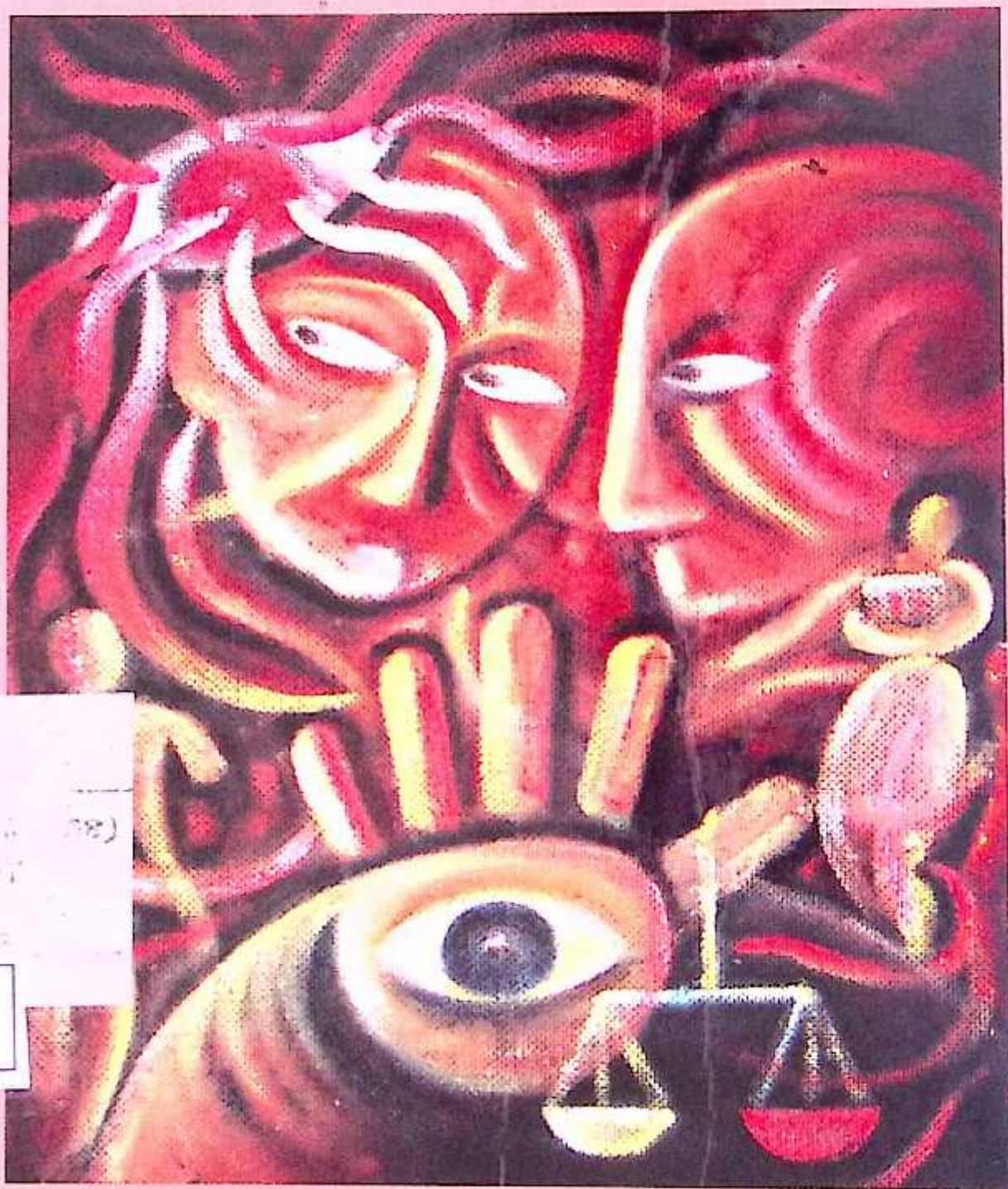
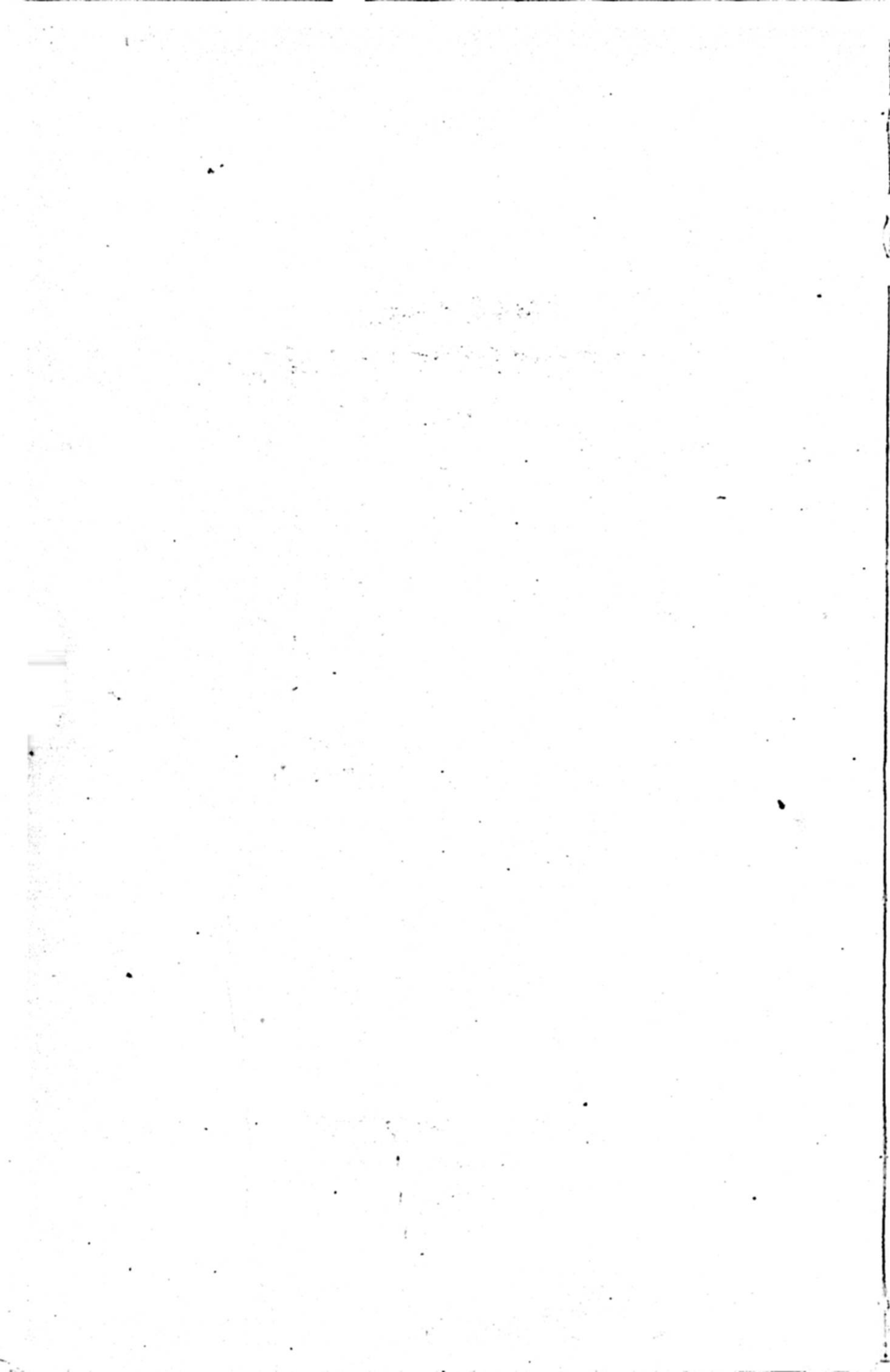


# Sri Lanka: State of Human Rights 2003



*Law & Society Trust*





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# **SRI LANKA: STATE OF HUMAN RIGHTS 2003**

This report covers the period  
January to December 2002

**Law & Society Trust**  
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## Foreword

This report seeks to describe the current status of human rights in Sri Lanka and to assess the extent to which Sri Lanka has fulfilled its obligation to protect the fundamental rights of its citizenry in conformity with its international obligations. Hence, the report represents an important watershed with regard to human rights in Sri Lanka. Constitutional guarantees, legislative enactments and the extent of the current implementation and enforcement of fundamental rights are examined and the impact of the restrictions they contain are discussed. This report focuses on: Internally Displaced Persons: Some Key Human Rights Issues, Integrity of the Person, The Status of Women in Sri Lanka: An Overview of Some Critical Aspects, Children Affected by Armed Conflict in Sri Lanka: The Year in Review, Freedom of Expression and Media Freedom, Judicial Protection of Human Rights, and Rights of Prisoners.

The report was co-ordinated by the Law & Society Trust. Specific chapters were assigned to individuals with special competence in the relevant areas. The drafts were subsequently reviewed for accuracy, objectivity and clarity of presentation. The report was then compiled in draft form and comprehensively edited to ensure that as far as practicable there would be uniformity of style and approach. It is inevitable, however, that there would be some overlap between chapters and that some topics would be dealt with more comprehensively than others. The report also contains a list of international human rights conventions to which Sri Lanka is a signatory and a list of instruments, which are yet to be ratified by Sri Lanka. A list of the fundamental rights cases decided by the Supreme Court in 2002, is also attached as a schedule to the report.

It is hoped that this report would continue to facilitate dialogue between civil society institutions and the government in ensuring more effective protection and promotion of human rights within Sri Lanka.



Sri Lanka's Constitution mandates that "the fundamental rights which are declared and recognized by the Constitution shall be respected, secured and advanced by all the organs of government." Sri Lanka is also a signatory to several international human rights conventions and must ensure that its domestic laws, policies and practices are in conformity with its international obligations. This report is a modest step in the continuing struggle to ensure that the State (and those non-state actors who are legitimately subject to scrutiny in this report) upholds its international and constitutional obligations to respect and safeguard human rights.

**Law & Society Trust**

Colombo

October 2003

## **ABBREVIATIONS**

BBC	British Broadcasting Corporation
BASL	Bar Association of Sri Lanka
CAT	Convention Against Torture
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CGES	Commissioner General of Essential Services
CHA	Consortium of Humanitarian Agencies
CID	Criminal Investigation Department
CMC	Colombo Municipal Council
COPE	Committee on Public Enterprise
CPA	Centre for Policy Alternatives
CRC	Convention on the Rights of the Child
CSHR	Centre for the Study of Human Rights
DNA	Deoxyribonucleic Acid
ECHR	European Convention on Human Rights
EPAU	Evaluation and Policy Analysis Unit
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
FDB	Foreign Development Board
FHD	Forum for Human Dignity



FOI	Freedom of Information
GS	General Services
GOSL	Government Of Sri Lanka
HSZ	High Security Zone
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
ILO	International Labour Organisation
INGO	International Non Governmental Organisation
ITN	Independent Television Network
JMO	Judicial Medical Officer
LTTE	Liberation Tigers of Tamil Eelam
MOD	Ministry of Defence
MOU	Memorandum of Understanding
MOH	Ministry of Health
NCW	National Committee on Women
NEP	National Employment Policy
NGO	Non-Governmental Organisation
NIFNE	National Institute of Fisheries and Nautical Engineering
OIC	Officer In Charge
OPA	Organisation of Professionals Association
PA	People's Alliance

PCC	Press Complaints Commission
PPB	Public Performances Board
PSD	Presidential Security Division
PRS	Poverty Reduction Strategy
PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
RRR	Rehabilitation, Resettlement and Refugees
RSF	Reporters Sans Frontiers
SDN	Sub-committee on De-escalation and Normalization
SGI	Sub-committee on Gender Issues
SIHRN	Sub-committee on the Immediate Humanitarian and Rehabilitation Needs
SLBC	Sri Lanka Broadcasting Corporation
SLBFE	Sri Lanka Bureau of Foreign Employment
SLMM	Sri Lanka Monitoring Mission
SLRC	Sri Lanka Rupavahini Corporation
SLT	Sri Lanka Telecom
STF	Special Task Force
UAS	Unified Assistance Scheme
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNF	United National Front
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commission for Refugees
UNSMR	United Nations Standard Minimum Rules
USA	United States of America
UTHR(J)	University Teachers for Human Rights Jaffna
WFP	World Food Programme
WIN	Women In Need





# I

## Overview

*Elizabeth Nissan*

### 1. Introduction

Following the general election on 5<sup>th</sup> December 2001, which brought the United National Front (UNF) government to power under the leadership of Ranil Wickremasinghe, the year 2002, was marked by a sense of cautious optimism on the human rights front. Central to this change of mood the cessation of hostilities in the Northeast, which was formalised in a Memorandum of Understanding (MOU) titled the "Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam" on 22<sup>nd</sup> February 2002. The first three rounds of peace talks between the two sides followed later in the year.

The cessation of hostilities lasted throughout the year, despite some breaches. Certainly the implementation of the MOU left much to be desired in human rights terms, and as the negotiations began to move forwards, human rights activists began to lobby for a human rights

perspective to be incorporated into the peace process. But the cessation of hostilities itself, together with the lifting of the embargo on the transport of numerous goods from the South to the Northeast and the opening of transport links from the South to the North, brought considerable improvement to the lives of many people living within the conflict zones. The MOU and the peace talks during 2002 are discussed later in this Overview.

The ceasefire brought many benefits to people living in the Northeast. In this report, the focus in this regard is particularly on women, children and the internally displaced. In addition, as security check points came down in the South and confidence gradually grew in the sustainability of the ceasefire, a greater sense of freedom and security also began to permeate the lives of people living in the South, especially in areas where the Liberation Tigers of Tamil Eelam (LTTE) suicide bombers have attacked in the past. Nevertheless, the tasks of resettling and rehabilitating displaced and war-affected people and of reconstruction in the Northeast remained vast throughout 2002; they became central issues in the peace talks towards the end of the year as concern remained high about slow progress in ameliorating conditions for the people of the Northeast. As discussed in the chapter on *Internally Displaced Persons*, the situation of the internally displaced, including many women and children, remained grave, despite some improvements under the ceasefire. Crucial issues in the year concerned the rights to safe and voluntary return for the internally displaced, as well as access to adequate food rations, shelter, work, health care and education. Children in the Northeast remained particularly vulnerable to violations of their rights, both as members of displaced families and as particular targets of LTTE recruitment drives. Indeed, the issue of continuing child conscription into the LTTE – despite the LTTE's undertaking in 1998 not to recruit children and denials during the year from senior LTTE officials – remained a major issue during the year and exposed serious weaknesses in the monitoring arrangements established under

the MOU, as discussed below and in the chapter on *Children Affected by Armed Conflict in Sri Lanka*. Child conscription into the LTTE reportedly involved both abductions and voluntary recruitment.

A more gender-sensitive approach to peace-building and to the issues facing the displaced has increasingly come to the fore in research and advocacy on women's rights and peace building, as discussed in the chapter on *The Status of Women in Sri Lanka*. On a more formal level, intensive lobbying by women's organisations led late in 2002 to an agreement by the government and the LTTE to form a Sub-Committee on Gender Issues (SGI) to advise on the effective inclusion of gender concerns in the peace process, a most important new initiative. The first meeting of the SGI took place early in 2003.

It has frequently been noted in past *Sri Lanka: State of Human Rights* reports that the ongoing conflict in the Northeast has provided the context for many of the worst human rights violations in the country – the 'disappearances' and abductions, the large scale arbitrary detentions, the extrajudicial executions and assassinations, the mass displacement of the civilian population with all the violations of economic and social rights that displacement entails. With the cessation of hostilities, this context changed for the better, as is noted in several chapters in this volume. But it must be remembered that the absence of certain kinds of violations – of 'disappearances' and arbitrary detentions, for example, or of new waves of mass displacement – does not mean that safeguards are in place against their future recurrence if hostilities should resume. Indeed, as is demonstrated in this volume, major reforms remain necessary to create a proactive and protective human rights infrastructure across the whole spectrum of human rights which would be effective during both times of peace and of conflict. Such reforms need to foster a more active human rights culture and be able to tackle both the effective prevention of future violations and the related issue of how past violations are dealt with in a just manner.

The lifting of emergency regimes under the Emergency Regulations and the Prevention of Terrorism Act (PTA) had a beneficial effect not only on rights relating to integrity of the person – as, for example, the great majority of detainees held under these provisions were released – but also had a positive impact on freedom of expression. Emergency provisions had long been used to impose different forms of censorship on the media; their lifting created far greater freedom. However, the government made no moves to repeal the PTA or amend the Public Security Ordinance to prevent a recurrence of such excesses. The government did, however, introduce certain beneficial reforms to media law that have long been sought, such as repealing the defamation provisions in the Penal Code and the Press Council Law. It also began consultations on a draft Freedom of Information Act. These and other reformist moves are outlined in the chapter on *Freedom of Expression and Media Freedom*, together with other outstanding major issues relating to freedom of the media that have yet to be addressed.

It must also be remembered that human rights violations in Sri Lanka have not only occurred in the context of conflict in the Northeast over the years. A long-standing issue which became the focus of renewed attention during the year was the endemic use of torture within the criminal justice system in Sri Lanka, which in some cases involved rape as well as other forms of physical abuse and in others led to the deaths of people held in custody. So important is this issue that it is highlighted in several chapters, including *The Integrity of the Person*, *The Status of Women in Sri Lanka* and *Judicial Protection of Human Rights*. Torture is illegal in Sri Lanka, but the criminal justice system does little to prevent its continuation. Torturers within the police and the armed services continue to benefit from a culture of impunity that must be changed if torture is to be stopped. The continuing efforts of the Supreme Court to provide redress for those few torture victims

who bring fundamental rights applications before it are laudable, but are inadequate to prevent torture from continuing, as is amply documented in this volume.

In addition to discussing women's rights issues relating to the conflict, the chapter on *The Status of Women in Sri Lanka* also reminds us of serious rights issues concerning women that are not necessarily linked to the conflict. Violence against women, including domestic violence, have risen on the women's rights agenda in recent years, for example, and the need to enhance the political representation of women remains imperative. State responsibility for the human rights is not confined within the island of Sri Lanka, as this chapter also reminds us in its discussion of violations of the rights of migrant workers from Sri Lanka, the majority of who are women.

A new issue to fall under the spotlight in this edition of *Sri Lanka: State of Human Rights 2003* is the dire conditions within Sri Lanka's prisons. With aged, decaying prison buildings that are severely overcrowded and with a very low priority in government spending plans, the Prison Department cannot and does not fulfil the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners' rights in Sri Lanka are violated daily. The figures for overcrowding alone are shocking: existing prisons in the whole country are authorized to hold 7,641 prisoners, yet prison statistics show that during 2002 the daily average of prisoners was around 18,000. When one also considers the fact that about 10,000 of these prisoners have not yet even been convicted but are held on remand, the urgent need for reform is stark. As stated in the chapter on *The Rights of Prisoners*,

*"Overcrowding in prisons has reached catastrophic proportions.... The problem is not only that there is a lack of space or accommodation for all these prisoners, it is also that there is insufficient provision of water, sanitary and recreational facilities*

*and essential items of equipment such as bedding, plates, mugs, towels and clothing.”<sup>1</sup>*

## **2. International developments**

### **2.1 Reporting under the Convention for the Elimination of Discrimination against Women**

Sri Lanka’s periodic report under the Convention for the Elimination of Discrimination against Women (CEDAW) came under scrutiny by the CEDAW Committee in January 2002, as outlined in the chapter on *The Status of Women in Sri Lanka*. The Committee produced a series of recommendations to the government to enhance women’s rights in the country.

### **2.2 International Criminal Court**

The treaty on the International Criminal Court (ICC) received the required number of ratifications (60) on 9<sup>th</sup> April 2002 and came into force on 1<sup>st</sup> July 2002. The Court will prosecute crimes of genocide, war crimes and crimes against humanity. The previous government of Sri Lanka did not ratify the treaty on the grounds that it was at war. However, now that the government and the LTTE are engaged in ongoing peace talks, there is a window of opportunity to lobby for ratification. Ratification would signal trust in the other party and the political will to respect human rights and humanitarian norms for the future.

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<sup>1</sup> See Page 205, in this Volume.



### 3. The Peace Process in 2002

The UNF government was elected to power on 5<sup>th</sup> December 2001; it had promised to seek a negotiated settlement to the conflict. On 24<sup>th</sup> December, the LTTE declared a unilateral ceasefire that the new government soon reciprocated. The ceasefire held and on February 22, 2002 it became formalised in the MOU, signed by both sides, which is summarized below. A series of peace talks followed later in the year, facilitated by the Norwegian government.

The parliamentary elections brought about a change of government but not of the presidency, which remained in the hands of the opposition. Tensions between the government and the President over the unfolding peace process remained high throughout the year, at times threatening to derail the process. Indeed, in what is now an all too familiar pattern in Sri Lankan politics, such tensions between the ruling party and the opposition within the predominately Sinhala Southern polity continued to pose a serious obstacle to reaching a sustainable and just peace for all communities and individuals in the island.

The MOU and the ongoing peace talks provided a new context for the work of activist human rights and peace organisations, which sought both to engage in a broad programme of peace building and advocacy. The place of human rights within the peace process became a key issue. At first, potentially sensitive human rights issues were only cautiously raised in the context of a fragile peace; as time passed and the ceasefire held, however, the need for a more explicit human rights framework underpinning the peace process was declared more readily and human rights issues started gradually to rise up the agenda. By November, at the second round of peace talks, the two parties had agreed to invite Mr Ian Martin, a former Secretary General of Amnesty International, to provide expert advice on the incorporation of human rights into the peace process. Nonetheless, despite pledges by both sides with regard to the importance of human rights protection, the

situation on the ground in the Northeast continued to generate concern throughout the year.

Of particular concern after the MOU was signed were continuing abuses by the LTTE in the Northeast, and in particular their continued recruitment of children and their extortion of money and land from residents of the Northeast, both Tamil and Muslim. If many Tamils feared to openly criticise such actions by the LTTE, the Muslim community was less reticent. It felt itself increasingly vulnerable to LTTE intimidation, and feared that its particular interests as a minority community in the Northeast might be overlooked in the peace negotiations, whatever the formal stance of the LTTE might be. Indeed, as the mobility of the LTTE increased within government-controlled areas under the terms of the MOU, members of the Muslim community living in such areas became increasingly vulnerable to extortion and abduction for ransom by the LTTE. The LTTE was also reported to have prohibited Muslims in the North from engaging in certain kinds of trade and in fishing, and to have extended its own domination over many business interests.

Human rights activists became increasingly concerned that the international Sri Lanka Monitoring Mission (SLMM) established under the MOU was turning a blind eye to such abuses, hesitating from addressing potentially contentious issues and refusing to address key human rights concerns head-on, in the interest of sustaining the ceasefire. This was despite the fact that the MOU itself prohibited the abduction, extortion and harassment of civilians. Furthermore, the SLMM did not have access to certain areas under LTTE control; its activities were concentrated primarily in the government-controlled zones.

As will be seen below, there was considerable disjunction between formal statements of principle by the LTTE and the situation on the

ground. On the one hand, the LTTE agreed in its formal statements on the importance of respecting the rights of all communities; on the other, Muslims in the East particularly felt themselves increasingly intimidated by the LTTE and members of other Tamil political groups in the Northeast also found themselves coming under increasing pressure from the LTTE.

In April, after the MOU but well before formal peace talks had started, the leader of the Sri Lanka Muslim Congress, Minister Rauf Hakeem, had met with LTTE leader Mr V. Prabhakaran, to discuss issues relating to lands belonging to Muslims. The LTTE leader had promised that lands belonging to Muslims but currently occupied by Tamils would be returned as soon as possible. By the end of the year, the issue had been taken up in the context of the formal peace talks (see below), but had not reached any resolution.

Soon after the MOU was signed, efforts were made to implement certain provisions swiftly as a means of building confidence and establishing trust, 'restoring normalcy' in the Northeast and providing a positive context to build on in further negotiations. The experience of the breakdown of negotiations between the previous government and the LTTE in the early days of the Kumaratunga administration had shown how important it was for prompt action to be taken by the government on such matters as lifting the economic embargo in order to establish a basis for trust. Soon after the MOU was signed, on March 6, travel restrictions were lifted on civilian traffic from Vavuniya to the South. As documented in previous editions of *Sri Lanka: State of Human Rights*, such restrictions had created considerable hardship for many people, seriously restricting freedom of movement and, in some cases, involving arbitrary detention. The requirements to obtain a pass before travelling South and to register with the police on arrival in the South were lifted, except for LTTE cadres, who were required to register with the authorities when

travelling to government controlled areas under the terms of the MOU. Later in March, through Norwegian facilitation, the LTTE agreed to the opening of the A9 highway through the Vanni (which remained under LTTE control). The A9 had been a most fiercely contested route over years of conflict; many thousands of lives had been lost in battles for its control. Its opening on April 8 for the first time in 12 years marked an important milestone in the peace process. Civilians could now travel by road right through to Jaffna from Kandy, albeit with the equivalent of 'border' checks by the military and the LTTE at their respective lines of control either side of the Vanni. In addition, only a very limited range of goods remained prohibited for transport to the Northeast under the terms of the MOU; the embargo that had previously limited access to many goods in the Northeast was also lifted, enhancing the potential for trade considerably, despite a parallel taxation system imposed by the LTTE at its lines of control in the Vanni. On July 15, a stretch of the A5 between Maha Oya and Chenkaladi was opened, enhancing access to the East. Another important development was the lifting of restrictions on fishing in the Northeast in May 2002.

Throughout this period, there were periodic meetings between government and LTTE representatives but the LTTE was unwilling to enter into formal peace negotiations with the government while it remained a proscribed organisation under Sri Lankan law. On September 4, the government lifted the ban. On September 28, soon after the first round of formal peace talks, the two sides exchanged a number of prisoners of war: seven security forces personnel held by the LTTE were released in exchange for 13 LTTE cadres who had been held prisoner in the South.

#### **4. The Memorandum of Understanding (MOU) and the Sri Lanka Monitoring Mission**

The MOU signed by the Government of Sri Lanka and the LTTE stated that the overall objective of both sides was “to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka”. Ending hostilities and improving living conditions for all groups affected by the conflict was seen as desirable in itself and as a means of establishing “a positive atmosphere in which further steps towards a lasting solution can be taken”.<sup>2</sup>

The MOU detailed the modalities of the ceasefire and the terms for separation of forces of the two sides, based on current ground positions. It also specified that Tamil paramilitary groups that had sided with government forces would be disarmed within a specified time limit.

The MOU also provided specific conditions under which unarmed combatants could move into or through areas controlled by the other side. In addition, it specified that “for the purpose of political work” a gradually increasing number of unarmed LTTE members would be allowed free movement within government controlled areas, excepting specified military areas.

The MOU contained several provisions intended to protect the civilian population from abuse and to facilitate the restoration of public services in the section on “Measures to Restore Normalcy”. Safeguards for the civilian population required the parties to “abstain from hostile acts

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<sup>2</sup> This section quotes from and summarises the provisions of the MOU as published on the official website of the Secretariat for Co-ordinating the Peace Process (SCOPP), which was established on February 6, 2002 as a means of institutionalising the peace process and functions within the Prime Ministers Office. See <http://www.peaceinsrilanka.org> official documentation relating to the peace process.



against the civilian population, including acts such as torture, intimidation, abduction, extortion and harassment". Activities that could offend cultural or religious sensitivities were also banned, and there was a requirement for places of worship held by the forces of either side to be vacated and made available to the public within 30 days of the MOU taking effect; such places located within high security zones should be vacated even if they would remain inaccessible to the public. School buildings occupied by the forces of either side had to be vacated within 160 days of the MOU taking effect, and the intention to return public buildings to their intended use was also stated. Security measures and checkpoints had to be reviewed, and systems established within 60 days that would prevent civilians from being harassed. Non-military goods would be permitted to flow to and from LTTE-controlled areas, with checkpoints at each party's line of control "to facilitate the flow of goods and the movement of civilians".

Further provisions dealt with the opening of the Trincomalee-Habarana Road on a 24-hour a day basis, the extension of the rails service on the Batticaloa line to Welikanda, and opening of the Kandy-Jaffna A9 road to non-military traffic of goods and passengers, and the lifting of fishing restrictions.

With regard to prisoners, search operations and arrests under the Prevention of Terrorism Act (PTA) by government forces would halt, with all future arrests being conducted in accordance with the Criminal Procedure Code and both parties agreed to provide access for family members to visit detainees within 30 days.

Under the terms of the MOU, an international monitoring body was established, the Sri Lanka Monitoring Mission (SLMM) "to inquire into any instance of violation of the terms and conditions of this agreement". The Head of the SLMM would be appointed by the Norwegian Government and its members would come from Nordic



countries. Both parties were required to “fully cooperate to rectify any matter of conflict caused by their respective sides” and the mission would conduct “international verification through on-site monitoring of the fulfilment of the commitments entered into in this Agreement”.

Local Monitoring Committees would be established in Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Ampara consisting of two members each appointed by the LTTE and the government, and a fifth international monitor appointed by the Head of the Mission. The local committees would advise the SLMM on the issues arising in their districts and seek to resolve disputes at the lowest possible level. The parties agreed to ensure freedom of movement to SLMM and local committee members performing their duties, and to give immediate access to areas where violations of the Agreement were alleged to have taken place.

A separate agreement contained guidelines for the operation of the SLMM and specified the privileges and immunities conferred on both the institution and its individual members.<sup>3</sup>

As set out in the MOU, the SLMM could be interpreted as having a strongly proactive mandate, being responsible for investigating alleged breaches of the Agreement and for bringing its concerns to the parties concerned for resolution. This was not how it appeared to interpret its role, however, at least in the first months of its existence. Instead, it took a passive stand on issues involving the violation of the rights of civilians, such as abductions and intimidation, failing to investigate such complaints and focusing its efforts on the military aspects of the agreement. Local human rights organisations expressed considerable concern that the specific human rights elements within the MOU were being overlooked, and when Amnesty International visited Sri Lanka

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<sup>3</sup> See “Status of Mission Agreement on the Establishment and Management of the Sri Lanka Monitoring Mission”, published on <http://www.peaceinsrilanka.org>.

in June 2002 for meetings with both the government and the LTTE, it also urged the Norwegian government to ensure that SLMM and local committee members received human rights training.<sup>4</sup>

## **5. The Peace Talks in 2002**

The first round of formal peace talks between the government and the LTTE, facilitated by the Norwegian government, was held in Thailand from September 16 to 18. The talks moved forward faster at the outset than many observers had expected. The first round ended on a positive note with both sides affirming their determination to move forward to create "the conditions for lasting peace, prosperity, and respect for human rights".<sup>5</sup> The talks focused on the serious humanitarian situation in the Northeast, and in particular the need for demining, for accelerating the resettlement and rehabilitation of internally displaced people, and for humanitarian and reconstruction work. Towards these ends, the parties agreed to establish a Joint Committee to deal with issues relating to High Security Zones (HSZ) (which remained as militarised areas, to which displaced people could not return) as well as a Joint Task Force for Humanitarian and Reconstruction Activities. The Joint Committee would consist of senior representatives of both sides, including military personnel. The Joint Task Force would also include participation by Muslims and it was stated that it would "benefit all ethnic communities of the North and East".<sup>6</sup> Recognising that a long path of negotiation lay ahead, the meeting ended with agreement on dates for three more rounds of talks, taking the process into the following year.

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<sup>4</sup> Amnesty International Report 2003, "Sri Lanka", <http://web.amnesty.org/report2003/Lka-summary-eng>.

<sup>5</sup> Statement of the Royal Norwegian Government, Royal Ministry of Foreign Affairs, 19th September 2002.

<sup>6</sup> Ibid.

The second round of formal talks was held from October 30 to November 3, again in Thailand. This time, the focus was on agreeing measures “to improve the security situation, inter-ethnic cooperation and respect for human rights in the North and Eastern Provinces”<sup>7</sup>, against a background of rising tension and violence, particularly in the East. In particular, the parties set out measures to improve inter-ethnic relations in the Northeast, and in particular relations between Muslim and Tamil communities. The agreements involved some changes in how the SLMM Local Monitoring Committees operated, an agreement for the commanders of the LTTE and the Special Task Force in the East to communicate directly to improve security in the area and consultations between LTTE and Muslim political leaders. Special note was also taken of the need for the interests of Sinhala people living in the East to be addressed. It was also agreed to establish local peace committees at community level, consisting of local community leaders together with LTTE and government leaders, which would contribute to inter-ethnic communication and reconciliation and promote respect for human rights.

Concern had been expressed by human rights activists that the first round of peace talks had failed to address human rights issues as an integral part of the peace process. At the second round of talks, it was agreed that former Amnesty International Secretary General Ian Martin would be invited to advise on human rights in the peace process.

In addition, it was decided at the second round of talks to establish various sub-committees as the need arose to work in depth on specific issues, accelerating the process, and report back to the formal talks. The Joint Task Force agreed at the first round of talks that a Sub-Committee on Immediate Humanitarian and Rehabilitation Needs

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<sup>7</sup> Statement of the Royal Norwegian Government, Royal Ministry of Foreign Affairs, 1 November, 2002.

would be established in the North and East, ensuring the involvement of all ethnic groups and giving priority to mobilizing local labour and institutions in implementing its activities. Its first task would be to assist the Royal Norwegian Government prepare for a fund-raising meeting with donor countries to finance their work.

In addition, sub-committees were also established on De-escalation and Normalization and on Political Matters. The former committee would provide the mechanism for dialogue between the parties on matters relating to high security zones and other areas that the public could not access, in order to facilitate the resettlement of internally displaced persons. It would include high-level civilian and military personnel from both sides. The latter sub-committee would address the complex political issues involved in reaching a negotiated settlement to the conflict. In practice, however, it was envisaged that the parties would "jointly and separately" consult with experts on the wide range of constitutional, legal, political and administrative issues involved to provide a basis for formulating the terms of any future Sri Lankan settlement.<sup>8</sup>

The third session of peace talks was held in Norway from December 2 – 5. Again, the focus of talks was on the consolidation of the ceasefire, humanitarian and rehabilitation work and political matters. It was agreed that a solution would be explored which would be acceptable to all communities and would be "founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka".<sup>9</sup> This agreement on a federal principle for resolving the conflict and on respect

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<sup>8</sup> Statement of the Royal Norwegian Government, Royal Ministry of Foreign Affairs, 3 November, 2002.

<sup>9</sup> Statement of the Royal Norwegian Government, Royal Ministry of Foreign Affairs, 5 December, 2002.

for the rights of all peoples in Sri Lanka was most important. To further consolidate the ceasefire, certain specific measures by both parties and the Sub-Committee on De-escalation and Normalization was asked to propose an approach to resolving disputes relating to the disputed use of private property, where the use has been impeded by the conflict.

Two new specific areas for attention also arose during the third round of talks with important human rights implications: first, the parties acknowledged the need to ensure that women's priorities and needs are taken into account in all aspects of the peace process. They agreed to establish a permanent advisory committee to submit proposals relating to women's interests to the negotiating sessions and to the various sub-committees. In addition, the need to improve the lives of children affected by armed conflict was also recognised. Of particular importance was the statement that "children belong with their families or other custodians and not in the workplace, whether civilian or military".<sup>10</sup> The LTTE agreed to work with United Nations Children's Fund (UNICEF) on an action plan to restore normalcy to children's lives and the parties called on the international community to fund such work.

By the end of 2002, then, there was a transformed political landscape in Sri Lanka with much remaining in the balance. The ceasefire had held for ten months – longer than at any previous time during the decades of conflict; the two parties were still involved in a process of formal talks, which would continue into the following year; disputes arising with regard to ceasefire violations by the government and the LTTE were being investigated; the SLMM was becoming willing to comment on human rights issues arising from ceasefire violations and there was some evidence that the LTTE leadership was taking action to reduce violations committed by middle ranking cadres. Both parties

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<sup>10</sup> Ibid.

had agreed to explore federal solutions to the conflict as the basis for their proposals, and had invited a much-respected international expert to act as an advisor on human rights issues in the peace process. Yet major uncertainties remained. Given the lack of consensus between the government and opposition parties in the South, and in particular the opposition of the Executive President, to the direction that the peace process had taken, the possibility remained that the government might yet find its hands tied in negotiations with the LTTE. And given the extent to which the LTTE had continued to recruit and to impose its political and economic will on the population of the Northeast throughout this period, and the sharp deterioration of its relationship with the Muslim population in the East in particular, doubts also remained in the minds of many as to the direction that the process might go, and especially whether it could lead to a future constitutional structure for Sri Lanka which would safeguard the rights of all communities and individuals living within the country, and within every region of the country.



## **II**

### **Internally Displaced Persons: Some Key Human Rights Issues**

*Renuka Senanayake\**

#### **1. Introduction**

In the year 2002, the internally displaced and the war-affected benefited from a number of developments that changed the political landscape of the country. The period witnessed a Memorandum of Understanding, (MOU) leading to formal peace talks between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE), the two main parties to the island's protracted conflict. The Memorandum of Understanding followed from developments in 2001, when on 24 December 2001 the LTTE declared a unilateral cease-fire, expressing their interest in a negotiated political settlement.

The United National Front (UNF) regime, which had been voted into parliament in December 2001, reciprocated the LTTE cease-fire and

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took measures to ease a number of restrictions that had contributed to human rights violations in the past. In January 2002, the Government lifted a longstanding economic embargo imposed on the North and East, allowing the flow of essential goods. Only items that could be militarily sensitive remained on the banned list. Restrictions on fishing were also eased in January and the ban on medical supplies to the North was lifted in February. The opening of the A9 road in April, linking the North and South, facilitated the movement of civilians and essential goods to and from the North. In November, official peace talks between the LTTE and the Government took place in Bangkok, offering further relief to the war-affected people.

Prior to the cease-fire, the primary cause of displacement had been the fear of being caught in the fighting. Other reasons for civilian displacement included direct attacks on civilian settlements and the launch of retaliatory attacks, arbitrary arrests, detention, torture, sexual harassment, forced recruitment of adults and children, or the threat of the aforesaid by the main parties to the conflict and other paramilitary groups.

In the year under review, new waves of civilian displacement ceased to be a significant issue because the cessation of hostilities brought to an end the main causes of displacement. Another factor that also helped was the disarming of paramilitary groups in the North and East in March,<sup>1</sup> which helped to control the more generalized violence.

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<sup>1</sup> Tamil paramilitary groups excluding the Eelam People's Democratic Party (EPDP) handed over arms to the Sri Lankan Army in accordance with Article 1.8 of the Memorandum of Understanding (MOU) titled as the "Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam". These groups comprised of the Tamil Eelam Liberation Organisation (TELO), People's Liberation Organisation of Tamil Eelam (PLOTE) and the Eelam People's Revolutionary Liberation Front (EPRLF).

However, despite these positive measures, a number of important human rights issues emerged in the post cease-fire period. These included civil unrest arising out of ethnic tensions between the three main communities, recruitment of children by the LTTE and harassment of civilians by both the LTTE and the police and armed forces. Furthermore, the lack of protection and assistance for the displaced continued to contribute to rights violations. During this period, crucial issues surrounding the rights to safe and voluntary return emerged and grew in significance.

In this chapter the human rights of the internally displaced persons (IDPs) will be discussed in the context of the positive changes that continued throughout the year 2002. This chapter adopts the definition of IDPs provided by the United Nations Guiding Principles on Internal Displacement.<sup>2</sup> The chapter, however, will limit itself to rights of those displaced by the ethnic conflict. The rights of the displaced in the year 2002 will be presented under the broad themes of the Memorandum of Understanding and human rights, assistance, freedom of movement, rights to return and resettlement, the institutional landscape, women, children, refugees, and international and domestic norms applicable to internally displaced persons and displacement.

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<sup>2</sup> "...internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effect of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border", UN Doc E/CN.4/1998/53/Add.2, paragraph 2.

## 2. Memorandum of Understanding and Human Rights

On 22 February 2002, the Government of Sri Lanka (GOSL) and the LTTE signed a Memorandum of Understanding (MOU)<sup>3</sup> (See Schedule IV). As stated in the preamble to the agreement, its main objective was to establish an atmosphere for negotiations for a lasting political solution to the ethnic conflict. The agreement in principle outlines the modalities for the cessation of hostilities and restoration of normalcy. Some of the detailed measures include the disarming of paramilitary groups, the vacating of public buildings by the two parties to the MOU so that they can be returned to their intended use, permitting the unimpeded flow of non-military goods to the north and east, reviewing security measures to prevent the harassment of civilians and guarantee human rights. The agreement made provision for the establishment of a mission, namely the Sri Lanka Monitoring Mission (SLMM), to monitor the implementation of the agreement. The SLMM, led by Norway, is made up of representatives from both the GOSL and the LTTE. Although it might be observed that there was an improvement in the overall human rights situation, acts of intimidation, repression and harassment of civilians by the Sri Lankan armed forces, the LTTE and paramilitaries continued in the North and East. Throughout 2002, the SLMM, the Human Rights Commission of Sri Lanka, the police and civil society organizations continued to receive complaints about child recruitment, abduction, extortion and harassment by the LTTE and harassment of civilians by paramilitary groups.

For instance, Amnesty International named 13 children who had been abducted in the month of May.<sup>4</sup> As of June 30, the SLMM had recorded

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<sup>3</sup> Titled as the "Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam".

<sup>4</sup> *The Island*, 7<sup>th</sup> May 2002, as cited in the *Monthly News Brief* June 2002, Home for Human Rights.

32 complaints of abduction or kidnapping, 5 complaints of extortion and 44 complaints of harassment by the LTTE, while in the same period there had been one reported complaint of abduction and 23 reported cases of harassment by the armed forces.<sup>5</sup> There were complaints against both the armed forces and the LTTE for restricting the movement of civilians and forcible occupation of their property. The GOSL was accused of inaction and failure to investigate alleged attacks by Sinhalese on Tamil civilians in Trincomalee.<sup>6</sup>

Furthermore, there was civilian concern that the cease-fire agreement had enabled the LTTE to impose their control in areas which had previously been inaccessible to them. The increase in the number of complaints against the LTTE was probably due to this new access that the LTTE had gained to the civilian population. However, complainants received little or no redress after their grievances had been recorded.

The lack of redress was, in part, due to the absence of an effective enforcement mechanism under the terms of the MOU. The main role of the SLMM, established by the MOU, was to monitor the cease-fire agreement. Even though section 2.1<sup>7</sup> makes provision for the protection of the civilian population, particularly from hostile acts such as torture, intimidation, abduction, extortion and harassment, in the early part of

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<sup>5</sup> Complaints and Violations of the Ceasefire Agreement as of 30<sup>th</sup> June 2002, Press Statement of the Sri Lanka Monitoring Mission, 8<sup>th</sup> July 2002.

<sup>6</sup> Keenan, Alan, *'Democratizing Human Rights, Strengthening Peace: Sri Lanka's Historic Challenge'* 2003 paper presented at CPA/ Berghof Road Map Workshop, Colombo, 13<sup>th</sup> February 2003.

<sup>7</sup> "The parties shall in accordance with international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion, and harassment," Article 2.1, MOU.

2002 there was uncertainty as to whether the SLMM would take upon itself the monitoring of human rights.<sup>8</sup>

Further, the SLMM's mandate has inherent limitations as regards human rights. The mandate, which derives from the MOU, has been broadly understood as being limited to monitoring instances of particular violations by the two parties to the agreement. The MOU does not refer to many important human rights, such as freedom of movement (beyond some very specific provisions within the MOU), freedom of association, freedom from arbitrary arrest, exercise of lawful political rights, freedom of expression and of the press, and the rights of displaced persons to return to their homes and carry on their economic activities.<sup>9</sup>

There was also concern about the geographic scope of the SLMM's monitoring activities under the MOU. In practice, the SLMM's monitoring did not extend to the areas of Killinochchi and Mullaitivu, which are under LTTE control.<sup>10</sup> A further limitation on its work is that fact that the membership of the SLMM includes representatives

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<sup>8</sup> "It has been suggested that the Norwegian led SLMM may be hesitant to include monitoring of human rights as part of its regular functions as this might jeopardise the peace process", *The Situation of IDPs in Sri Lanka: Report of a Mission by the Internal Displacement Unit*, April 2002, UN Office for the Coordination of Humanitarian Affairs. (OCHA).

<sup>9</sup> "Although the list of protected rights is not exhaustive both sides tend to interpret that other rights such as freedom of movement, freedom of expression and freedom from unlawful detention are not covered by the MOU. Thus they are not incorporated into monitoring arrangements put in place to verify the fulfillment of the agreement"-*The Situation of IDPs in Sri Lanka: Report of a Mission by the Internal Displacement Unit*, April 2002, UN Office for the Coordination of Humanitarian Affairs. (OCHA).

<sup>10</sup> See Martin, Ian, "*Human Rights in Sri Lanka after the Ceasefire*", The International Working Group on Sri Lanka, UK, 26<sup>th</sup> March – 3<sup>rd</sup> April 2002.



of the GOSL and the LTTE, which could act as a deterrent to would-be complainants.

In addition to providing inadequate monitoring provisions, the MOU also failed to address past violations adequately. For instance, it made no provision for the release of those who had been forcibly recruited; nor did it provide for a review of the cases of prisoners detained under the Prevention of Terrorism Act (PTA) prior to the MOU.<sup>11</sup>

### 3. Humanitarian Assistance

The Sri Lankan government has been the main provider of assistance to the displaced population. Assistance has mainly comprised of basic food and in some instances shelter. However, the government has come under criticism for the glaring disparities that exist in its treatment of the displaced and for the fact that its assistance fell short of internationally accepted standards of humanitarian assistance and aid.<sup>12</sup> For instance, despite a request for assistance for 379,400 IDPs in the LTTE controlled areas in the northern Vanni, the State continued to provide relief to only 170,000 persons.<sup>13</sup> This discriminatory treatment

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<sup>11</sup> *The Situation of IDPs in Sri Lanka: Report of a Mission by the Internal Displacement Unit*, April 2002, UN Office for the Coordination of Humanitarian Affairs. (OCHA).

<sup>12</sup> The World Food Programme provides assistance based on the calorie needs of an individual and provides all family members with assistance irrespective of the number of members per family. The Commissioner General of Essential Services provides assistance based on the cost of living in 1993 and provides assistance only to a maximum of 5 members per family.

<sup>13</sup> V. Gosselin, R. Senanayake & E. Vijayalakshmi, *Human Rights Violations of Internally Displaced Persons and Government Policies 2001*, Centre for Policy Alternatives.



was rectified in 2002, as a step towards creating the climate for peace negotiations with the LTTE.

The inadequacy of assistance, prolonged delays, arbitrary cuts and rampant corruption in the distribution of assistance continued throughout 2002. The State provides dry food rations worth Sri Lankan Rupees (SLR) 1,260 per month for a maximum of five persons per displaced family.<sup>14</sup> This package of assistance, which is based on cost of living estimates for 1993, had not changed even in 2002, to reflect the increased cost of living in the country. Thus, the monthly food rations provided by the government were often claimed as barely enough for IDPs to survive for 10-15 days.<sup>15</sup> Humanitarian groups have requested the government to ensure that relief assistance conforms to the Sphere standards<sup>16</sup> and to take into consideration the calorie needs of individuals. The 'five-member' ceiling on family size also posed particular hardships to larger families, particularly the female-headed households and families headed by adults with special needs.

In the period under review the displaced were adversely affected by the denial of food assistance by both the World Food Programme (WFP) and Commissioner General of Essential Services (CGES). IDPs island-wide were denied food relief for three months from December 2001 till March 2002.<sup>17</sup> The sudden withdrawal of the WFP, due to a shortfall of funds, affected 10% of the most vulnerable IDPs out of a total of 800,000 and included those confined within closed camps in Vavuniya. Following the withdrawal of WFP assistance, the Commissioner

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<sup>14</sup> State Assistance is distributed through the Office of the Commissioner General of Essential Services.

<sup>15</sup> Ibid.

<sup>16</sup> <http://www.sphereproject.org>, visited on 5<sup>th</sup> May 2003.

<sup>17</sup> Senanayake, Renuka, *"The Displaced Starve as Politicians Play,"* Inter Press Service March 2001, Published in the *Asia Times* online, <http://www.atimes.com>

General of Essential Services (CGES) stepped in to assist the displaced three months later with a relief package of Rs. 1,260 worth of dry food rations. The CGES package is limited to a maximum of five members per family in contrast to the WFP assistance, which had been based on the calorie needs of individuals and so extended to the entire family. The WFP relief assistance had consisted of rice, sugar, dhal, coconut oil and iodized salt with supplementary food items for pregnant women and children under five.

The failure of the CGES to provide its regular supplies of food relief to the displaced has been attributed to power struggles between the President's People's Alliance party and the rival UNF, which commands a majority in parliament. The newly elected UNF government froze funds allocated to the CGES, which came directly under the purview of the President, on allegations of corruption, making no arrangements to continue the supply of relief to the displaced. The CGES office was later brought under the control of the UNF government.

However, despite announcements by the Ministry of Rehabilitation, Resettlement and Refugees that food assistance to the displaced had been restored by March, the media continued to highlight month-long delays in providing relief, particularly in the districts of Killinochchi, Batticaloa, and Vavuniya.<sup>18</sup>

IDPs have often been denied the full benefits of relief assistance, due to the prevalence of widespread corruption.<sup>19</sup> This situation continued during the period under review. Under the prevailing distribution

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<sup>18</sup> *Virakesari* 2<sup>nd</sup> June, 2002, as published in Monthly News Brief, Home for Human Rights, August 2002, Tamil Net 7<sup>th</sup> August, 2002.

<sup>19</sup> Care, October 2000a, Workshop report as cited by Ibarguen Claudia, in the *Review and Analysis of Secondary Literature on Internal Displacement in Sri Lanka*, Care, 2001.

mechanism, the displaced must produce a coupon to collect their dry food rations from designated shops that have been paid in advance by the government. Often these shops claimed not to have adequate stocks or they sold low quality goods at prices higher than on the open market. For instance, in Jaffna District, rice that was sold in the open market at rupees 30 per kilogram, was sold to IDPs at Rs. 37.50; IDPs also had to pay exorbitant prices for essentials such as sugar and dhal, with sugar that could be purchased on the open market at Rs. 27 costing IDPs Rs. 32.50 and dhal which would normally cost Rs. 30 being charge to IDPs at Rs. 56.50.<sup>20</sup>

#### **4. Freedom of Movement**

In the past the movement of IDPs had been restricted in a number of ways. These included 'closed camps' run by the GOSL for the displaced and imposition of a rigid military 'pass system' on IDPs among others. The GOSL and the LTTE imposed severe restrictions on the movement of youth, and the LTTE restricted the movement of civilians out of areas under their control by requiring fees to be paid.<sup>21</sup> During the period under review, a number of positive changes took place. The rigid military pass system restricting the movement of IDPs in Vavuniya and Mannar was removed on March 5<sup>th</sup> 2002. The removal was influenced by measures that were taken to pave the way for peace talks and the challenge to its legality in a fundamental rights case

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<sup>20</sup> Statement by the Council of NGOs, Jaffna District.

<sup>21</sup> 'LTTE restrictions on movement included payment of fees to move out of areas under their control and rarely were whole families allowed to leave', V. Gosselin, R. Senanayake & E Vijyalakshmi, *Human Rights Violations of Internally Displaced Persons and Government Policies 2001*, Centre for Policy Alternatives 05.09.2002.

sponsored by the Centre for Policy Alternatives (CPA).<sup>22</sup> The LTTE, too, relaxed its restrictions on the movement of civilians in areas under their control. However, there was uncertainty as to the right to movement of some of the displaced Muslims and Sinhalese in LTTE-controlled areas.

Displaced people living on the islands off the Jaffna peninsula continued to complain of harassment by the armed forces and paramilitary groups. There were also complaints that the navy was placing restrictions on civilians traveling to Delft Island.<sup>23</sup>

Further, the government's relocation policy<sup>24</sup> itself impeded freedom of movement. According to this policy, the displaced could not be relocated on State land in a district other than the district of their origin. In practice, 'district of origin' is interpreted to mean the district from which they were displaced in the last few years.

The application of this policy has been an obstacle to the relocation of many landless IDPs. The Tamils of Indian origin, who had been living in the hill country before they fled to the North during periodic riots from the late 1970s, figure prominently among those so affected. As documented by the Centre for Policy Alternatives (CPA),<sup>25</sup> most of the displaced have expressed their willingness to relocate in the area of their current displacement, where they have been living for at least five years.

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<sup>22</sup> *Arumugam Vadivelu v. O.I.C. Sithambarapuram Refugee Camp Police Post, Vavuniya and Others*, S.C. Application No.44/2002, S.C. Minutes 05.09.2002.

<sup>23</sup> *Virakesari* 8<sup>th</sup> January 2003 as published in Monthly News Brief February 2003, Home for Human Rights.

<sup>24</sup> Appendix II, 13<sup>th</sup> Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

<sup>25</sup> V. Gosselin, E. Premaratne & R. Senanayake, *Land and Property Rights of Internally Displaced Persons February 2003*, Centre for Policy Alternatives.

## 5. Return and Resettlement

By October 2002, according to the United Nations High Commission for Refugees (UNHCR), an estimated 183,000 IDPs had returned to their places of origin.<sup>26</sup> While in many cases return was spontaneous, there were complaints, particularly in the early part of 2002, of the forced or coerced return of IDPs by the GOSL. As recorded by CPA in its report on Land and Property Rights of the Internally Displaced Persons<sup>27</sup> a number of strategies were used at local level to compel IDPs to return to their areas of origin. These included threats of stopping dry food rations and the closure of camps and camp facilities such as schools. In September, the GOSL closed the Madhu Welfare Centre located in the vicinity of the Madhu church, forcing 1,600 families to return to their areas of origin.<sup>28</sup> The few landless families who remained at the campsite have been denied access to schools and food assistance, as these facilities were withdrawn with the closure of the camp.

The right to safe return was further impeded by a number of other factors: the prevalence of landmines and unexploded ordnances, ethnic tension, the occupation of property by the armed forces, the LTTE and other IDPs, destruction and damage to houses and property and other essential infrastructure and lack of assistance to return. Women, particularly those heading households, expressed reservations about return.<sup>29</sup> Their concerns ranged from threats to their security, inadequacy of assistance, practical difficulties in competing for limited employment opportunities, and difficulties with clearing land and rebuilding houses.

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<sup>26</sup> *The Island*, 12<sup>th</sup> October 2002.

<sup>27</sup> *Supra* n. 25.

<sup>28</sup> *Ibid.*

<sup>29</sup> See generally Elek Sophia, *Choosing Rice over Risk: Rights, Resettlement and Displaced Women*, Centre for the Study of Human Rights (CSHR), University of Colombo, 2003.

Land mines and unexploded ordnances remained one of the crucial issues affecting the safe return of IDPs, as well as rendering large extents of agricultural and other otherwise economically viable land unusable. According to the United Nations Development Programme (UNDP), at least two landmine-related accidents have taken place each week since the signing of the MOU. The United Nations Mine Action Service Report says there are at least 15 landmine casualties per month.

In the year 2002, a number of issues arose about current de-mining practices as well as the absence of de-mining in certain areas. The Sri Lanka Army carries out de-mining in government-controlled areas, and its failure to meet international standards for de-mining was a crucial issue.<sup>30</sup> Out of 90 Sri Lanka Army de-miners, 36 have been injured.<sup>31</sup> There have also been complaints that civilians have been injured in accidents involving mines in areas that were supposed to have been cleared of mines.<sup>32</sup> Further, there were regional discrepancies in the focus of de-mining efforts. While mine action by trained local personnel was underway in the LTTE-controlled Vanni and by trained personnel in Jaffna only *ad hoc* mine action was taking place in the Eastern Province and other government-controlled areas.

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<sup>30</sup> International standards on de-mining are contained in the "Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti Personnel Mines and on Their Destruction, 1999" and the two Protocols to the Convention on Conventional Weapons (CCW) 1980. Sri Lanka has not ratified either of these two conventions.

<sup>31</sup> *Northeastern Herald*, October 4<sup>th</sup> to 10<sup>th</sup>, 2002, as cited in *Land and Property Issues Affecting IDPs and Returnees*, 2003, Centre for Policy Alternatives.

<sup>32</sup> *Supra* n. 25.



Another problem has been that the pace of de-mining has not kept up with the pace at which displaced people have returned to their homes. Information on landmines was not adequately disseminated to IDPs and refugees either in their camps or other settlements before their return. Consequently, there has been a real danger of IDPs returning to areas where they may be unaware of the presence of landmines and Unexploded Ordnances, increasing their risk of injury.

Land mines were used extensively in the war between the LTTE and the Sri Lankan armed forces and pose the biggest threat to personal safety for displaced people who return home. An estimated 1.3 million land mines had been purchased by the Sri Lanka Army, of which about 900,000 mines were laid.<sup>33</sup>

The provision of infrastructure has been another major problem for IDPs. In a number of areas in the North and East houses and infrastructure including schools, hospitals and local administrative structures have been partially or completely destroyed. The lack of professionals to provide specialized services in health and education remained a crucial problem. Furthermore, the high cost of building materials impeded the rebuilding of houses. The high cost of transportation and the arbitrary 'taxes' imposed by the LTTE in addition to government taxes, contributed to the increased cost of building materials. The conflict-affected people in the North and East had to bear the burden.

Another factor hindering the fast return of IDPs was the occupation of property by the armed forces and the LTTE. The armed forces and the police occupied a substantial extent of civilian properties. These include

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<sup>33</sup> *Supra* n. 25.

properties within the High Security Zones (HSZ), the areas where military checkpoints, posts and administrative offices have been set up.

Large extents of land belonging to IDPs, refugees and migrants, including Muslim and Sinhalese owners, have also been taken over by the LTTE. The LTTE use these lands and buildings for administrative and business purposes and also rent them out.

Some land has also been occupied by people who are themselves displaced. Further, unauthorized occupation has become an organized racket, particularly in the Jaffna peninsula. The Law of Prescription is viewed as a potential threat to land-owning IDPs who fear that such unauthorized occupation could be legalized on an application of this law.<sup>34</sup> During the period under review no steps were taken by the GOSL to suspend this law's application to the North and East. Further, some IDPs who owned land are faced with problems of proving ownership as they have lost all their documentary evidence. Their plight is worsened as even public records maintained by the Land Registries have been destroyed.<sup>35</sup> It can also be very difficult for landowners to identify their lands due to damage and destruction of landmarks and boundaries.

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<sup>34</sup> According to the Law of Prescription an occupant can claim prescriptive rights to land on completing 10 years possession adverse to the rights of the legal owner. While it maybe argued that the prescriptive period may exclude the period of the conflict, persons holding title to such property would have to go before a court of law to establish their right in the event of a competing claim. See Section 3, Prescription Ordinance No. 22 of 1871 (as amended).

<sup>35</sup> *Supra* n. 25.

Concerns were also expressed with regard to mortgages and leases of buildings and lands that were interrupted due to the outbreak of the conflict. A request was made by the Displaced Northern Muslims to the Human Rights Commission (HRC) to restore such agreements.<sup>36</sup>

A number of IDPs in the North and East are landless. These IDPs include people who had been temporarily settled in the North and East on the promise of being given land under the Land Development Ordinance and the second generation of those who had been provided with land. The landless also include Tamils of Indian origin. These landless people, who mostly live in camps in the North and East or who occupy land without authorization, have no place to return to. In Madhu such IDPs remained at the campsite even after the camp was closed and facilities such as schools withdrawn.

Many IDPs feared to return to their places of origin due to the prevalence of ethnic tension caused by perceived or real ethnic discrimination and past human rights violations. IDPs particularly feared to return to areas where they would be an ethnic minority.<sup>37</sup>

Another major impediment to the return and resettlement of IDPs was the lack of financial assistance. While a few relied on personal finances to rebuild damaged houses, develop property and resume livelihoods, most IDPs have no such funds to draw on. Neither the government nor NGOs operating in the peninsula seem to have adequate financial resources to meet the needs of large-scale migration into the peninsula. Returnees are officially entitled to a Unified Assistance Scheme (UAS)

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<sup>36</sup> Letter to the Chairman, Human Rights Commission of Sri Lanka dated 27.01.2002 by The Displaced Northern Muslims Organisation, Jaffna.

<sup>37</sup> *Supra* n. 25.

of Rs. 65,000. Out of this Rs. 15,000 was set apart to purchase basic tools and put up a temporary shelter and Rs.50, 000 as a housing allowance. However, this amount is wholly inadequate even to carry out minor repairs to a damaged house. Only a handful of people received the full entitlement while others had to be satisfied with Rs.15,000, Rs.7,000, or Rs. 2,000, given at the discretion of Government Agents or on availability.<sup>38</sup>

The UAS is not needs-based and does not take into consideration any specific needs, such as those of female-headed households.<sup>39</sup> The grant makes no provision for the fact that female-headed families may have to use hired labour in the process of resettlement.<sup>40</sup>

The UAS is released only when entire families agreed to return to their area of origin. This conditional nature of the UAS has made it harder for the displaced to return. Further, under current policy, food assistance is for a maximum period of 6 months after resettlement, irrespective of the specific needs of the individuals concerned.

Although the UNHCR provided emergency packs containing non-food items, such assistance was given only when the entire family returned.<sup>41</sup> Often, and particularly among the Northern Muslims, the male adults returned first to prepare for the return of the rest of the family. Returnees who decided to phase the return of their families were denied such assistance, to facilitate their resettlement.

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> *Supra* n. 29.

<sup>41</sup> *Supra* n. 25.

## 6. Women

Many of the issues highlighted in this chapter affect women. However, the gender dimensions of displacement in the past have been neither adequately documented nor factored into planning or the implementation of policy.<sup>42</sup>

A significant number of families are female-headed households. In the Jaffna peninsula there are an estimated 21,400 widows of whom 9,000 are under the age of 40.<sup>43</sup> Further, it is estimated that 60% of the displaced families in Vavuniya are female-headed households. The women who head these households face increased responsibility and social marginalisation due to patriarchal cultural and traditional practices that endorse their exclusion from public life and decision-making.

Women have expressed particular concern about the practical challenges of clearing land and rebuilding houses, returning home alone and threats to their security. Such experiences have been made more complex by inequitable policies and laws that apply with regard to relief assistance, compensation and gaining legal title to land and property. Discriminatory laws and practices in the allocation of State land not only disentitle women of their rights to land and property, but also deny them access to credit to build, cultivate or improve their land.

For instance, even though it is "a family" that qualifies for state land distributed to landless people under the Land Development Ordinance,<sup>44</sup>

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<sup>42</sup> Ibid.

<sup>43</sup> De Alwis, M. (unpublished) Association of War Affected Women's Visit to Jaffna, November 21-24 2001:6 in *Choosing Rice over Risk: Rights, Resettlement and Displaced Women* by Elek Sophia, Centre for the Study of Human Rights, (CSHR), University of Colombo, 2003.

<sup>44</sup> See Land Development Ordinance No. 19 of 1935 (as amended).

the grant is generally made in the name of the male spouse. The female spouse is entitled to inherit such property only when she is named as the successor and only for as long as she continues to remain unmarried. In practice, this has meant that where women have not been nominated as successors they are unable to furnish security to apply for credit.

Further in order to obtain compensation for the death of a spouse, a formal record is required in the form of an eye witness report or an admission by those involved in causing his/her death. In the absence of such documentation, compensation may not be granted.<sup>45</sup>

Displaced women have often been victims of sexual abuse. In April 2003, Amnesty International called upon the government to prevent the sexual abuse of Tamil women, including displaced women, by the armed forces and the police.<sup>46</sup>

In June, a coalition of women's organisations in Sri Lanka submitted to the Government, the LTTE and the Norwegian facilitators a memorandum alerting them to the experiences and concerns of women and demanding women's representation in the on-going peace talks.<sup>47</sup> The memorandum stressed that women's issues and concerns should form an integral part of the peace agenda and, therefore, the participation of women in decision-making should be guaranteed during all phases of the reconstruction, rehabilitation and transformation

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<sup>45</sup> Supra n. 29.

<sup>46</sup> Statement by Amnesty International as reported in the *Virakesari*, 25 April 2003 as published in the *Monthly News Brief*, March 2003, Home for Human Rights.

<sup>47</sup> The Memorandum relied on UN Security Council Resolution 1325 (UN S/res/1325 (2000)), which reiterates the importance of bringing a women's perspective to bear on all aspects of peace making, peace building, rehabilitation and reconstruction.



process. In response to this demand, at the third round of peace talks held from December 2 to December 5, 2002 in Oslo, Norway, a sub-committee on gender issues was formed to ensure the inclusion of gender issues in the peace process.

## 7. Children

There were a number of human rights issues relating to children during the year. Complaints against the LTTE of child recruitment continued in the post ceasefire period. In March, Amnesty International listed the names of 49 children who had reportedly been recruited or abducted by the LTTE to be used as child soldiers.<sup>48</sup> During this period, with the intervention of the UNICEF, a number of LTTE child soldiers were demobilized.<sup>49</sup>

In addition, several other factors contributed to the denial of children's rights: shortage of food, lack of nutritional and medical assistance, schooling and infrastructure and care givers. It is estimated that more than 5,000 children between the ages of two and five are orphans and another 2,000 are handicapped in the North and East.<sup>50</sup> Children's schooling has also been severely disrupted. For example, in the Vanni the schooling of over 20,000 children was disrupted during the conflict. In 2002, a "back to school" programme was launched in Jaffna, but no such programmes were launched in other parts of the country, despite schooling in other areas, too, having been disrupted for long years due to the conflict.

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<sup>48</sup> Fear for Safety/Child Soldiers, 11 March 2002, <http://www.amnesty.org>

<sup>49</sup> *The Island*, 23<sup>rd</sup> June 2002.

<sup>50</sup> *Thinakural*, 16<sup>th</sup> August 2002 as published in *Monthly News Brief*, September, Home for Human Rights.

Despite an overwhelming need for counseling services, little or no initiative was taken during the period to meet this need.

In the past, IDPs were affected by a military embargo on medicines as well as by an acute lack of health facilities. Hospitals in LTTE-controlled areas were particularly badly affected. As a result, despite being under-staffed and under-resourced, the Vavuniya base hospital had to cater to the medical needs of three other districts – Mullaitivu, Killinochchi and Mannar, amounting to nearly 600,000 people.<sup>51</sup>

In February 2002, the Ministry of Defence lifted the embargo on the transport of medicines and medical equipment to the North that had been in place since 1986. However, shortage of funding and personnel caused continuing problems relating to health care in the period under review. Shortages of doctors and medicines were reported, and problems relating to the closure of a hospital at Eachilampathu in Muttur.<sup>52</sup>

## **8. Institutional landscape**

The variation in provision for the displaced has been largely due to the lack of any integrated and comprehensive policies to deal with the displaced and the absence of a single coordinating body. During the tenure of the previous People's Alliance government<sup>53</sup> there were over

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<sup>51</sup> Supra n. 13.

<sup>52</sup> Tamilnet October 9<sup>th</sup> 2002.

<sup>53</sup> The People's Alliance was voted into power in 1994 and continued until its defeat in the December 2001 Parliamentary Elections.

ten government institutions involved in relief, rehabilitation and reconstruction. Each of these ministries, departments and institutions had different areas of responsibility and geographical coverage, and worked at different levels with little or no coordination.

Under the UNF government, ministerial allocations were, once again, made to appease the short-term objectives of party politics, but there was some improvement with regard to coordination. Three ministries were set up to have a direct bearing on the displaced. The Ministry of Rehabilitation, Resettlement and Refugees (Ministry of RRR) is vested with the functions of coordinating food assistance, compensation and emergency relief island-wide. It also oversees infrastructure and reconstruction of the North, which is carried out through the Rehabilitation and Reconstruction Authority of the North. The Ministry of Eastern Development is considered responsible for Muslim IDPs island-wide in addition to its task of reconstruction and infrastructure development in the East. On the other hand, the role of the Ministry Assisting Vanni Rehabilitation is unclear. Initially, it seemed that the task of this ministry would be to assist Northern Muslims.

However, the restructuring that has taken place has not overcome many problems of co-ordination, which in turn have contributed to rights violations of IDPs in the past. The displaced were denied access to basic documents such as birth certificates and identification cards, which are essential to the enjoyment of freedom of movement as well as the right to vote. The United Nations Office for Coordinating Humanitarian Affairs states that, "much needs to be done by the Ministry of RRR to ensure better co-ordination within government".<sup>54</sup> They note that the cross-cutting nature of IDP issues requires close inter-ministerial cooperation.

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<sup>54</sup> Supra n. 11.

In order to improve co-ordination, a Planning Policy and Co-ordination unit was established in the Ministry of RRR, which was expected to come up with a plan of action to facilitate the organized return of IDPs. Although the unit publicized in the media that it had developed a comprehensive plan of action, it was not made available to the public during 2002.

The Ministry of RRR assisted by the UNHCR also initiated a comprehensive registration process of IDPs in order to update the number of displaced and gather information on their willingness to return or relocate. Their findings too were not disclosed to the public during the period under review.

In the past, UN agencies and International Non-Governmental Organizations (INGOs) assisting the GOSL in providing assistance and protection to IDPs have also come under criticism for not having a collaborative approach. At the suggestion of the UN Office for the Coordination of Humanitarian Affairs, a UN working group on internal displacement was established under the aegis of the UN Resident Coordinator with the presence of the International Committee of the Red Cross (ICRC), and the Ministry of RRR to facilitate the UN responses for humanitarian support to rehabilitation and recovery.

In late 2001, the UNHCR and the Legal Aid Foundation of the Bar Association of Sri Lanka launched a legal aid programme for the internally displaced. Lawyers were appointed from Vavuniya, Batticaloa, Mannar, Trincomalee, Puttalam, Jaffna, and Polonnaruwa to advise and provide free legal advice and assistance for litigation to displaced persons with an income of less than Rs. 6000 per month. While such a programme could potentially be a catalyst in advancing the rights of IDPs, the Bar Association of Sri Lanka programme is stymied by the fact that it does not assist in litigation when the State is

a party to the dispute.<sup>55</sup> As many of IDP grievances, particularly regarding human rights violations, involve action or inaction by the State, the limitations of this programme are clear.

In November 2002, two sub-committees were formed following the third round of peace talks between the GOSL and the LTTE in Thailand: the Sub-Committee on De-Escalation and Normalization (SDN)<sup>56</sup> was set up to address issues arising from High Security Zones (HSZ) and other areas made inaccessible to the public. The Committee was also expected to ensure resettlement, the return of private property and the resumption of economic activities in these areas. The Sub-Committee on Immediate Humanitarian Needs was mandated to focus on humanitarian and rehabilitation needs, prioritising the activities needed to meet these objectives, finding financial resources and identifying implementing agents for programmes. The priority areas of concern of the Sub-Committee are the resettlement and rehabilitation of IDPs, the rehabilitation of war-affected women and children and the provision of livelihoods for war-affected people in the North and East.<sup>57</sup>

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<sup>55</sup> Interview by author with the Secretary, Legal Aid Programme of the Bar Association of Sri Lanka.

<sup>56</sup> Following the fourth session of peace talks, the SDN was deactivated, leaving the issue at a standstill. The parties, however, agreed on an Action Plan for the Accelerated Resettlement of the Jaffna District, which will look into the vacating of areas in the vicinity of High Security Zones. Disputes over occupation by the Armed Forces are presently resolved at District Level. Following the fifth session of the peace talks in Berlin, the parties agreed to establish three committees in the Batticaloa, Trincomalee and Ampara Districts to address the issue of the occupation of Muslim agricultural land and to facilitate the return of such lands to their legal owners.

<sup>57</sup> Statement of the Royal Norwegian Government, 3 November 2002 on the conclusion of the second session of First Round of Peace Talks.

## 9. Refugees

The year 2002 also saw the return of a number of refugees from India. There are nearly 200,000 refugees in India, at least 66,000 of whom are in camps in South India.<sup>58</sup> In the period under review, the UNHCR's official policy stressed that the situation was not conducive for the return of refugees, as peace had not been consolidated.<sup>59</sup> While the UNHCR facilitated the safe return<sup>60</sup> of some 85 refugees on humanitarian grounds, others made unlawful and perilous boat journeys back home. Seven such refugees who were returning by boat were arrested in Mannar in August and several other refugees were rescued at sea in October.<sup>61</sup> As of July 2002, about 200 Sri Lankan refugees had journeyed back from India.

The birth records of children born in refugee camps in India have not been endorsed by the Sri Lankan High Commission in India. These children thus are stateless and therefore, face difficulties when attempting to return through official channels.

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<sup>58</sup> *Sunday Observer*, 2<sup>nd</sup> February 2002, as cited in Monthly News Brief, March 2002, Home for Human Rights.

<sup>59</sup> *Durable Solutions Progress Report*, May 13-19 2002, A weekly bulletin of the United Nations IDP Working Group.

<sup>60</sup> The UNHCR provides refugees with airfare, an allowance and assistance to travel to their final destination.

<sup>61</sup> Sudar Oli, 27<sup>th</sup> August 2002 as published in Monthly News Brief, September, Home for Human Rights.



## **10. International and Domestic Norms Applicable to IDPs**

The primary responsibility for the protection of IDPs rests with the Sri Lankan State and arises from the State's responsibility to guarantee to its citizenry universally guaranteed human rights whether such rights stem from the Constitution and other laws or from treaty obligations and customary international law.

There is no specific international human rights treaty that recognises the internally displaced as a distinct category, affording them special rights. As such, IDPs receive protection from international human rights law in so far as the State accepts such obligations under international human rights and humanitarian law or when such laws have become part of customary international law through state practice and the conviction that they are binding on states. Thus, a number of UN treaties provide a valuable basis for the protection of IDPs, including the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, the Convention Against Torture, Other Cruel Inhuman or Degrading Treatment, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. Sri Lanka is a party to all these treaties.

International humanitarian law is the main body of law that applies during armed conflicts. Sri Lanka is a party to the Geneva Conventions of 1949 and as such is bound by Article III common to the four Geneva Conventions, which binds and applies to both parties to the conflict. However, Sri Lanka has not ratified Protocol II to the Geneva Conventions of 1977, which applies to the protection of victims of non-international armed conflict. However, a number of provisions in Protocol II have been recognised as having attained the status of customary international law. In 1998, the representative of the UN

Secretary General of the Internally Displaced Persons prepared a normative framework for the internally displaced, which is now popularly known as the Guiding Principles on Internal Displacement. These principles draw on norms of international humanitarian law and international human rights law relevant to internal displacement and serve as a valuable guide to the protection of the internally displaced.<sup>62</sup>

In addition to these, Sri Lanka has a number of domestic norms, which include Constitutional guarantees of fundamental rights. However, displaced people have been seriously hampered in trying to enforce these rights by complex procedural requirements, which the displaced are often unable to meet, as well as by the break down of law enforcement mechanisms, the judicial system and allied agencies in the North and East. For instance, in a fundamental rights application<sup>63</sup> sponsored by the Centre for Policy Alternatives (CPA) on the right to vote of displaced Northern Muslims resident in Puttalam, the case was dismissed for failure to observe procedures laid down in law in the event of non-registration of persons as voters. The court failed to take due regard of the complexities of displacement and the practical difficulties faced by the displaced that would make such a course of action difficult if not impossible under the circumstances.

## 11. Displacement

A survey carried out by the Ministry of Rehabilitation, Resettlement and Refugees and the UNHCR in 2002 revealed that the number of persons displaced from the North and East exceeded 1.3 million.<sup>64</sup> It is

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<sup>62</sup> See *State of Human Rights 2001*, Law and Society Trust, for a fuller discussion of the international human rights regime relevant to IDPs.

<sup>63</sup> *Christopher David Beling and Others v. The Commissioner of Elections and Others*, SC Application No. 415/99, SC Minutes 11.05.2000.

<sup>64</sup> *The Island*, 18<sup>th</sup> June 2002, as published in Monthly News Brief July, Home for Human Rights.

estimated that 78% of the displaced are Tamils, 13% Muslims and 8% Sinhalese. For many civilians displacement has been both long term and recurrent. Some IDPs, such as the Muslims and some Sinhalese who were evicted by the LTTE from the North in an act of ethnic cleansing, have been living in temporary settlements for over 10 years. Out of the 80,000 Muslims who were displaced, a majority sought refuge in Puttalam in the North Western Province and have been unable to return in any large numbers to date.

Others, such as inhabitants of Kayts and other islands off the Jaffna peninsula as well as residents of the districts of Jaffna, Mullaitivu, Mannar and Trincomalee, have been displaced repeatedly since the inception of the war.

In 1995, following operation Rivirasa which was launched by the Sri Lankan armed forces with the intention of driving the LTTE out of Jaffna, over 300,000 Tamils were displaced. Most of them fled the area or were forced by the LTTE to settle in the Vanni mainland, which lies south of the peninsula. Subsequent large-scale military operations carried out in the same areas forced hundreds of civilians to move further south to parts of Vavuniya.

Apart from these main incidents, displacement took place because of direct or indiscriminate attacks on civilians either by the LTTE or the armed forces. Routine harassment, child recruitment, fears of reprisals and the government-imposed prolonged economic embargoes also contributed to displacement.

Many have been displaced from the districts of Jaffna, Mannar, Mullaitivu, Killinochchi and Vavuniya in the North and Trincomalee and Batticaloa in the East. Further, these areas continue to host IDPs, in addition to the districts of Puttalam, Kurunagala, Anuradhapura, and Pollonnaruwa.

It is estimated that while one in every 25 Sri Lankans is displaced, one in every three persons in the North is an IDP. By far the greatest number of displaced people have come from the Jaffna peninsula, which accounts for some 350,000 persons of the total IDP population. Most of these people are hosted in the LTTE-controlled Vanni, which is believed to hold some 300,000 IDPs.<sup>65</sup>

## 12. Conclusion

The Memorandum of Understanding, and many measures taken subsequently to achieve normalcy in the North and East during 2002, no doubt offered considerable relief to the internally displaced people and the war-affected community. However, the displaced were unable to enjoy the full dividends of the ceasefire due to a number of issues that were not urgently addressed by the State: foremost among these were the lack of adequate and timely humanitarian assistance, facilities to return and assistance to restart livelihoods. The failure of the state to address these issues efficiently stems from problems of poor co-ordination, the non-recognition of the internally displaced as a category of persons with special needs, and the refusal to adopt a rights-based approach to planning, implementation and service delivery. These factors have contributed to the marginalization of the displaced, not only in the period under review but throughout their years of displacement.

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<sup>65</sup> *Supra* n. 13.

### **III**

## **Integrity of the Person**

*Shantha Jayawardena\**

### **1. Introduction**

This chapter seeks to assess developments concerning the rights relating to the integrity of the person during the year 2002. The chapter will first outline the scope of the rights relating to the integrity of the person in Sri Lanka, including Sri Lanka's international obligations. It will then chronicle the severe violations of the rights relating to the integrity of the person that occurred during the year and the relevant judicial decisions. Finally, it will suggest recommendations for the advancement of the rights relating to the integrity of the person.

In Sri Lanka, for the past two decades, the armed conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) provided the context for major human rights abuses, in particular, violations relating to the integrity of the person.

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After the election of the United National Front (UNF) government on 5<sup>th</sup> December 2001, the LTTE declared a unilateral cease-fire on 24<sup>th</sup> December 2001. The UNF government, which came into power with a mandate to solve the ethnic crisis through a negotiated settlement, reciprocated by declaring a cease-fire. Later the cease-fire matured into a Memorandum of Understanding (MOU) titled the "Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam", facilitated by the Norwegian Government. The MOU between the Government and the LTTE came into effect on 22<sup>nd</sup> February 2002. The MOU has resulted in a noticeable decline in the number of war-related violations of human rights relating to the integrity of the person, both by the State and the LTTE. Thus, the status of rights pertaining to the integrity of the person during the year 2002 should be assessed against the backdrop of the MOU and the peace process.

However, regrettably, the rights relating to the integrity of the person are violated not only in the context of the armed conflict. Many rights are violated in the process of criminal investigation. So although the number of war related violations decreased during 2002, the number and the gravity of violations in the process of criminal investigations remained a matter of serious concern.

## **2. The Scope of the Rights Relating to Integrity of the Person**

### **2.1 Sri Lanka's International Obligations**

As a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Sri Lanka is



bound to uphold the rights to life,<sup>1</sup> freedom from arbitrary arrest and detention<sup>2</sup> and freedom from torture or cruel inhuman or degrading treatment or punishment.<sup>3</sup>

## 2.2 Constitutional Rights

While the obligations of the State under the Constitution fall short of its international obligations, several provisions of the Constitution protect the integrity of the person from the executive and administrative actions of the State.<sup>4</sup> It must be noted that the rights under Articles 11 and 13 of the Constitution are guaranteed to all “persons” whereas the rights under Articles 12(2) and 14 are accorded only to “citizens”.

### Article 11:

*No person shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.*

### Article 13:

- 1) *No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.*
- 2) *Every person held in custody, detained in custody or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to*

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<sup>1</sup> Article 3 of the Universal Declaration on Human Rights (UDHR), Article 6 of the ICCPR.

<sup>2</sup> Article 9 of the UDHR, Article 9 of the ICCPR.

<sup>3</sup> Article 5 of the UDHR, Article 7 of the ICCPR, Article 2 of the CAT.

<sup>4</sup> Article 17 of the Constitution of Sri Lanka.

*procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.*

3) ...

4) *No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment.*

## 2.3 Statutory Provisions

The Code of Criminal Procedure Act, No. 15 of 1979, lays down the procedure, *inter alia*, relating to arrest,<sup>5</sup> detention,<sup>6</sup> and investigation.<sup>7</sup>

Torture is criminalized by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act,<sup>8</sup> No. 22 of 1994. Under the Torture Act, "torture" is an offence punishable with imprisonment of either description for a term not less than seven years and not exceeding ten years and a fine not less than ten thousand rupees and not exceeding fifty thousand rupees.<sup>9</sup> Further, an attempt to commit torture, aiding and abetting torture and conspiracy to commit

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<sup>5</sup> Sections 23 to 29, 32 to 36, 38 to 43 and 50 to 59 of the Code.

<sup>6</sup> Section 37 of the Code.

<sup>7</sup> Section 108 to 125 of the Code

<sup>8</sup> Hereinafter "the Torture Act"

<sup>9</sup> Section 2(1) read with Section 2(4).

torture are also offences under the Torture Act. The offences under the Torture Act are cognizable and non-bailable.<sup>10</sup> Moreover, the fact that any act constituting an offence under the Act was committed at a time when there was a state of war, threat of war, internal political instability or any public emergency or an order of a superior officer or a public authority is not a defense.<sup>11</sup>

## 2.4 Memorandum of Understanding

In addition to the aforesaid international, constitutional and statutory obligations, in the year 2002 the MOU referred to above had a far-reaching impact on the rights relating to the integrity of the person. Both the State and the LTTE are bound by the MOU and it eventually resulted in a decrease of the number of violations of rights relating to the integrity of the person.<sup>12</sup> The provisions of the MOU, which are relevant to the present discussion, are:<sup>13</sup>

### Article 1.2:

*Neither party shall engage in any offensive military operation. This requires total cessation of all military actions and includes, but is not limited to, such acts as:*

*a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian*

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<sup>10</sup> Section 2(5) of the Torture Act.

<sup>11</sup> Section 3 of the Act.

<sup>12</sup> The constitutionality of the MOU has been questioned by several constitutional experts. Few writ applications bearing numbers CA Writ Applications 447/2002, 421/2002 and 461/2002 were filed in the Court of Appeal praying for Writ of Certiorari to quash the decision of the government to sign the MOU. These writ applications were pending at the end of the year.

<sup>13</sup> See Schedule IV for the full text of the MOU in this Volume.

*or military property, sabotage, suicide missions, and activities by deep penetration units;*

*b) Aerial bombardments;*

*c) Offensive naval operations*

### **Article 2.1:**

*The Parties shall in accordance with international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment.*

## **3. Reported Violations**

### **3.1 Attacks on Civilians**

There were a few reported incidents of attacks on civilians despite the fact that under the MOU the Government and the LTTE are bound not to attack civilians. However, in comparison to the number and the gravity of the attacks on civilians in any given year in the past two decades, the incidents that took place in year 2002 were relatively minor.

#### **3.1.a Attacks by the Government Forces**

On 21<sup>st</sup> January 2002, a clash between the Sri Lanka Navy and the Sea Tigers near the Sea Tiger base at Chalai resulted in the Sri Lankan Air Force bombing coastal areas between Chundikulam and Mathalan during which five civilians were wounded.<sup>14</sup> This clash occurred wh

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<sup>14</sup> *The Sri Lanka Monitor*, No.169, February 2002, British Refugee Council.

the Navy attempted to intercept ten Sea Tiger boats, which were allegedly carrying arms.

On 16<sup>th</sup> August 2002, it was reported that Navy personnel had attacked some people in a toddy tavern at Naranthanai in Kayts Island, west of Jaffna. Reportedly, seven people were injured in this attack.<sup>15</sup> On 3<sup>rd</sup> September 2002, the Sri Lanka Navy allegedly attacked seven fishermen near Chirutivu Island, north-east of Mandathivu Island, Jaffna.<sup>16</sup>

On 9<sup>th</sup> October 2002, the Police Special Task Force (STF) reportedly fired on demonstrators, killing seven Tamil civilians and injuring 13 others at Kanchirankudah in Ampara district. Among the dead were four students. According to the reports, the incident was triggered by an STF attack on the LTTE leader of Pottuvil area and two others near the police camp in Kanchirankudah. Several thousand people had gathered near the camp to protest against the attack on the LTTE leader. The STF claimed that the crowd began attacking the camp as a result of which the STF was forced to open fire.<sup>17</sup>

On 11<sup>th</sup> September 2002, the STF were reported to have assaulted seven construction workers in Sagamam Village in Ampara district. The STF also allegedly fired at the workers but no one was injured.<sup>18</sup>

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<sup>15</sup> *The Sri Lanka Monitor*, No.175, August 2002, British Refugee Council.

<sup>16</sup> *The Sri Lanka Monitor*, No.176, September 2002, British Refugee Council.

<sup>17</sup> *The Sri Lanka Monitor*, No.177, October, 2002, British Refugee Council.

<sup>18</sup> *The Sri Lanka Monitor*, No.176, September 2002, British Refugee Council.

### 3.1.b. Attacks by the LTTE

On 16<sup>th</sup> February 2002, 21 Muslim fishermen were abducted by the LTTE at sea, off Valachenai in Batticaloa. However, the fishermen were released the next day, after the villagers launched a *hartal*.<sup>19</sup> It was also reported that Muslim people in the East were subject to harassment and abductions for ransom by the LTTE.<sup>20</sup>

Members of Tamil groups aligned with the government were also reported to have been harassed by the LTTE. For example, on 1<sup>st</sup> September 2002, two supporters of the Eelam People's Democratic Party (EPDP) were reportedly assaulted by the LTTE.<sup>21</sup>

## 3.2 Arrest and Detention

During the year arrests and detentions continued as part of the criminal investigation process. However, as the government abstained arresting suspects under the Prevention of Terrorism Act (PTA) the number of illegal arrests and detentions were minimal in comparison to the previous years.

### 3.2.1 PTA Detainees<sup>22</sup>

With the peace process underway, the LTTE and human rights activists expressed their concern over the detainees held under the PTA. It was

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<sup>19</sup> *The Sri Lanka Monitor*, No.169, February 2002, British Refugee Council.

<sup>20</sup> *Ibid.*

<sup>21</sup> *The Sri Lanka Monitor*, No.175, August 2002, British Refugee Council.

<sup>22</sup> For detailed discussions of the arrests and detentions under the PTA, see: "*Taming of the Beast: Judicial Responses to the State Violence in Sri Lanka*", Dr. Deepika Udugama, LST Review, Vol. 9, Issue 137, March 1999, Law and Society Trust, Colombo and "*PTA Violates International Human Rights Standards*", S.V. Ganeshalingam, *BEYOND THE WALL*, June- August 2002, Home for Human Rights, Colombo.



reported that there were approximately 1,700 Tamil detainees held under the PTA. In late January, when the President pardoned 2,500 criminals to mark Independence Day, 473 Tamil PTA detainees in several prisons launched a hunger strike,<sup>23</sup> demanding a review of their cases. Again in July, approximately 100 detainees held under the PTA in Kalutara and Batticaloa prisons began a hunger strike demanding their release.

According to Amnesty International, by the end of 2002, only 65 PTA detainees continued to be held, all the rest having been released.<sup>24</sup>

### 3.3 Torture

Torture continued to be a widespread problem during the year and many incidents of torture by police officers were reported from almost every part of the country. The gravity and the number of incidents of torture are a cause for serious concern. In November, Amnesty International urged the government to take necessary steps to stop torture. It also urged a thorough and impartial review of the role of the police, magistrates and doctors in relation to the prevention and investigation of torture and recommended the establishment of "an investigative body fully independent of the police with the necessary powers and expertise required to open criminal investigation wherever there is reasonable ground to believe that torture has been committed".<sup>25</sup>

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<sup>23</sup> The Sri Lanka Monitor, No.168 January 2002, British Refugee Council.

<sup>24</sup> Amnesty International Report 2003.

<sup>25</sup> Amnesty International Press Release of 1 November 2002, AI Index ASA 37/017/2002 (Public).

### 3.3.1 Galkiriyagama Police Station

A number of incidents of torture were reported to have taken place at the Galkiriyagama Police Station in the Anuradhapura District. A newspaper revealed eight alleged incidents of torture in this police station within the first eight months of the year.<sup>26</sup> Among the persons who had been tortured at this Police Station were: Thompalayaye Ukkuwa Devalage Gunapala of Pubogama, Kekirawa, Nihal Kantha Udaya Kumara of Thalagama, Praneeth Chandana, Prasanna Sumith, Ajith Jayantha, Sanath Sameera, Gayan Chameera, Akuressa Gamage Nelson Silva, Kirihamige Punchirala, Ekanayake Mudiyanselega Sunil Bandara, and Sisira Bandara of Aluthgedara, Siyambalawe. The Officer in Charge of the Police Station told the newspaper that by adopting such measures he had been successful in curbing the number of crimes in the area.<sup>27</sup> Any action taken against the OIC was not reported in the media.

### 3.3.2 Sexual Torture

The sexual torture of the detainees in the custody of the police and the armed forces continued in 2002.<sup>28</sup> In January 2002, Amnesty International made several recommendations to the Sri Lankan government to prevent rape in custody and ensure accountability for such incidents.<sup>29</sup> Some of the recommendations were:

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<sup>26</sup> *Ravaya*, 25<sup>th</sup> August 2002.

<sup>27</sup> *Ibid.*

<sup>28</sup> It was reported by Amnesty International that in 2001 there had been eight reported incidents of sexual torture. In four of the said incidents the victims had been raped. See: *Sri Lanka: Rape In Custody*, Amnesty International, January 2002.

<sup>29</sup> *Ibid.*

- The government should ratify the Optional Protocol to the UN Convention for the Elimination of All Forms of Discrimination Against Women.
- The government should ensure that the arrest of a woman is carried out by a female officer, women detainees are to be kept in the custody of female officers and female guards are to be present during the interrogation of female detainees.
- The government should review the role of the medical profession and magistrates and consider all necessary measures to improve the training of Judicial Medical Officers and particularly District Medical Officers.
- The government should undertake a comprehensive review of the current legal and institutional framework relating to rape in custody to ensure more effective investigation and prosecution of alleged offenders.

Nandanee Sriyalatha Herath of Bamunakotuwa, Ihaladeegalla in Wariyapola Police Division in Kurunegala District, who had been arrested by the Wariyapola police on 8<sup>th</sup> March 2002, was kept in custody for three days. Whilst in custody she was reportedly subjected to sexual torture by police officers who allegedly inserted a rubber tube into her vagina. She had been taken to the Police Station for the purpose of recording a statement regarding a theft in which she was supposed to have been involved.<sup>30</sup>

It was later reported that the Officer in Charge of Wariyapola Police Station and a Sub Inspector thereof were charged in the Magistrate Court of Wariyapola with regard to the torture allegedly inflicted on

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<sup>30</sup> *Ravaya*, 28<sup>th</sup> April 2002.

Nandanee Sriyalatha.<sup>31</sup> The trial began on 30<sup>th</sup> September 2002 and the trial was pending at the end of the year. The five police officers allegedly involved in this incident had been transferred out of the Wariyapola Police Station.

### 3.3.4 Torture of Two School Children in Hiniduma

In July, two school children of Mallika Maha Vidyalaya, Hiniduma of Galle District were reportedly subjected to severe torture by police officers of the Hiniduma Police Station. The two children were Shiran Rasika, aged 10 years, and Kasun Madusanka, aged 13 years. They had been arrested on 8<sup>th</sup> July 2002 on suspicion of stealing two buns from the school canteen.<sup>32</sup> The two children had been suspended from a pole and assaulted. Their hair had been 'pulled out'. Pins had been inserted under their fingernails. Two fundamental rights applications were filed by the two children in the Supreme Court and the Court granted leave to proceed in respect of the alleged torture.<sup>33</sup> The cases were pending at the end of the year.

### 3.3.5. Torture and inhuman treatment of Migrant Women Workers in Lebanon

It was revealed in January that at the "safe house" where run-away migrant women workers were temporarily accommodated in Lebanon, which is run by the Sri Lankan Embassy, the women were being subjected to inhuman treatment. Reportedly, they were given only two meals per day and all 140 women who were there had to use one unhygienic toilet. Further, according to the report, one woman had

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<sup>31</sup> *Lankadeepa*, 8<sup>th</sup> August 2002.

<sup>32</sup> *Divaina*, 5<sup>th</sup> August 2002.

<sup>33</sup> SC FR Applications 483/2002 and 484/2002.

been raped by an embassy official and some of the younger women who lived there were forced into prostitution by the officials.<sup>34</sup>

### 3.4 Death in Custody

There were eight reported custodial deaths during the year 2002.<sup>35</sup>

In April, Jayarathna Ranasinghe of Muddaragama, Ganihimulla died whilst being held in custody at Mirigama Police Station. The deceased had been arrested on 10<sup>th</sup> April 2002 for his alleged involvement in a theft of coconuts.<sup>36</sup>

Upali Jayarathna, aged 32, died whilst being held in custody at Kuruwita Remand Prison, allegedly after being assaulted by prison officers. At the Magistrate Inquiry the mother of the deceased gave evidence that the deceased had been a perfectly healthy person at the time of his arrest.<sup>37</sup> The post mortem examination conducted by the Judicial Medical Officer of Ratnapura revealed that the death was due to cerebral damage.<sup>38</sup>

In June, Susil Jayalath, aged 19, of Sri Pannasiri Mawatha, Makola North died whilst being held in the custody of Sapugaskanda Police Station. He had been arrested on 29<sup>th</sup> June 2002 in Denimulla on suspicion of being in possession of ganja.<sup>39</sup>

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<sup>34</sup> *Daily Mirror*, 4<sup>th</sup> January 2002.

<sup>35</sup> Reported in the newspapers. The actual number of custodial deaths may vary.

<sup>36</sup> *Lankadeepa*, 20<sup>th</sup> April 2002.

<sup>37</sup> *Dinamina*, 30<sup>th</sup> April 2002.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ravaya*, 14<sup>th</sup> July 2002, also *Divaina*, 7<sup>th</sup> July 2002.

In July, M.K. Piyarathna of Edanduwawa, died whilst in the custody of Peradeniya Police, allegedly after being assaulted by police officers.<sup>40</sup> He had been arrested by the Peradeniya Police on 3<sup>rd</sup> July 2002, after he had left Peradeniya Hospital on his own where he had been a patient. He was arrested on the Kandy-Colombo road that day. Reportedly, the deceased had got into a vehicle parked outside the hospital and had requested the driver to drop him at his home. The driver had refused to do so and a confrontation between the two had ensued. The Police had intervened, arrested the deceased and taken him to Peradeniya Police Station. The Officer In Charge of the Police Station told the newspaper that the deceased had knocked his head on the ground and that he had not been assaulted by police officers.

On 25<sup>th</sup> October 2002, Ranjith Karunarathna, aged 26, of Wathurugama, Kannimahara died in police custody, allegedly after being assaulted by police officers of Kirindiwela Police Station. Ranjith Karunarathna had been arrested on 20<sup>th</sup> October 2002 on suspicion of involvement in a theft. The report of the Judicial Medical Officer of Ragama, submitted to the Pugoda Magistrate on 1<sup>st</sup> November 2002,<sup>41</sup> concluded that death had been due to excessive internal bleeding and shock as a result of the contusions caused by a blunt weapon.<sup>42</sup>

In November, Pingamuwa Appuhamylage Piyadasa, aged 70, of Veralugampola, Anuragoda died in the custody of Kirindiwela Police, allegedly after being tortured by police officers.<sup>43</sup> The Judicial Medical Officer of Ragama Hospital testified that the death was due to a direct blow from a blunt instrument applied to the head.<sup>44</sup>

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<sup>40</sup> *Ravaya*, 21<sup>st</sup> July 2002.

<sup>41</sup> *Divaina*, 28<sup>th</sup> October 2002.

<sup>42</sup> *Lakbima* 15<sup>th</sup> November 2002.

<sup>43</sup> *Lankadeepa*, 18<sup>th</sup> January 2002.

<sup>44</sup> *Divaina*, 17<sup>th</sup> January 2002.



In September, Atapattu Mudiyanseelage Nimal Bandara, aged 41 and a father of three, died allegedly after being assaulted by police officers of Anamaduwa Police Station. He had been arrested by the villagers and handed over to the Anamaduwa police on suspicion of being involved in the theft of a cow.<sup>45</sup>

In September, Wickramaarachchilage Kamal Wickramarachchi, aged 28, died in the custody of Nawagamuwa Police Station, after being arrested on 21<sup>st</sup> September 2002 for allegedly being in possession of 10 milligrams of heroin.<sup>46</sup>

### 3.5 Impunity

The impunity of the perpetrators of human rights abuses, particularly of torturers, continued to be an issue for concern. The government failed to take any reasonable steps to overcome the issue.

For instance, in the case of torture of Nandane Sriyalatha, referred to above, a Cabinet Minister – none other than the Minister of Women's Affairs – intervened to prevent action being taken against the OIC of the police station in question.<sup>47</sup> It was also reported that police had threatened the victim's lawyers.<sup>48</sup>

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<sup>45</sup> *Lankadeepa*, 6<sup>th</sup> September 2002

<sup>46</sup> *Lankadeepa* 26<sup>th</sup> September 2002.

<sup>47</sup> *Ibid.*

<sup>48</sup> Amnesty International, ASA 37/014/2002, 10<sup>th</sup> September 2002.

## 4. Judicial Developments

During the year there were two significant judicial developments relating to the integrity of the person.<sup>49</sup> First, *locus standi* in fundamental rights applications to the Supreme Court alleging violations of Article 11 of the Constitution was widened; second, the Supreme Court recognized “rape” as a form of “torture”.

### 4.1 *Locus Standi* in Fundamental Rights Petitions Alleging Torture

The Supreme Court decision in the case of *Kotabadu Durage Sriyani Silva v. Chanaka Iddamalgoda, O.I.C., Police Station, Payagala and six others*<sup>50</sup> has far-reaching implications on the rights pertaining to the integrity of the person.<sup>51</sup> The petitioner<sup>52</sup> was the wife of a detainee who had died in the Magazine Remand Prison, six days after being arrested by the police on 12th June 2000. The petitioner alleged that her husband’s fundamental rights guaranteed to him under Articles 11, 13(1) and 13(2) of the Constitution had been violated by the respondent police officers and prayed *inter alia* for compensation for the petitioner and their 2 ½ year old child.

One of the preliminary objections raised on behalf of the respondents was that in terms of Article 126(2) of the Constitution the petitioner has no *locus standi* to maintain the application. Article 126(2) of the

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<sup>49</sup> See also, Maduranga Rathnayake, “Judicial Protection of Human Rights” in this Volume.

<sup>50</sup> SC FR Application 471/2002.

<sup>51</sup> SC Minutes 10.12.2002.

<sup>52</sup> The initial petition had been filed by an Attorney-At-Law and later the petition was amended with the permission of the Court so as to make the deceased detainee’s wife the petitioner of the case.

Constitution provides as to the manner in which a fundamental rights application should be made to the Supreme Court.

The question that was to be decided by the Court was whether or not a person other than the victim (the wife in the instant case) can make an application to the Supreme Court in terms of the provisions of Article 126(2).

The Supreme Court by a majority (the Chief Justice concurring with Justice Bandaranayake) held in favour of the petitioner and overruled the preliminary objection raised by the respondents. The reasoning of the Supreme Court was twofold: the Court relied on the maxim *ubi iudis ibi remedium*, which means that there is no right without a remedy; it also referred to the "absurdity" it might have led to, if it had held otherwise.

Justice Bandaranayake stated:

*... the deceased detainee, who was arrested, detained and allegedly tortured, and who met his death subsequently, had acquired a right under the Constitution to seek redress from this court for the alleged violation of his fundamental rights. It could never be contended that the right ceased and would become ineffective due to the intervention of the death of the person, especially in the circumstances where the death in itself is the consequence of injuries that constitute the infringement. If such an interpretation is not given it would result in a preposterous situation in which a person who is tortured and survives could vindicate his rights in proceedings before this court, but if the torture is so intensive it results in death, the right can not be vindicated in proceedings before this court.*<sup>53</sup> (emphasis added)

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<sup>53</sup> Above 51, at p. 7.

It will be interesting to see the future implications of the order of the Supreme Court vis-à-vis *locus standi* in fundamental rights applications to the Supreme Court. However, it is important to note that the Supreme Court did not overrule its decision in *Somawathie v. Weerasinghe and Others*.<sup>54</sup> The Court distinguished this case on facts. Justice Bandaranayaka stated:

*I am of the view that Somawathie v. Weerasinghe and others [supra] on which the learned counsel for the respondents placed heavy reliance, can be distinguished in relation to the facts of the case.*

*In Somawathie's case [supra] application was made by the wife of the virtual complainant alleging the infringement of her husband's fundamental rights guaranteed by Articles 11, 13(1), 13(2), 13(5) and 13(6) of the Constitution. At the time the application was filed, he was in Remand Prison, Mahara. The virtual complainant was named as the 4<sup>th</sup> respondent in that application.*

*The evidence before us in the present case, however, is different.*<sup>55</sup>  
(emphasis added)

As the decision in *Somawathie's* case was distinguished on facts, the principle in *Sriyani Silva's* case cannot be extended to any other situation; it only applies to situations where a person has succumbed to the injuries caused by torture.

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<sup>54</sup> [1990] 2 Sri LR 12.

<sup>55</sup> Above 51 at p. 5.

## 4.2 Rape and Sexual abuse as forms of torture

In the case of *Velu Arasadevi v. H.P. Kamal Priyantha Premathilaka, Reserve Police Constable of the Poice Force and five others*,<sup>56</sup> the Supreme Court recognized rape as a form of torture. This was the first time the issue had come before the Supreme Court of Sri Lanka in a fundamental rights application.

The petitioner alleged that on 23<sup>rd</sup> June 2001 at about 11.00 p.m. she had been stopped at a check-point by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and that on 24<sup>th</sup> June 2001 at about 3.00 a.m. the 1<sup>st</sup> and 3<sup>rd</sup> respondents had taken her to a place behind the check point and there she had been raped by more than one person. The petitioner alleged, *inter alia*, that the respondents had violated her fundamental right to freedom from torture. The Supreme Court held, *inter alia*, that the petitioner had been tortured by one or more of the respondents and that, therefore, her fundamental rights under Article 11 of the Constitution had been violated.

In the case of *Yogalingam Vijitha v. Wijesekera, Reserve Sub Inspector of Police, Police Station, Negombo and eight others*,<sup>57</sup> a “grave sexual abuse”<sup>58</sup> was held to be violative of rights under Article 11 of the Constitution as it amounted to torture. The petitioner was a 27-year-old woman who had been arrested by a group of police officers from Negombo Police Station. Whilst she was in custody “the policemen who were torturing her had asked her to place her signature on some statements prepared by them and when she refused to sign one

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<sup>56</sup> SC FR Application No. 401/2001. SC Minutes 24.01.2002.

<sup>57</sup> SC FR Application 186/201. SC Minutes 23.05.2002.

<sup>58</sup> Section 365B of the Penal Code defines “grave sexual abuse”. According to the definition of “rape” under section 363 of the Penal Code of Sri Lanka, the forcible penetration of on object other than the penis does not amount to rape.

policeman had shown her a plantain flower soaked in chili powder and said that it would be inserted into her vagina unless she signed the papers. When she had refused to sign the statement she had been asked to remove her blouse and cover her eyes with it and had been asked to lie on a table. Whilst she was lying down on the table four policemen had held her legs apart and the plantain flower had been inserted by force to her vagina and had been pulled in and out for about 15 minutes.”<sup>59</sup>

The Supreme Court found that medical evidence amply corroborated the petitioner’s version and held, *inter alia*, that the petitioner’s fundamental rights guaranteed under Article 11 of the Constitution had been violated.

These two judgments are in keeping with international developments which recognize rape and sexual abuse as forms of torture and even as war crimes in certain contexts. However, the Supreme Court decision was not based on these international developments.

### 4.3 Compensation in Torture cases

Another noticeable development during 2002 was the Supreme Court’s willingness to grant higher amounts of compensation to torture victims,<sup>60</sup> which could be a response on the part of the judiciary to the increase in the number of the torture cases brought before the Court. In the case of *Velu Arasadevi v. H.P. Kamal Priyantha Premathilaka*,

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<sup>59</sup> *Supra* n. 57.

<sup>60</sup> For a detailed discussion of compensation for victims of torture in fundamental rights cases, see: J.C. Weliamuna, *Compensation and other Reliefs For Torture Victims In Sri Lanka [With Special Reference to Fundamental Rights Cases]*, Family Rehabilitation Centre, Colombo, 2000.



*Reserve Police Contable of the Police Force and five others*<sup>61</sup> the Supreme Court awarded a sum of Rs.150,000 as compensation and costs payable by the state. In the case of *Yogalingam Vijitha v. Wijesekera, Reserve Sub Inspector of Police, Police Station, Negombo and eight others*<sup>62</sup> the Supreme Court ordered that Rs. 250,000 be paid as compensation and costs to the petitioner, out of which Rs.150,000 was to be paid by the respondents who were held liable for torturing the petitioner and the balance to be paid by the State.

## 5. Conclusions and Recommendations

One of the most dismal aspects of the year 2002 were the related issues of torture and deaths in custody. The judicial developments relating to torture, discussed above, are therefore welcome. On the positive side, the issues of illegal arrests, detentions, disappearances and attacks on civilians became less significant compared to previous years due to the ceasefire agreement, although impunity for past human rights violations remained a matter of great concern.

Frequently detainees are tortured by police officers to obtain confessions. Under the general law, a confession made to a police officer is not admissible as evidence in a court of law.<sup>63</sup> However, in practice the police gain an advantage by obtaining a confession as it might implicate others and witnesses in relation to the crime they are investigating. In Sri Lanka, police investigations frequently seem to be based on the leads obtained through confessions, which in turn

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<sup>61</sup> Supra n. 56.

<sup>62</sup> Supra n. 57.

<sup>63</sup> Section 25(1) of the Evidence Ordinance reads as: *No confession made to a police officer shall be proved as against a person accused of an offence.*

obtained through torture. It would thus seem that lack of proper investigative skills is one of the main reasons why the police resort to torture.

Although the law does prohibit torture, it does not prohibit investigations based on information obtained by inflicting torture. Thus as a long term measure to help eradicate torture, the government should take steps to enhance the investigative skills of police officers and allocate adequate funds to the Police Department to enable the police to use scientific methods such as Deoxyribonucleic Acid (DNA) tests.

The police should be provided the opportunity to seek the advice of the Attorney General's Department as much as possible in the criminal investigation process.

A large number of torture victims do not come before the Supreme Court, as they cannot afford to retain lawyers to appear on their behalf. Therefore, the Torture Act should be implemented effectively in order to do away with the impunity presently enjoyed by police officers and members of the armed forces with regard to torture.

Further, we wish to reiterate the importance and urgency of the recommendations that were made in our previous reports<sup>64</sup>.

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<sup>64</sup> See *Sri Lanka: State of Human Rights 1998*, Law and Society Trust, Colombo, (1998), pp. 39-41.

## **IV**

### **The Status of Women in Sri Lanka : – An Overview of Some Critical Aspects**

*Kumudini Samuel<sup>1</sup>*

#### **1. Introduction**

The year 2002 commenced with a new government in power. The United National Front (UNF) had just assumed office, the Liberation Tigers of Tamil Eelam (LTTE) had unilaterally declared a ceasefire and by February a Memorandum of Understanding (MOU) titled the “Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam” paved the way for peace talks between the two parties. By December, the ceasefire was still holding, despite various setbacks. In addition, marking an important watershed in Sri Lanka’s recent history, the LTTE and the government had agreed to resolve the vexed question of power sharing between the centre and the north eastern regions on the principle of internal self determination based on a federal structure within a united Sri Lanka.

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The absence of war also brought with it much relief to civilians, especially to the lives of women and children – those most affected by Sri Lanka's armed conflict. Momentous, too, for women was the agreement at the December round of peace talks to set up a Committee of Women to explore the effective inclusion of gender issues into the peace process.<sup>2</sup>

This chapter discusses the situation and condition of women and the protection of women's rights during the year 2002 against the above backdrop.

## **2. CEDAW**

The year opened with Sri Lanka coming under crucial and important international scrutiny on women's rights. Lalitha Dissanayake, the newly re-appointed Secretary to the Ministry of Women's Affairs, defended Sri Lanka's 3<sup>rd</sup> and 4<sup>th</sup> periodic reports on compliance with the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) before the CEDAW Committee at the UN in New York on the 26<sup>th</sup> January 2003.

CEDAW or the Women's Convention is the international bill of rights for women. States' compliance with the Convention is monitored by the Committee on the Elimination of Discrimination against Women (hereinafter "The Committee"), established under the Convention. Sri Lanka ratified the Convention in 1981.

The Women's Convention defines discrimination against women and provides a fundamental basis for eliminating such discrimination. In

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<sup>2</sup> Press Release by the Norwegian Embassy in Sri Lanka, 5 December 2002.

monitoring compliance with the Convention, the Committee reviews state obligations in the form of law, policy and programmes undertaken in order to eliminate discrimination against women.

Under the Convention, States are obliged to eliminate discrimination in the areas of:

- sex roles and stereotyping and customary practices detrimental to women (Article 5);
- prostitution (Article 6);
- political and public life (Article 7);
- participation at the international level (Article 8);
- nationality (Article 9);
- education (Article 10);
- employment (Article 11);
- health care and family planning (Article 12);
- economic and social benefits (Article 13);
- rural women (Article 14);
- equality before the law (Article 15);
- marriage and family relationships (Article 16).

The Convention deals with the core inter-related principles of equality and non-discrimination and State obligations towards achieving them. It promotes the substantive model of equality requiring States to ensure women's entitlement with equal access and equal opportunity to a country's resources. Such entitlement has to be ensured by a system of laws and policies with effective implementing mechanisms for their operation. This means that the State has to guarantee equality of results

for both men and women and this is the standard by which the CEDAW Committee measures State obligations. Thus, the Committee seeks to review the real achievements of change for women, and States are expected to show concrete results.

## **2.1 Reporting before the CEDAW Committee**

Following the review of the State reports,<sup>3</sup> the CEDAW Committee made a series of observations and recommendations in relation to the fulfillment of Sri Lanka's obligations under the Women's Convention to ensure equality and non-discrimination for women. In addition to the State's own periodic reports, supplementary reports that sought to present a critical overview of the situation of women in the country had also been submitted to the Committee to inform its work. Among these were the Shadow Report prepared by women's rights NGOs in Sri Lanka and an Amnesty International Report on custodial rape.<sup>4</sup>

The spokesperson for the Sri Lankan delegation, Ms. Lalitha Dissanayake, informed the CEDAW Committee that the government was sincerely committed to honouring its obligations under the Convention and respecting the principle of equality enshrined in the country's Constitution. However, she noted that the country was currently experiencing severe economic constraints resulting primarily from long civil unrest, condemning a third of the country's population to live below the poverty line. Despite this, among positive indicators noted according to the Human Development Report 2001, the Human Development Index for Sri Lanka had risen to 81 from a rank of 97 in

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<sup>3</sup> Sri Lanka's combined 3<sup>rd</sup> and 4<sup>th</sup> periodic reports CEDAW/C/LKA/3-4.

<sup>4</sup> Sri Lanka Shadow Report on the UN Convention on the Elimination of All Forms of Discrimination Against Women, Centre for Women's Research, December 2001 and Sri Lanka: A Rape in Custody (AI Index: ASA 37/001/2002), January 2002.



the year 1995, while the country's Gender Development Index was 70 from among 146 countries. Although cited as a positive gain, Sri Lanka's Gender Development Index has slid from 1995 to 2001.<sup>5</sup>

Ms. Dissanayake also cited a new Prime Ministerial directive that all government programmes should contain a gender component and that the gender impact of every programme should be assessed. It was expected that this commitment would provide the leverage for gender mainstreaming across the entirety of the government machinery and would facilitate the implementation of the components of the National Plan of Action for Women, which had been revised in 2000.

The CEDAW Committee recognised that economic globalization puts constraints on the situation of women, while the ethnic conflict in the north and east of the country poses serious challenges to the full implementation of the Convention. However, it observed that the persistence of a strong patriarchal culture in Sri Lanka that emphasizes the traditional roles of women and men constitutes an impediment to the full implementation of the Convention.<sup>6</sup>

Some among the Committee's concerns were:

- the contradiction between the constitutional guarantees of fundamental rights and the existence of personal laws that discriminate against women;
- the low representation of women in government at both the local and the national level;
- the insufficient legal, institutional and financial frameworks to implement the Convention;

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<sup>5</sup> Refer to the UNDP Human Development Reports of 1995 to 2001.

<sup>6</sup> Sri Lanka, Concluding Comments, CEDAW 26<sup>th</sup> Session, 14<sup>th</sup> January – 1<sup>st</sup> February 2002, IWRAW – AP website.

- the under-representation of women in engineering and technology related courses in tertiary education;
- the high incidence of violence against women;
- the prohibition of abortion even in extreme circumstances and the prevalence of illegal abortions;
- the violence suffered by women of ethnic minorities at the hands of the armed forces and police;
- the high unemployment rate of women;
- the complete lack of protection for women working in the informal sector and the lack of enforcement of laws to protect women workers in the Export Processing Zones;
- the increasing number of women migrant workers in vulnerable situations, subjected to abuse and sometimes death;
- discrimination against women under the Land Development Ordinance;
- the lack of a gender perspective in economic policies and recognition of rural women's role as producers;
- the high percentage of households headed by women;
- the wage gap between women and men;
- discriminatory anomalies in the Land Development Ordinance.

In its concluding comments to the Government, the Committee:

- urged that all existing laws be reviewed and that discriminatory provisions be amended to make them compatible with the Convention;

- encouraged the Government to obtain information on comparative jurisprudence, including on the interpretation of Islamic law in line with the Convention;
- urged that legal force be given to the Women's Charter, that the establishment of the National Commission on Women be expedited, that the gender focal points in government ministries be strengthened and that sufficient human and financial resources for the implementation of the National Plan of Action be ensured;
- urged that all necessary measures be taken to increase the representation of women in politics and public life at local, provincial and national levels, including through the implementation of temporary special measures;
- urged that all necessary measures be taken to increase the representation of women in engineering and technology related courses in tertiary education;
- recommended that abortion be permitted in cases of rape, incest and congenital abnormalities;
- urged the full implementation of all legal and other measures relating to violence against women, that the impact of those measures be monitored, and that women victims of violence be provided with accessible and effective means of redress and protection;
- requested the enactment of legislation on domestic violence as soon as possible;
- recommended systematic data collection on violence against women, including domestic violence, disaggregated by sex and ethnic group;

- urged the recognition of marital rape in all circumstances as a crime;
- recommended the provision of comprehensive training to the judiciary, police, medical personnel and other relevant groups on all forms of violence against women;
- urged that the behaviour of the police and the security forces be strictly monitored, that all perpetrators of violence against women be brought to justice, and that all necessary measures be taken to prevent acts of violence against women, especially ethnic minority women and girls;
- called for stronger measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men, including awareness-raising and educational campaigns directed at both the media and women and men of the general public;
- urged that all necessary measures be taken to increase the economic participation of women and to ensure that women have equal access to the labour market and equal opportunities at work;
- called for the revision of labour laws so that they apply to all workers, including those in the informal sector, and for the enforcement of those laws in all areas, including the Export Processing Zones;
- recommended that sex-disaggregated data on income distribution and wages be collected and included in the Government's next report and that the Government take measures to ensure that a gender perspective is incorporated into all labour policies;

- urged the full and effective enforcement of the measures taken to protect women migrant workers, including preventing the activities of illegal employment agencies and ensuring that insurance covers the disabled and jobless after they return to Sri Lanka;
- urged amendment to the Land Development Ordinance so that it is compatible with the Convention;
- urged the recognition of rural women's contributions to the economy by collecting sex-disaggregated data on rural production and by ensuring the incorporation of a gender perspective in all development programmes, with special attention to minority rural women;
- urged the development of policies and programmes to improve the situation of women-headed households and elderly women, including recognizing women-headed households as equal recipients and beneficiaries of development programmes;
- urged the allocation of more resources to meet the needs of internally displaced women and children and to ensure their privacy, access to health facilities, security and protection from violence;
- called for the full and equal participation of women in the process of conflict resolution and peace building.

### **3. Implementing Mechanisms**

#### **3.1 National Commission on Women**

A Bill of Rights akin to (and in fact with stronger provisions than) CEDAW was adopted as the Sri Lanka Women's Charter in 1993,

embodying within it the authorization to eliminate discrimination against women and achieve gender equality. The Women's Charter, if effectively operationalised, enables legal reform, structural reform within the law enforcement establishment and the taking of preventative measures. The Charter could play a proactive and supportive role in strengthening all state and non governmental initiatives dealing with the elimination of discrimination against women.

A National Committee on Women (NCW) was set up under the Charter mandated to entertain, scrutinize, and take action against complaints of gender discrimination, to promote research into gender issues and to play an advisory role to the Ministry of Women's Affairs when advice is sought or when the NCW considers it necessary. A new slate of officers was appointed to the NCW in 2002. The NCW, however, lacks statutory powers of enforcement and must become a statutory authority as envisaged in the Women's Charter. This implementing mechanism was envisaged as a National Commission on Women. However, successive governments have been unable or unwilling to bring about the national legislation required to make the Commission a reality. In January, Sri Lanka stated before the CEDAW Committee that the Government expected legislation giving statutory recognition to the National Commission on Women to be enacted shortly. However, by December draft legislation for the National Commission was being reformulated and a two-tiered apparatus consisting of a Council and an Executive was being considered to replace a Commission, further delaying the legal enforcement of the Women's Charter.

### **3.2 National Plan of Action**

Complementing the work of the Ministry of Women's Affairs and the National Committee on Women, and keeping within the principles enshrined in the Women's Charter, the National Plan of Action for Women was adopted in 1996. This important document was originally



based on the Beijing Platform for Action adopted at the UN 4<sup>th</sup> World Conference on Women in 1995. Prepared in collaboration with relevant State ministries, departments and women's NGOs, the National Plan of Action identifies clear areas of concern: violence against women, women and human rights, women and armed conflict, education and training, economic activities and poverty, health, environment, decision making, the girl child and the media. It also identified objectives, strategies, actions, timelines and indicators for achievement. The second five-year plan was finalized in 2002 by the Ministry of Women's Affairs in collaboration with the National Committee on Women and a range of women's organizations and NGOs.

### **3.3 Optional Protocol**

Despite shortcomings in compliance and implementation, Sri Lankan governments over the years have ratified many of the key human rights instruments that bring within their ambit the promotion and protection of different aspects of women's rights. It is noteworthy that in the year 2002, keeping with a commitment made before the CEDAW Committee, Sri Lanka acceded to the Optional Protocol to the Women's Convention on the 15<sup>th</sup> October 2002. This allows far greater scope for women and for persons acting on behalf of women to bring complaints and attempt to get their grievances heard at the international level once domestic measures have failed. The effective use of CEDAW will no doubt help strengthen civil society activism that seeks to promote and protect women's rights in Sri Lanka.

### **3.4 Citizenship Laws**

Sri Lanka retains an archaic provision in its citizenship laws that does not allow a Sri Lankan woman the right to pass on her nationality to her children if her husband is not a Sri Lankan citizen, while a Sri Lankan man married to a non-Sri Lankan may do so. Women's groups

have been lobbying for years to get this law reformed. By the end of the year relevant provisions had been drafted to do away with this anomaly and the amendments were presented and passed in Parliament on 8<sup>th</sup> March 2003. A new set of guidelines was also formulated by the Department of Immigration and Emigration allowing the granting of resident visas to foreign spouses for an initial period of two years. They would also be entitled to seek employment in the country. Another five years would be granted following the end of the initial two years. Permanent residence visas would be granted at the end of the seven years.<sup>7</sup>

### 3.5 Violence Against Women

The high incidence of violence against women remained a matter of grave concern in 2002. While a complete statistical breakdown of reports of violence against women recorded by the Department of Police had not been finalized and released at the time of writing, a press report claimed that the Police Headquarters had logged 999 complaints of rape, 285 complaints of murder and 400 incidents of abduction – all of women, from January to September 2002.<sup>8</sup>

Women in Need (WIN), a non governmental organization dealing with violence against women, particularly domestic violence since 1987, has received a steadily increasing number of complaints and requests for assistance.<sup>9</sup> WIN dealt with 6,530 cases in 2002 of which 1,117 related to family breakdown due to violence. Among these were 844 cases of battery, 842 of domestic violence, 31 rape cases, 6 incest and 42 sexual abuse cases.<sup>10</sup> In March 2002, WIN established the first one

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<sup>7</sup> *The Island*, 10<sup>th</sup> February 2003.

<sup>8</sup> *Dinamina*, 8<sup>th</sup> March 2003.

<sup>9</sup> See Annual Reports for this period, Women in Need, Colombo.

<sup>10</sup> Annual Report 2002, Women in Need, Colombo.

stop crisis centre for women at the Colombo National Hospital. A second was opened at the Castle Street Maternity Hospital in January 2003. WIN also opened offices in Badulla and Anuradhapura in October 2002 to add to those already established in Colombo, Kandy and Matara. WIN staff reported an alarming trend in the nature of the violence suffered by women. They indicated that an increasing number of women complain of sexual violence within marriage linked to pornography and sadistic sexual practices.<sup>11</sup> The non-recognition of marital rape as a crime except in situations of judicial separation continues to be a problem for women who are sexually abused and exploited by their husbands and partners. WIN is contemplating embarking on research to study the impact on women of this lacuna, given the nature of complaints received by the organisation.

The Gender Complaints Unit of the National Committee on Women reports handling a total of 583 cases in the year 2002.<sup>12</sup> Of these, 34 related to domestic violence, 13 were complaints of rape and 23 were complaints of sexual harassment. Kantha Diri Piyasa, an initiative promoted by the present government, has also set up six women's crisis centres in the provinces. The first was set up at Ja-ela in March 2002 followed by a second center in the Western Province and others in the Central Province, North Western Province, Southern Province and the Northern Province. Counselors staff the centres and Women Police Constables and their clients have access to lawyers and legal assistance as well as doctors when required. The centres are empowered to act as police posts and record first statements that are admissible in court. Kantha Diri Piyasa recorded over a thousand requests for assistance from women during the year. They have settled a large

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<sup>11</sup> Informal discussion at consultation on domestic violence called by the Sri Lanka Women's NGO Forum on 5<sup>th</sup> November 2002.

<sup>12</sup> Statistics supplied by the National Committee on Women for year ended December 2002.

number of domestic complaints out of court and have filed court cases following investigation on behalf of 54 clients, primarily for rape and incest.

The Colombo Municipal Council (CMC) formed a committee for the prevention of "Abuse of Women and Children" on a proposal made by the CMC's only woman councilor, Ms. Sharmila Gonawala. A sum of Rs.25 million was allocated for 2003 to implement a programme to safeguard women and children. The programme seeks to provide free legal advice for victims with a counseling service, set up in Colombo's Municipal hospitals. The effort, which will have a preventative focus, will enlist the co-operation and the assistance of female lawyers and police officers. It will also study possible legal measures to control modes of advertising - audio and visual - that encourage violence.<sup>13</sup>

Another concern is that constitutional provisions on fundamental rights do not create accountability for the activities of non-State actors or the private sector barring an effective means of redress, particularly for women who are vulnerable to crimes such as domestic violence and sexual harassment committed by private actors.<sup>14</sup>

While the work in relation to violence against women has increased over the years, there is still a concern about the lack of systematic data collection and gender-disaggregated information on violent crime perpetrated against women. This is compounded by a serious deficiency of shelters and services for women victims wishing to escape from the violence. As a result this continues to impede the provision of adequate redress to women as well as formulating strategies that can help prevent

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<sup>13</sup> *Sunday Observer*, 29<sup>th</sup> December 2002.

<sup>14</sup> Shadow Report to CEDAW.

or at least reduce the high incidence of violence against women and girls.

### 3.6 Domestic Violence

In March 2002 the Ministry of Justice presented draft legislation on domestic violence, focusing primarily on the granting of protection orders to women.<sup>15</sup> By October an amended version of the draft had been presented to a Cabinet sub-committee for review. The drafting of this legislation had been preceded by a campaign led by women's groups calling for legislation on domestic violence. A draft Act prepared by this lobby (Women's draft)<sup>16</sup> was discussed through a consultative process at national, regional and local levels from 2000 to 2002. The Ministry's draft incorporated some of the concepts and elements elaborated in the women's draft. However, women's groups and others were of the opinion that the Ministry's draft was somewhat limited and needed further strengthening. Of particular concern was that the Ministry's draft Act was limited to the issuing of protection orders; that it did not contain a composite definition of domestic violence; that there was a need to extend standing; that there was a need to grant an interim protection order ex-parte; and that the draft Act was confused on the standard of proof and the need for support services.<sup>17</sup>

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<sup>15</sup> See Draft Domestic Violence Bill forwarded to selected women's organizations on 25<sup>th</sup> March 2002 and taken up for discussion at the Ministry of Justice on 18 April 2002. The draft was introduced as 'An Act to provide for the making of Protection Orders in instances of domestic violence and for matters connected therewith or incidental thereto'.

<sup>16</sup> See the draft Act prepared by the Domestic Violence Act Campaign co-ordinated by the Women and Media Collective.

<sup>17</sup> See letters to the Ministry of Justice by women's groups and the Ministry of Women's Affairs dated following a discussion on the final draft on 2<sup>nd</sup> October 2002.

Representations by this lobby and the Ministry of Women's Affairs resulted in the call for revisions to the Ministry's draft.<sup>18</sup>

### 3.7 Women and Torture

Despite the ratification of the Torture Convention and the enactment of specific legislation to deal with torture<sup>19</sup>, a number of cases of torture in custody were reported in 2002.<sup>20</sup> Among them were cases of torture reported by women, illustrating the manifold difficulties in bringing such cases to justice.

A case filed by Herat Pathirannehelage Nandani Sriyalatha remained pending at the end of the year. She had been arrested at home by police officers from Wariyapola police station on 8<sup>th</sup> March 2002, in the presence of her family. She had been kept for two days at Wariyapola police station, during which period she was stripped naked and sexually tortured by a pipe-like object being inserted into her vagina.<sup>21</sup>

Although it was expected that the case would be filed under the Convention Against Torture and Other Cruel, Inhuman, Degrading Punishment and Treatment Act No.22 of 1994, the Deputy Inspector General of Police for Wayamba filed criminal charges against five police officers, including the Officer in Charge (OIC) of Wariyapola police station, under the Penal Code of Sri Lanka. The officers were

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<sup>18</sup> See the letter dated 21<sup>st</sup> October 2002 addressed to Mr. Bradman Weerakoon, Secretary to the Prime Minister and Chair of the Cabinet sub committee reviewing the draft, written by Women and Media Collective on behalf of the individuals & groups formulating the Women's Draft and his reply dated 6 November 2002.

<sup>19</sup> Convention Against Torture, Cruel and Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994.

<sup>20</sup> See Jana Sammathaya electronic newspapers published by the Asian Human Rights Commission, Hong Kong in 2002.

<sup>21</sup> Jana Sammathaya, Vol. 1, No. 9, 22 June 2002.



only charged with causing simple and grievous hurt to Nandini Sriyatha Herat, diluting the gravity of the offences and allowing for bail. The suspected perpetrators continue to hold their official posts and lawyers involved in the case, family and activists have alleged interference, intimidation and violence. Some of the lawyers involved have withdrawn due to intimidation, and local media representatives have been warned away from reporting the case, bringing into focus serious concerns about witness and defender protection. The effect of all this on the pending proceedings is considerable despite an explicit warning by the Magistrate that witnesses in the case should not be intimidated.<sup>22</sup> Kishali Pinto Jayawardene in her *Sunday Times* column indicates that the Nandani Herat case is a pointer to the significant manner in which Sri Lanka's human rights protection structures and institutions have broken down in a collapse of moral and legal faith.<sup>23</sup>

Another case of horrendous sexual torture by the police resulted in a historic judgment by the Supreme Court. The Supreme Court for the first time directed the Attorney General, "*..... to consider taking steps under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 against the respondents and others who are responsible for acts of torture perpetrated on the petitioners.*" The practice hitherto had been the issuing of directions to the Inspector General of Police to take disciplinary action against the offending officers. The order in this case indicates a new and more effective direction.<sup>24</sup>

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<sup>22</sup> See Amnesty International press release, Sri Lanka: Fear for safety Nandini Herat, ASA 37/014/2002 and related press releases.

<sup>23</sup> Kishali Pinto Jayawardene, *Sunday Times*, 15<sup>th</sup> September 2002.

<sup>24</sup> Per Gunasekera J. in *Yogalingam Vijitha v. Wijesekara, Reserve Sub Inspector of Police, Police Station, Negombo and eight Others*, SC FR Application No. 186/2001, S.C. Minutes 23.05.2002 at 26 and 27.

This decision was given in the application filed by Yogalingam Vijitha, citing 7 police officers including Police Officers of the Negombo police station as respondents. She complained of wrongful arrest and brutal torture, including sexual torture committed with the insertion of a chilli-soaked banana flower into her vagina. Ms. Vijitha was also awarded compensation to the value of Rs. 250,000, a considerable sum in torture cases.

In another important judgment, Angeline Roshana won a fundamental rights case in which she alleged illegal arrest and illegal detention by Inspector Saleh, the OIC Crimes, Narahenpita, Colombo.<sup>25</sup> The Supreme Court held that her fundamental rights protected under Articles 11, 13(1) and 13(2) of the Constitution had been violated, and ordered the payment of Rs.100,000 as compensation, Rs.30,000 of which had to be paid by the respondent personally. This is an important judgment that incorporates a strong deterrent factor.

In a year when there was an absence of war and a process towards negotiated peace, it is a matter for deep concern that a culture of violence and impunity continued apparently unabated. Such a culture seems to be deeply entrenched in the practices of the very institutions set up to enforce law and order and protect the rights of people.

### **3.8 Political Representation of Women**

Political representation of women continued to be very low at all levels of government. Local government elections were held in May 2002 and women's groups called upon the United National Front (UNF) Government to implement its promise to increase women's

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<sup>25</sup> *Angeline Roshana Michael v. Selvin Saleh, O.I.C. (Crimes), Police Station, Narahenpita and 2 others*, S.C. FR Application No. 1/2001 S.C. Minutes 02.08.2002.

representation. The UNF chose to request all political parties contesting to nominate a minimum of 25% women on to their lists. Ironically, the UNF slate headed by the United National Party (UNP) was itself unable to achieve this target. While the party maintained that it was unable to find sufficient women candidates, women of all the major mainstream political parties alleged that a majority of their applications had been rejected in favour of men. The election results, as in the past, brought no change to the extremely low representation for women.<sup>26</sup> The Colombo Municipality returned just a single woman member.

Women activists attempting to find a way out of the problem of low nominations floated an independent list of women candidates for the Colombo Municipality, contesting under the symbol of the orange. The list headed by women lawyers had among its nominees women from low income groups and urban communities and had a women-friendly, gender-sensitive manifesto. The women's list failed to obtain the minimum 2500 votes required to win a seat in the Colombo Municipality but gained some valuable insights for women contesting elections. These ranged from a critique of the system of elections to the lack of gender sensitivity in the Department of Elections, and from the high cost of electioneering to the difficulties of canvassing throughout the district due to lack of support from civil society groups.

Women's groups and activists continued to investigate ways of improving women's political representation. The International Centre for Ethnic Studies (Colombo) conducted a series of workshops in the districts of Monaragala, Kandy, Matara and Batticaloa with women political activists. These were concluded with a national level convention in Colombo where a campaign memorandum was handed over to the Minister of Women's Affairs detailing obstacles to women's

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<sup>26</sup> At the time of writing the Elections Department had not compiled gender disaggregated data to indicate the number of seats won by women.

representation and participation in the electoral process. The Memorandum highlighted recommendations from women to the government, political parties and civil society organizations and called for affirmative action to increase women's political representation.<sup>27</sup> The coalition Mothers and Daughters of Lanka began a three-district programme of training for women following up on the International Centre for Ethnic Studies (Colombo) campaign. The Women's Bureau and the Ministry of Women's Affairs focused on training and awareness raising for women wishing to enter politics. But the fundamental question of internal party democracy and the political will to nominate women remained unanswered in 2002. However, by the end of the year, the *Regaining Sri Lanka* Policy document, currently proposed as the UNF government's flagship document outlining policy imperatives for the future, in its action plan proposed legislative measures to ensure that all political parties nominated 50% women on to their lists of candidates for local government elections and at national level.<sup>28</sup>

## **4. Migrant Workers**

### **4.1 The Migrant Workers Convention**

The UN Convention on the Rights of Migrant Workers and their families is the international covenant protecting the rights of migrant workers. Drafted and opened for ratification in 1990 it is among the Conventions that have taken the longest time to come into force in UN history. Following the 20<sup>th</sup> ratification, the Convention is now due

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<sup>27</sup> See memorandum dated 15 June 2002, handed over to the Minister of Women's Affairs at the Sri Lanka Foundation Institute Auditorium by women political activists.

<sup>28</sup> See Part III, Section VI Public Sector Reforms Action Plans, in *Regaining Sri Lanka Vision and Strategy for Accelerated Development*, Government of Sri Lanka, December 2002.

to come into force on the 1<sup>st</sup> of July 2003 after a 13-year long wait. Sri Lanka ratified the Convention in 1996.

It is estimated that approximately 800,000 Sri Lankan workers were in employment overseas in 2002.<sup>29</sup> The vast majority of these workers are women, mostly employed in the 'unskilled' category of 'domestic worker' or 'housemaid'. While most migrant workers in the 1980s and 1990s also fell into this category, current statistics indicate that women are now also moving very slowly into the semi-skilled and skilled categories of work in factories and as nurses and teachers.<sup>30</sup>

Remittances from migrant workers, as in the years of the late 90s, accounted for the highest contribution to foreign exchange coffers in the country, with remittances from women's labour obviously making the bulk of the earnings.

In Sri Lanka the Sri Lanka Bureau of Foreign Employment (SLBFE) is the lead agency overseeing the concerns of migrant workers. It is governed by the Sri Lanka Bureau of Foreign Employment Act of 1985. The SLBFE has put in place various measures over the years to streamline labour migration and bring in safeguards for workers. However, migrant workers continue to experience a range of problems stemming mainly from the inability of labour-sending governments, including Sri Lanka, to ensure that minimum standards of protection and monitoring are in place and operational in labour-receiving countries. The nature of migrant labour and attitudes towards migrant workers in sending countries as well as receiving countries and the lack of political will to address these issues seriously are other reasons for the continued problems of migrant workers, particularly women migrant workers.

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<sup>29</sup> Sri Lanka Bureau of Foreign Employment, *Statistics on Labour Migration 2002*, forthcoming.

<sup>30</sup> See Sri Lanka Bureau of Foreign Employment statistics on labour migration for the 1980s and 1990s.

No Western migrant -receiving country has ratified the Convention, even though the majority of migrant workers live in Europe and North America. Other important receiving countries, such as India, Japan, Australia and the Gulf States, have not ratified the Convention either.<sup>31</sup> Although the impact of the Convention remains limited since a majority of receiving countries have not signed or ratified it, states ratifying must ensure that the Convention is incorporated into national laws. The application of the Convention will be monitored by a panel composed of ten experts (to be known as the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families). These experts will be recognized as impartial authorities in the field covered by the Convention and will be elected by the states that have ratified the Convention (article 72). As a country that has ratified the Convention, Sri Lanka will have to seek more proactive means of dealing with labour-receiving countries through diplomatic and other channels to protect the rights of Sri Lankan migrant workers employed overseas.

## **4.2 Exploitation of women migrant workers**

As in previous years, some of the problems faced by migrant workers were highlighted in the media in 2002. The violations experienced by migrant workers ranged from work related labour exploitation to sexual abuse.

Of special concern in 2002 were the high incidence of women workers stranded in receiving countries, and allegations of trafficking and complicity of government officials, particularly officials in Sri Lankan embassies in West Asia, in a range of offences.

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<sup>31</sup> Information Kit on the United Nations Convention on Migrants rights, UNESCO, June 2003.



According to a report by the Forum for Human Dignity (FHD) based in Colombo, such exploiters include Sri Lankan embassy officials in Middle East countries who exploit women by means of threats, force, deception and abuse of power for financial and other benefits. The FHD makes the case that the manner in which labour migration is promoted and the means by which migrants obtain employment or passage overseas is a form of human smuggling or trafficking for purposes of financial benefit.<sup>32</sup>

A particularly horrendous report dealt with the case of women workers stranded in the Sri Lankan embassy in Jeddah. Their case was highlighted in the *Thinamurasu* and was taken up by FHD. The letter alleged that female migrant workers seeking refuge at the embassy are sexually abused and sold to brothels. The FHD called upon the Minister of Foreign Affairs to investigate the report and bring the culpable to justice; bring the stranded workers home and compensate the victims and their families.

Another embassy implicated in the abuse and trafficking of women is the Sri Lankan Embassy in Kuwait, where an embassy official is under investigation following a complaint made by a returnee woman migrant to Minister of Labour, Mahinda Samarasingha.<sup>33</sup>

*The Island* of 5<sup>th</sup> October 2002, quoting reports of airport health officers, stated that 809 bodies of migrant workers have been sent back from foreign countries since the beginning of 2000, 70% of them from countries in the Middle East. Noting that this number had increased over the years, the report added that between January and September

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<sup>32</sup> Human Rights Situation Report Sri Lanka 2002, Forum for Human Dignity, Colombo.

<sup>33</sup> *Sunday Times*, 24<sup>th</sup> November 2002.

2002 the number of bodies received by health officials totaled 235. Of the 48 bodies received in August and September, 33 were those of young drivers and housemaids. Some of the bodies had been lying in mortuaries for months. A spate of reports in the press on the deaths of women migrant workers highlighted the mysterious nature of the deaths and family suspicions of foul play.<sup>34</sup>

There were also reports of women being kept in slave-like conditions by recruitment agencies and travel agents who confiscate passports and transfer women from work place to work place and agent to agent, retaining their wages.<sup>35</sup> Among them were reports of women held in prisons with no means of communication with lawyers or family members. The *Veerakesari* of 31 January 2002, quoting a returnee migrant worker from Bahrain, states that a group of women were living like prisoners, undergoing untold sufferings and hardship in the custody of unscrupulous job agents. The report further stated that in the prison at Eeza in Bahrain alone there were 11 Sri Lankan housemaids.

Non payment of wages is another frequent complaint.<sup>36</sup>

The Sri Lankan actor, Ranjan Ramanayake, has been leading a campaign to get justice and compensation for stranded, abused and detained women migrants in Lebanon. He states that he met many of these women in the safe house maintained by the Sri Lankan Embassy in Lebanon. He alleged complicity from top officials to the labourers in the Embassy in the exploitation and trafficking of women.<sup>37</sup>

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<sup>34</sup> See *The Island*, 12<sup>th</sup> November 2002; *The Island* 5<sup>th</sup> November 2002; *The Island*, 19<sup>th</sup> October 2002; *The Island*, 18<sup>th</sup> November 2002.

<sup>35</sup> *Veerakesari*, 31<sup>st</sup> January 2002.

<sup>36</sup> *Veerakesari*, 27<sup>th</sup> January 2002.

<sup>37</sup> *Lakbima*, 30<sup>th</sup> January 2002, *Lankadeepa*, 3<sup>rd</sup> March 2002, *Silumina*, 24<sup>th</sup> November 2002.

Ramanayake's campaign had widespread coverage in the press and on radio and television, and resulted in the setting up of the Lebanon Committee and the return of these migrant workers.

## **5. Women and Armed Conflict**

### **5.1 Rape in custody**

Amnesty International noted that in 2001, Sri Lanka saw a marked increase in allegations of rape in custody, particularly by the army, police and navy. In a report to the CEDAW Committee in January 2002, it said that most incidents had occurred in the context of the armed conflict between the security forces and the Liberation Tigers of Tamil Eelam (LTTE) and that many internally displaced women were among the victims.<sup>38</sup>

While welcoming several measures, including the introduction of tough prison sentences for those committing rape in custody and gang rape, Amnesty International urged the authorities to take additional measures for the prevention of rape in custody and the proper investigation of alleged incidents. It further noted that not a single member of the armed forces had ever been found guilty of rape in custody except in the case of a victim of rape who was subsequently murdered. In its document, Amnesty International set out the reasons why the role of the police, magistrates and doctors in the early stages of criminal investigations should be reviewed to ensure that evidence is safeguarded and chances for a successful prosecution increased.<sup>39</sup>

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<sup>38</sup> Sri Lanka Rape in custody (AI Index: ASA 37/001/2002), January 2002.

<sup>39</sup> Ibid.

## 5.2 Internally Displaced Persons

Concerns regarding internally displaced persons were a high priority issue in 2002 with the commencement of the peace process and the setting up of mechanisms to deal with immediate humanitarian needs and the restoration of 'normalcy' in the war affected areas. The numbers of internally displaced persons have been estimated at 800,000 by the UNHCR<sup>40</sup> and it is calculated that women and children make up at least 70% of this figure.<sup>41</sup>

The Centre for the Study of Human Rights (CSHR) compiled a report on internally displaced women in Sri Lanka in an attempt to highlight their needs and concerns, in the context of the ongoing peace process.<sup>42</sup> The ensuing report named the following issues identified by displaced women as critical: shifting gender roles for women and men, new opportunities for change, patriarchal power relations, lack of decision making power for women, lack of institutional protections, increased discriminatory practices against women such as dowry and child marriage, increased violence against women including sexual violence, abuse, incest and domestic violence, violence and sexual harassment and abuse at checkpoints, prostitution and trafficking, lack of basic services and facilities, breakdown in reproductive health services, trauma, inadequate provision of food and rations, major problems with sanitation, water, shelter, housing and privacy, lack of livelihoods, wage labour and wage disparities.

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<sup>40</sup> UNHCR's program for Internally Displaced in Sri Lanka, UNHCR Evaluation and Policy Analysis Unit, EPAU/2002/04, May 2002.

<sup>41</sup> Assessment of Needs in the Conflict Affected Areas of the North East, prepared for SIHRN with the assistance of the United Nations Development Fund, the World Bank and the Asian Development bank.

<sup>42</sup> Elek Sophia, *Choosing Rice over Risk: Rights, Resettlement and Displaced Women*, Centre for the Study of Human Rights, (CSHR) University of Colombo, 2003.

In conclusion, the report noted that questions of peace, rights and resettlement are fundamental issues and it advocated the inclusion of women's rights throughout the peace agenda. The importance of a rights-based approach to policy development and application was reiterated throughout this report – recognising the need to address not only the physical needs of displaced peoples, but also their social and emotional needs. The report noted the necessity and centrality of meaningful participation of all displaced people in the provision of assistance. The findings of the report also point to the essential need to involve women in the decision making process, planning and implementing of all programmes of re-settlement, relocation and reintegration that will be envisaged for IDPs in the course of seeking solutions to the causes and consequences of the ethnic conflict.

### **5.3 Child Conscription**

Women's activism has also contributed to putting the vexed issue of child conscription firmly on the table. The LTTE had to acknowledge that it recruited children and by the end of the year it had to make a commitment to stop the practice and return conscripted minors to their families. In a nascent peace process, with the strongest emphasis on maintaining a fragile balance between military and political imperatives and preventing a relapse into war, hard human rights questions often remain unasked. They become the un-named 'spoilers'. In the first year of Sri Lanka's peace talks, child conscription, was one such issue. Yet through efforts of a few courageous mothers who dared to protest to the LTTE, a few local human rights activists, mainly women, who lobbied relentlessly to make the issue visible and the international watch dog agencies such as Amnesty International and United Nations Childrens Fund (UNICEF), the issue was forced on to the negotiating table.

## 6. Women and Peace

### 6.1 International Standards

The Forward Looking Strategies of the UN World Conference on Women held in Nairobi in 1985 reviewing the achievements of the Women's Decade – 1975 to 1985, noted that peace includes not only the absence of war, violence and hostilities at the national and international levels but also the enjoyment of economic and social justice, equality and the entire range of human rights and fundamental freedoms within society.<sup>43</sup>

It further notes that peace is promoted by equality of the sexes, economic equality and the universal enjoyment of basic human rights and fundamental freedoms. Its enjoyment by all requires that women be enabled to exercise their right to participate on an equal footing with men in all spheres of the political, economic and social life of their respective countries, particularly in the decision-making process, while exercising their right to freedom of opinion, expression, information and association in the promotion of international peace and co-operation.

Ten years later, in 1995 at the 4<sup>th</sup> UN World Conference on Women, the Beijing Platform for Action considered the effects of armed conflict on women a critical area of concern and recognised that women are increasingly establishing themselves as central actors in a variety of capacities in the movement of humanity for peace. Their full participation in decision-making, conflict prevention and resolution

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<sup>43</sup> Report of the World Conference to review and appraise the achievements of the UN Decade for Women, Nairobi, 15 – 26 July 1985, [www.un.org/womenwatch](http://www.un.org/womenwatch).



and all other peace initiatives is essential to the realization of lasting peace.<sup>44</sup>

However it was only in the year 2000 that the UN Security Council passed its first ever resolution specifically addressing the impact of war on women, and women's contributions to conflict resolution and sustainable peace; this resolution (United Nations Security Council Resolution 1325) was passed unanimously on 31<sup>st</sup> October 2000.<sup>45</sup>

The Resolution reaffirmed the important role of women in the prevention and resolution of conflicts and in peace-building, and stressed the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution. It urged Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

Just as importantly, it called on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

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<sup>44</sup> Global Framework, Beijing Platform for Action.

<sup>45</sup> S/RES/1325.

Resolution 1325 brought about a shift in global perception and a political framework for addressing issues of women, peacemaking, peacekeeping and security in the context of conflict resolution.

## **6.2 Women and the Peace Process**

Such a framework has wide-ranging and important implications for Sri Lanka's peace process. Women's groups carried on their activism for a solution to Sri Lanka's ethnic conflict and for the strengthening of the peace process throughout 2002. On 12<sup>th</sup> of January 2002, the Association of War Affected Women successfully concluded their 'one million signatures' campaign calling for a negotiated political solution to the conflict, with the handing over of the signature petition to the President, the Prime Minister, and the LTTE.

With the signing of the Memorandum of Understanding (MOU) in February 2002 by the Sri Lankan Government and the LTTE, women's groups began their quest to get women and women's concerns included in the unfolding peace process. One of the first interventions was launched by two coalitions, Mothers and Daughters of Lanka and the Sri Lanka Women's NGO Forum on 8<sup>th</sup> March 2002 with a rally and picket in Colombo focusing on a petition addressed to the negotiating parties as well as to the Norwegian mediators. The petition welcomed the ceasefire resulting from the signing of the MOU and called for the strengthening of the agreement and the inclusion of women in the process.

In April, the LTTE honoured the memory of Annai Poopathy with a monument and commemoration for her in Batticaloa. Annai Poopathi was honoured for her fast unto death in protest against the presence of the Indian Army in the North East of Sri Lanka in 1989.

In May the International Centre for Ethnic Studies hosted an international meeting in Colombo on women, conflict resolution and constitution making. As a follow-up initiative women from Sri Lanka attending the conference handed over a Memorandum dated 7 June 2002 to the Government, the LTTE and the Norwegian facilitators. The 14 point Memorandum welcomed the peace process and called for: women to be included in all aspects of the peace process; women's issues and concerns to form an integral part of the peace agenda and human rights to be protected at every stage of the peace process. Delegations of women met the President, the Prime Minister and the Norwegian Ambassador in Colombo. A copy of the Memorandum was delivered to the LTTE political office in Kilinochchi as well.

In September 2002 the LTTE called a rally and convention in Kilinochchi of Tamil women from within movement ranks and from civil society organizations in the North East to discuss women's involvement and contributions to policy and policy interventions for the area. Of particular importance were the discussions on immediate humanitarian and relief needs for women and women's participation in policy formulation, implementation and monitoring.

A group of women's organisations participated in an International Women's Mission to the North East of Sri Lanka from the 12<sup>th</sup> to the 17<sup>th</sup> October 2002.<sup>46</sup> Teams of women from different parts of the country together with women from the North East visited Jaffna and Kaytes, Kilinochchi, Vavuniya, Trincomalee, Batticaloa, Puttalam, Mannar and border villages in Polonnaruwa District. Members of the mission talked to a wide range of women and men from different communities and social groups in these areas. The Mission made two sets of recommendations – one relating to the peace process and the MOU

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<sup>46</sup> Women's Concerns and the Peace Process, Recommendations, International Women's Mission to the North East of Sri Lanka, 12<sup>th</sup> to 17<sup>th</sup> October 2002, Women and Media Collective, Colombo.

and the other relating to policy issues on resettlement, reconstruction and rehabilitation. The mission made findings and recommendations in the areas of sustaining the peace process, the right to information, displacement and resettlement, land rights, compensation, health, education, women's livelihoods, political representation, freedom of association and movement, disappearances and persons missing in action, and violence against women. Women's groups lobbied bi-lateral and multi-lateral agencies in Colombo with the Mission's report in the lead up to the aid group meeting and the 3<sup>rd</sup> round of peace talks in Oslo in December 2002 and were successful in getting the negotiating parties to agree to the setting up of a Sub-Committee on Gender Issues (SGI) to advise on the effective inclusion of gender concerns in the peace process. Government and LTTE nominees to the sub-committee were to be named at the next round of peace talks in January 2003.

Women's groups also expressed solidarity with each other and with organizations of family members missing in action and in detention, calling for the release of the detained and the disappeared. The Association of Women Affected by War and the Parents and Guardians Association in Jaffna organized one such activity in Colombo. A similar activity organized in Jaffna by the Consortium of NGOs on 10<sup>th</sup> December, the International Human Rights Day, was attended by women from the south and the east under the auspices of the Women and Media Collective in Jaffna. A number of women's groups from the North Eastern districts and the rest of the country visited each other's townships and homes in a continuous stream of activity and exchange throughout the year holding meetings, seminars, common celebrations, conventions and participating in joint rallies and pickets.

## 7. Economic Policy and Women

The government's economic reforms process was articulated in a number of key documents during 2002. One was the draft National Employment Policy for Sri Lanka (NEP) and another was the draft Sri Lanka Poverty Reduction Strategy Paper (PRS). The latter was eventually incorporated into an integrated three part comprehensive policy framework titled *Regaining Sri Lanka*, in December 2002. The PRS and the NEP focus on addressing issues of poverty and 'pro-poor' growth strategies and both have come under heavy criticism by civil society organizations. A particularly important criticism concerns the lack of a gender perspective in policy formulation.

Ramani Jayasundere, critiquing the draft NEP from a gender perspective,<sup>47</sup> called it a confusing document which attempts to take on a gender neutral tone in five of its seven sections.<sup>48</sup> In the other two sections,<sup>49</sup> on foreign employment and social obligations, which speak directly and inevitably of women's contribution to the economy, she noted an attempt to be gender sensitive which ended up being patronizing, discriminating against and marginalizing women. The document itself was drafted by an advisory committee made up of 15 males and one female representing the main stakeholders of the economy, the private sector, trade unions and the state sector. Jayasundere further states that while the draft policy recognizes that there are issues that need be addressed in dealing with women in employment, it makes little note of the key role played by Sri Lankan

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<sup>47</sup> Ramani Jayasundere, *"Stepping into a new economic era – gender blind again?"* - forthcoming.

<sup>48</sup> Initiative 1: Manpower Planning, Initiative 2: Education and Training for Life Long Employability, Initiative 4: Improving Quality of Life through SMEs and Self Employment, Initiative 6: Partnerships Re-Aligned, and Initiative 7: reaching Out-Employment Sourcing and Delivery Systems.

<sup>49</sup> Initiative 3: Foreign Employment Redefined and Initiative 5: Fulfilling Social Obligations.

women in productive employment. The policy, once more, places women in a disadvantaged position, justifying welfarism, condescending attitudes to women's work and the idea that women are only supplementary income earners.

She notes that the document treats the fact that 70% of migrant workers are women as an incidental occurrence, with no effort to strategically address their participation in low paying, 'unskilled' jobs. She also cannot understand how the NEP can ignore the existence of domestic garment factory workers, the majority of whom are women, working in a sector that contributes the second highest foreign exchange income to the country.

The other important policy document, the PRS, has also been strongly criticized for its weak gender analysis and response to the gendered nature of poverty, among other things. It is important to note that poverty indicators have only changed marginally since independence despite a gamut of policy initiatives adopted by successive governments since independence ranging from state intervention to market liberalization and poverty alleviation. At present a large segment of the population lives below the poverty line. Looking at the distribution of income, the lowest 40% of households receive around 15% of the national income and the highest 20% receive around 50%. About 30.4 % of the population lives under the official poverty line<sup>50</sup> and the levels change with geographical distribution: rural poverty (34.7%) appears to be the worst followed by the plantation estate areas (20.5%).<sup>51</sup>

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<sup>50</sup> Defined as Rs. 2750 in 1997. See Ramani Jayasundere, *Op.cit.*

<sup>51</sup> See Ramani Jayasundere, *Op.cit.*



Despite the many studies that indicate women constitute a significant percentage of the poor and make up the majority of the poor in some categories and geographical locations, the 200-plus page PRS document devotes about two pages to women in its main text under the head 'Combating Gender Discrimination'. Critiquing this document, Jayasundere notes that here too, there is gender blindness in the guise of gender neutrality with the PRS making no attempt to consider the impact of poverty on women as a category of poor who are affected in specific ways.<sup>52</sup> She further notes that although the document attempts to be gender sensitive, it ends up being wholly discriminatory against women. Another critic of the PRS, writing in *Cats Eye*<sup>53</sup>, lays bare the lack of understanding of the concept of gender mainstreaming within some important arms of state machinery and policy making bodies and a penchant to be satisfied with limiting gender awareness solely to rhetoric. The *Cats Eye* columnist makes some other very salient points. The author notes that the focus of poverty reduction strategies continues to be the household with no understanding, however, that the household is not a centre of harmonious social relations where both men and women have equal status and enjoy equal benefit. It is also noted that while the strategy focuses on households, it completely fails to recognize the growing phenomenon of female headed households, particularly within the context of war and political violence and that this category may well be a critical group in poverty. This apart, the author also criticizes the general notion among the drafters of the PRS that women, unless suffering the loss of a male 'head of household', cannot assume or be considered a joint head of household together with men. Other strategically important issues pertaining to women's ownership of land, and women's recognition as farmers and productive income earners in the informal sector have also been ignored in this strategy document.

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<sup>52</sup> Ibid.

<sup>53</sup> *Cats Eye*, The Island Midweek Review, 5<sup>th</sup> June 2002.

The Regaining Sri Lanka policy framework too, unfortunately appears to be a hasty amalgam of a number of previously drafted policy documents, resulting in an extremely disjointed and ad-hoc treatment of gender concerns and issues. A clear example of this mismatch is the important Action Plan segment laid out in Part III, which has a wish list of demands to combat gender discrimination under an area titled 'Reforming Governance and Empowering the Poor', a title which has no direct correlation with gender discrimination. The only interventions relating to gender and to women range from increasing women's political participation to diversification of vocational training opportunities for women, and such matters as the extension of micro credit programmes, entrepreneurship, improvement of working conditions of women in factory employment, female headed households, the elderly, and child care, with an absolutely unrealistic time frame for implementation.

These shortcomings point clearly to the lack of understanding of a gendered framework that would address women's long term strategic interests, bringing about structural changes that will both reduce poverty and increase women's empowerment.

## **8. Women Workers**

The main piece of legislation governing workers in the garment factories (as well as other factories in the Export Promotion Zones) the Factories Ordinance No. 45 of 1942<sup>54</sup>, was amended in August 2002 with a particularly problematic amendment for women workers which increased overtime work from 80 hours a year to 60 hours a month. Amendments were also proposed to the Industrial Disputes

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<sup>54</sup> Amended by Ordinance No. 22 of 1946, Act No. 54 of 1961, Act No. 17 of 1965, Act No. 29 of 1971 and Law No. 12 of 1976.

Act making the time frame for the hearing of labour cases in the Labour Tribunal, Industrial Courts and the Termination Unit. The proposed time frame was on a 4-2-1 formula i.e. Labour Tribunal to finish their hearing within 4 months, Industrial Courts within 2 months, and the Termination Unit within 1 month. Trade Unions opposed this formula as being unreasonable to deal with cases that currently took at least 10 months to resolve. They called for a corresponding increase in staff and resources at the Labour Department and Courts to make such a formula work effectively.

Another proposed amendment under the Termination of Employment Act sought to allow employers' permission to terminate workers with compensation, but with no room for hearings or appeals. Additionally, the amendment proposed that the Commissioner of Labour be given the power to order compensation, instead of reinstatement, even if he found the termination to be unlawful if he felt it to be prejudicial to the employer to reinstate the worker. This amendment was unacceptable to trade unions because under current legislation the Commissioner has power to reinstate the workers with back wages.<sup>55</sup>

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<sup>55</sup> See <http://www.tieasia.org>

## V

### **Children Affected by Armed Conflict in Sri Lanka: The Year in Review.**

*Farzana Haniffa\**

#### **1. Introduction**

- 270,000 children are internally displaced by war in Sri Lanka.
- Many have lost at least one parent in the fighting; a high proportion are orphans.
- Up to 50 per cent of displaced children have lost their birth certificates, causing problems with their schooling.
- One in five displaced children is malnourished.<sup>1</sup>

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<sup>1</sup> "War Brought Us Here: protecting children displaced within their own countries by conflict" Save the Children, 2000.

The legal structure in Sri Lanka does not provide special protection for children in armed conflict, and has no provision to recognize the special needs of internally displaced people. The parties to the conflict are required to respect at least the minimum standards in Common Article 3 of the Geneva Conventions. However, despite over 25 years of conflict, Sri Lanka has not ratified the main international humanitarian law treaty governing internal conflict, namely The Protocol Additional to the Geneva Conventions of 12 August 1949 - Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977. If Sri Lanka did become a signatory to Additional Protocol II, it would immediately become binding on all parties to the conflict. This would greatly advance the rights of children to protection measures during and in the aftermath of conflict.

Sri Lanka generally has very low social expenditure and standards of education and health have been deteriorating for years. While at one time the literacy rate in Sri Lanka was amongst the highest in Asia – second only to Japan and Singapore – now Sri Lanka is ranked twenty-first in the region.<sup>2</sup> In 1999, Sri Lanka spent 2.5 per cent of GDP and 10 per cent of total public expenditure on education. The World Bank minimum standards for expenditure on education are 5% of GDP and 20% of total public expenditure.<sup>3</sup> Health expenditure in real terms has been declining. Although Sri Lanka is highly rated for access to health care in the region, these statistics do not take account of the appalling conditions in the areas affected by the war. Sri Lanka's health budget amounts to 1.4 per cent of the GDP.<sup>4</sup> The conflict has only exacerbated

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<sup>2</sup> "Drastic Drop in Literacy Rates in Sri Lanka." *The Sunday Observer*, Colombo, Sept. 1996.p.4 cited in "The Sri Lanka Children's Challenge!" Save the Children, Sri Lanka, April 2002.

<sup>3</sup> *Education for All. The Year 2000 Assessment: The Country Status Report-Sri Lanka*. UNESCO World Education Forum 2000, p. 15

<sup>4</sup> Sri Lanka Central Bank Report, 1999.

prevailing problems and statistics indicate that areas in which fighting has been ongoing for the last 20 years have conditions similar to some of the poorest districts in the country.<sup>5</sup>

At the time of writing, the government was engaged in peace negotiations with the Liberation Tigers of Tamil Eelam (LTTE) and a ceasefire had been in operation from January 2002. In February 2002 a Memorandum of Understanding (MOU) was entered into by the government and the LTTE which called for all parties to adhere to standards of international law "...and abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment."<sup>6</sup> However, recruitment of children into the LTTE continued even after the MOU had been signed.

There is inadequate provision of services to conflict affected areas and the government has refrained from commenting on the continuation of child conscription. Such inadequacies constitute a continuing breach of state obligations under several international conventions. Under the UN Convention on the Rights of the Child, access to health care, housing and education and non-discrimination have to be ensured by the state. Under ILO Convention 182, the state is required to take time bound and effective steps to prevent child recruitment, to remove the circumstances of recruitment, and provide children with access to free education and vocational training.

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<sup>5</sup> Haniffa, Farzana. Save the Children Sri Lanka Submission to the UN CRC, March 2002 (updated Jan 2003). Overall malnutrition levels (p.45) have decreased during the period from 1987 to 1998 from 38 per cent to 24.5 per cent. However, there are some areas such as Mannar, Ampara, Vavuniya, Ratnapura and Hambantota where malnutrition levels are from 30 per cent to 50 per cent.

<sup>6</sup> "Making Space for Children in the Peace Process", Bhavani Fonseka, *Daily News*, Colombo, 5<sup>th</sup> October 2002.



## 2. Provision of Services

### 2.1 Health Services in Conflict Affected Areas

As stated in the 1998 Sri Lanka Country Report on Implementation of the Convention on the Rights of the Child (CRC), the conflict-affected areas have long suffered from an acute shortage of drugs, hospital facilities and health service personnel. Cut off from the rest of the country, limited supplies from the Ministry of Health were transported via the Ministry of Defence (MOD). Further, there was a countrywide increase in malaria; the Northern and Eastern provinces of the country accounted for almost 56 per cent of all detected cases while the Wanni alone accounted for 40 per cent.<sup>7</sup> High rates of infant mortality and low birth weight have been reported from the North and East. Immunization programs, despite days being allocated for immunization during the conflict, did not have 100 per cent reach. There was inadequate provision of reproductive health care, psycho-social services and specialist access.<sup>8</sup> An under-reporting of births and deaths was also noted.<sup>9</sup> However, as was pointed out in alternative submissions to the UN Committee on the CRC, medicine shortages in these areas were not solely due to the Government being the only provider of supplies: restrictions placed by the MOD on the kinds of medicines that were sent to LTTE controlled areas contributed largely to the shortages. Patients were reported to have died from pain due to the lack of painkillers; broken bones were said to have been fixed with cardboard due to the lack of plaster of Paris.<sup>10</sup> Medicine was sent to hospitals in the North, especially Jaffna, by ship. The conditions of

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<sup>7</sup> *The Sri Lanka Children's Challenge!*, Save the Children, Sri Lanka, April 2002.

<sup>8</sup> Ibid.

<sup>9</sup> Sri Lanka Second Country Report on the Implementation of the Convention on the Rights of the Child. 1998.

<sup>10</sup> Samath Feizal, "Wounds Don't Heal in War torn Jaffna", *Sunday Times*, Colombo, Feb. 3<sup>rd</sup> 2002.

transportation, with frequent checks en route, were such that almost 15 per cent of the meager supply that was allowed by the MOD was lost due to damage and pilfering.<sup>11</sup> The reasons for restricting some of the drugs were questionable. For instance, quotas were placed on drugs used for obstetrics.<sup>12</sup> These restrictions have now been lifted. Following the ceasefire and the MOU, the Minister of Relief and Rehabilitation, Dr. Jayalath Jayewardene, issued instructions in February 2002 that MOD approval was not necessary for the transportation of medicines and patients.<sup>13</sup>

The cessation of hostilities and the easing of travel restrictions have done away with the series of bottlenecks hitherto encountered. Constant improvements to the provision of services have been reported monthly from the districts in the North and East. In April 2002 additional air conditioners, a gift from the British Government sent ten years ago, were finally installed at the Jaffna Teaching Hospital. These units had apparently been lying at Trincomalee for want of transport facilities. The A9 highway is now used for the movement of medical supplies and the arrival of the first such consignment on April 15<sup>th</sup> 2002 was said to have considerably eased the acute shortage of medicine in Jaffna hospitals.<sup>14</sup> Previously, the quarterly deliveries of drug quotas had been routinely delayed for long periods. In March 2002, the Provincial Health Department in Trincomalee District was reported to have drawn up a program to immunize all newborn babies in the uncleared areas.<sup>15</sup> Patients from the Wanni are now transported to the Jaffna teaching

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<sup>11</sup> Ibid.

<sup>12</sup> Supra n. 5.

<sup>13</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 2. Feb 2002.

<sup>14</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 4. April 2002.

<sup>15</sup> District Situation Report, Trincomalee from *CHA Bulletin* Volume 6 Issue 3. March 2002.

hospital via the A9 highway. The International Committee of the Red Cross (ICRC) transports patients requiring specialist treatment to Colombo, also using the A9. Previously such transportation of patients was only possible by using the ICRC ship that operated only once a week.<sup>16</sup>

There are many outstanding issues that still need to be addressed. Poor sanitation facilities in welfare centers continue to be an issue. The lack of staff is a perennial problem and there has been no noticeable improvement in the availability of personnel, even after the cessation of hostilities and the removal of travel restrictions. The Outpatients Departement at Batticaloa Teaching Hospital, which caters for 700 outpatients daily, has only eight doctors; the Kalavanchikudi District Hospital has only five doctors to serve 600 patients daily.<sup>17</sup> The Manthikai Base Hospital in Point Pedro functions with thirty-three nurses instead of their required cadre of ninety three.<sup>18</sup> The Tuberculosis Hospital in Kopay has no doctors or specialists; it also lacks adequate bed facilities and food.<sup>19</sup>

Families returning to resettle often have little or no access to health care. Infrastructure is often damaged or destroyed and health care facilities non-existent. It was recently reported that at Maruthankerny in Vadamarachchi East, where around two thousand internally displaced

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<sup>16</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 6. June 2002.

<sup>17</sup> District Situation Report, Batticaloa from *CHA Bulletin* Volume 6 Issue 1. January 2002.

<sup>18</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 6. June 2002.

<sup>19</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 3. March 2002.

people have resettled, there are no medical facilities and the hospital is badly damaged.<sup>20</sup> Specialist treatment in these areas is scarce. Prior to the removal of restrictions on movement to the South, access to medical specialists was almost impossible. Further, when such access was possible treatment was often delayed due to language problems. There are few Tamil-speaking staff in hospitals in the South.<sup>21</sup>

## **2.2 Food Security in Conflict Affected Areas**

Overall malnutrition levels in the country decreased from 1987 to 1998 from 38 per cent to 24.5 per cent. However, there are some areas such as Mannar, Ampara, Vavuniya, Ratnapura and Hambantota where malnutrition levels have risen from 30 to 50 per cent. Stunting, wasting and underweight percentages are significant. The poor use of iron supplements during pregnancy, late introduction of complementary feeding coupled with poor quality and quantity of food are the primary causes of Protein Energy Malnutrition (PEM) in infants.<sup>22</sup> Over 60 per cent of pregnant and lactating mothers suffer from anemia and 20 per cent of children under five are chronically undernourished.<sup>23</sup> The sizable remaining nutrition gap is concentrated amongst the economically most vulnerable in the country, the poor and those displaced due to the conflict.

Given the breakdown of infrastructure and the large displaced population, it is difficult to ascertain to what extent the statistics on nutrition reflect the ground situation in the conflict affected areas. The Sri Lanka Second Country Report on the Implementation of the

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<sup>20</sup> District Situation Report, Jaffna from *CHA Bulletin* Volume 6 Issue 7. July 2002.

<sup>21</sup> *Supra* n.5.

<sup>22</sup> *Supra* n.7.

<sup>23</sup> *Ibid.*

Convention on the Rights of the Child emphasizes the attempts made by the government to provide food supplies to the north even during the height of the conflict and the report provides no indication of low nutrition levels in the areas. However recent reports have been disturbing. Surveys conducted in many of the conflict-affected areas in 2002 have shown severe malnutrition amongst children. According to a Health Department survey conducted in Vavuniya District amongst 21,123 students, 22 per cent were found to be suffering from long-term protein deficiency and 16 per cent from short-term protein deficiency.<sup>24</sup> A survey conducted on the nutritional status of children under five years who came from the Wanni and were now living at the Nilaweli refugee camp showed that 44.4 per cent of the 54 children surveyed were wasted due to acute malnutrition, 37 per cent were stunted as a result of chronic malnutrition and 68.5 per cent were underweight compared to the national average of 37.6 per cent.<sup>25</sup>

The Government funds an assistance program consisting of dry rations (intended as a supplement and not full food intake) and cash payments to affected and displaced families whose income is less than Rs.1,500 per month. However, there are constraints on quantity (lack of reliable figures on beneficiaries), the frequency of transportation (access) and distribution in conflict-affected areas. Government Emergency Relief regulations provide for Rs.25 a day per individual over 12 years of age for cooked meals. The maximum payable for a child below 12 years for cooked meals is Rs.15. Inadequate funds have prevented the revision of the scheme of food assistance, even though it was formulated as far back as 1990. As such the amounts and money and rations allocated have remained constant and inadequate, despite the rising cost of living.

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<sup>24</sup> Supra n.18.

<sup>25</sup> District Situation Report, Trincomalee from *CHA Bulletin* Volume 6 Issue 5. May 2002

Recently, the price of rice issued as part of this ration was increased from Rs. 29.50 per kilo to Rs. 38.50 per kilo.<sup>26</sup>

Other factors also restrict access to food. Some areas within the conflict zone are agriculturally poor and dependent on fertilizers that were prohibited by the MOD. The ban on transportation of metal into the uncleared areas also impacted on the availability of farming equipment. In other areas, the failure to develop markets and security restrictions such as the prohibition of fishing have also led to food insecurity. This, combined with families facing difficulties in providing supplementary food, meant that children were (and many still remain) increasingly dependent on food rations.

During the peace process, logistical problems relating to resettlement have impacted on the distribution of food rations. In June 2002, for instance, the displaced people who returned to Thenmarachchi experienced difficulties obtaining dry ration cards because they were required to travel to the office of the Grama Seva Niladhari in both their displaced location as well as their resettled location.<sup>27</sup> In addition, commitments made by the World Food Program (WFP) to provide food to sections of the internally displaced population are not always met due to lack of funds and of proper planning. In addition, the nutritional supplement Thriposha provided to children and pregnant mothers in seven MOH divisions in Jaffna by the Government has sometimes been unfit for human consumption.<sup>28</sup> Distribution systems agreed between the Government and the WFP require improvement.

The MOU requirement that the military move out of schools and places of worship has often meant that new camps have been constructed on

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<sup>26</sup> Ibid.

<sup>27</sup> Supra n.18.

<sup>28</sup> Supra n.25.



cultivable land. In Nunavil in the Thenmarachchi division one such camp utilized nearly 700 acres of cultivable paddy land.<sup>29</sup> There have also been reports of security forces using palmyrah and coconut trees for security bunkers and fences, thereby affecting the livelihood of many.<sup>30</sup> Large amounts of cultivable land also lie uncultivated due to lack of capital, the loss or destruction of farming equipment as a result of conflict, and the presence of landmines. The lack of markets for products also proves a disincentive too many. Recently, however, with the opening of the A9 highway, local products like bananas, onions and tobacco have been transported to markets outside the Jaffna peninsula.<sup>31</sup> Fishing restrictions have also been eased in terms of time and distance limitations in all areas except those designated as high security zones. The Central Bank report for the year 2002 recorded increases in fisheries and paddy cultivation due to the improvement in the security situation in the country.<sup>32</sup>

### **2.3 Education in Conflict Affected Areas**

Children's development in areas affected by the conflict in the North and East faced a major setback through the deterioration and destruction of services and infrastructure. The displacement of communities, often repeatedly, meant that children's schooling has often been disrupted. Displacement and poverty have led to a large number of children dropping out of school. Children who have not attended school for a year or two because of displacement often find it difficult to adjust back to the school environment and tend to drop out permanently. While 650,000 children attend school in these areas, it is reported that close to 65,000 children do not. In certain areas up to 50 per cent of children

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<sup>29</sup> Ibid.

<sup>30</sup> Supra n.18.

<sup>31</sup> Supra n.25.

<sup>32</sup> Sri Lanka, Central Bank Report, 2002 pp. 91, 94.

are not enrolled in school while enrolled children miss up to 30 per cent of their education through irregular attendance.<sup>33</sup>

The closure of schools due to lack of trained teaching staff, lack of educational supplies and teaching aids, and the use of the schools as welfare centers or military billets have hampered children's access to education. In "uncleared" areas, the supply of educational materials was restricted. According to the officials of the Department of Education in the Vanni, problems of communication and information dissemination have affected education provision. Further, the lack of school uniforms, lack of documents, social stigmatization, poverty and the resistance of local communities to the presence of internally displaced children in their schools are all factors contributing to the disruption of displaced children's education. Parents and children in government-controlled areas also complained (prior to the cease-fire) that harassment of children at security checkpoints discouraged them from attending school.<sup>34</sup> The cessation of hostilities and the provisions of the Government - LTTE MOU have meant that the security forces have moved out of school buildings, enabling many schools to return to their original locations, some after as long as ten years. However, attendance levels remain low. Schools are often in a dilapidated state and badly in need of repair. Classes are often conducted under trees or in temporary shelters. Teacher vacancies are high and currently classes are run for the most part by volunteers.<sup>35</sup> Some schools have had to close down their A-level classes due to the lack of teachers.<sup>36</sup> The Ministry of Education has taken steps to provide facilities to affected schools but reports indicate that such measures remain somewhat ad

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<sup>33</sup> UNHCR Report on Implementation of Deng Principles; Draft, Unpublished.

<sup>34</sup> *Ibid.*

<sup>35</sup> District Situation Report, Ampara from *CHA Bulletin* Volume 6 Issue 7. July 2002.

<sup>36</sup> *Ibid.*

hoc. Recently, persons only qualified up to A level were appointed to teaching posts.<sup>37</sup> Education has been identified as an area of high importance in rehabilitation planning. UN agencies are reported to have estimated the cost of rebuilding the education system in the conflict zone at around US \$ 40 million.<sup>38</sup>

The Ministry of Education has initiated steps to enforce compulsory education from age five to fourteen years through committees formed at Grama Sevaka Divisional and education zone level. Catch-up programmes are being implemented for children in this age group who have experienced short-term displacement.<sup>39</sup>

One other feature peculiar to educational institutions in the North and East is the political mobilization of school children. This has been particularly prevalent during the year under review. According to the UTHR(J), on 21<sup>st</sup> March 2002 the LTTE had brought school children from the Year 4 class onwards to Kiran. These children came from schools in Valachchenai, Kinniady, Petthalai, and Kalkudah. According to the report the children were taken to Kiran on public transport buses which had been "commandeered" by the LTTE. The children were included in a protest demonstration against the army's removal of decorations for a festival commemorating LTTE martyr Annai Poopathy.<sup>40</sup> During the week of commemorations for LTTE cadre Thileepan, schools were given strict instructions on how to observe

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<sup>37</sup> Supra n.35.

<sup>38</sup> Jayasinghe, Amal. "Child Soldiers in New Battle," *The Island*, 22<sup>nd</sup> November 2002.

<sup>39</sup> The Education Ordinance: Compulsory Attendance of Children at Schools Regulations No.01 of 1997.

<sup>40</sup> UTHR(J) Special Report No. 13 "*Towards a Totalitarian Peace: The Human Rights Dilemma*", 10<sup>th</sup> May 2002.

the week-long celebration. Several schools had assemblies and speech competitions devoted to the event.<sup>41</sup> For many years, LTTE recruitment activities have reportedly been carried out through schools. Children have been required to attend LTTE training from school,<sup>42</sup> and large school events have been co-opted by the LTTE for its own recruitment propaganda activities. For instance, the UTHR(J) reported that on the 27<sup>th</sup> of February 2002, the Thambiluvil High School sports meet was attended by LTTE members with "action videos". Several children later went off with the LTTE in buses brought for that purpose.<sup>43</sup> The LTTE has used the educational infrastructure in the North and the East to mobilize children and inculcate the group's ideology in the next generation. It continues to utilize schools for recruitment and for proselytizing its ideology. While the "movement" may be fostering its next generation of adherents, it remains to be seen what status will be given to schools – traditionally places of refuge – under any future regime.

### **3. Child Combatants**

The LTTE has continued to recruit children, despite the undertaking it made in 1998 to UN Special Representative on Children Affected by Armed Conflict, Olara Otunnu.<sup>44</sup> Indeed, intense recruitment drives

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<sup>41</sup> Fieldwork in Jaffna, September, 2002.

<sup>42</sup> In April 1999 intense propaganda and compulsory self defense training was begun in schools and villages. After the Elephant Pass Victory Festival of 5<sup>th</sup> May 2000 LTTE informed schools that three days a week all school children from year 10 class onwards were required to take military training. See UTHR(J) Bulletin no 23, 11.07.2000.

<sup>43</sup> *Supra* n. 40.

<sup>44</sup> See also "*The Rights of the Child in Sri Lanka: State of Human Rights 2000*", Law and Society Trust.

were reported during the year under review.<sup>45</sup> The drive was mainly concentrated in the Eastern province and was reported to have begun in August 2001 after the LTTE had suffered high casualty rates at Elephant Pass in 2000 and in its attempt to retake Jaffna shortly after. In February 2002, Amnesty International reported on thirteen missing children between the ages of 12 and 15 who were believed to have been recruited by the LTTE.<sup>46</sup> The LTTE's political advisor and chief negotiator, Anton Balasingham, quoted on 6<sup>th</sup> February 2002 on the Tamilnet website, stated that the LTTE was recruiting young men and women above 17 years of age, "to expand the movement's political and administrative wings" as part of its preparations for the political and administrative demands that will arise as the peace process progresses. He also reportedly stated that the LTTE's military section was recruiting volunteers "to ensure the prevailing balance of forces is not altered disadvantageously".<sup>47</sup> Many human rights organizations believe that the terms of the Memorandum of Understanding signed by the LTTE and the government enhanced LTTE access to hitherto government-controlled areas, making the populace more vulnerable to conscription.<sup>48</sup> According to the Sri Lanka Monitoring Mission (SLMM), of the 502 ceasefire violations by the LTTE in 2002, 313 were confirmed cases of child recruitment.<sup>49</sup>

<sup>45</sup> See UTHR(J) Special Reports 13, 10<sup>th</sup> May 2002; and Special Report 14, 20<sup>th</sup> July 2000 and Situation report 30-3<sup>rd</sup> December 2002.

<sup>46</sup> Amnesty International Online: *Sri Lanka, Fear for safety/Child soldiers*, Appeal, 14<sup>th</sup> Feb. 2002.

<sup>47</sup> It is noteworthy that this is the first time since 1998 that an LTTE member at this level has publicly mentioned a minimum age but there is no indication as to whether the LTTE recognizes the Optional Protocol to the CRC that expressly prohibits recruitment of those under 18.

<sup>48</sup> Sumadhu Weerawarne, "Furhove Tamilchelvam pow-wow", *The Island*, 22<sup>nd</sup> January 2003. This article reported that the issue of child soldiers would be raised at the fifth round of peace talks in Thailand.

<sup>49</sup> Harrison, Frances, "Demobilizing Child Soldiers - a test of tigers' commitment to peace", *Sunday Observer*, 9<sup>th</sup> February 2003 (Courtesy BBC on line).

The LTTE position on child recruitment has been evasive. At the pivotal press conference in April 2002, LTTE leader, V. Prabhakaran, denied the fact of child conscription. Tamilchelvam, head of the LTTE Political Wing, has repeatedly assured various delegations that underage recruitment would not be carried out. Several NGOs, human rights organizations, UN agencies and Amnesty International have lobbied the LTTE to stop child recruitment. Amnesty International, which early on in the peace process drew attention to the ongoing conscription of children in the interior of Batticaloa, visited the LTTE in June 2002. Tamilchelvam gave his assurance that the LTTE would not recruit underage children. But newspapers reported almost immediately that complaints of such recruitment had not stopped. UNICEF representatives met Tamilchelvam in September 2002, at which time the LTTE released a list to UNICEF representative Ted Chaiban of 85 children who were being released. UNICEF reportedly followed up on 20 of the children listed and it was reported that they intended to follow up on all the names on the list.<sup>50</sup> Again, however, newspapers recorded a spate of recruitment, involving both abductions and volunteers, during the months of October and late November.<sup>51</sup>

More recent comment on the increasing incidence of underage recruitment came from LTTE negotiator Jay Maheswaran at the Save the Children conference on Children Affected by Armed Conflict in Colombo in October 2002.<sup>52</sup> His position was that children join the LTTE voluntarily due to poverty and family breakdown. The LTTE, he said, take care of the children and return them when their parents

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<sup>50</sup> "LTTE Releases 85 Child recruits", *Daily Mirror*, 12<sup>th</sup> September 2003, p3.

<sup>51</sup> UTHR(J): *The Cost of Peace and the Dividends of Terror: Sri Lanka's Nordic Winter?*, Information Bulletin No.30, 3<sup>rd</sup> Dec.2002.

<sup>52</sup> Ibid.



are in a position to take them back.<sup>53</sup> The leader of the SLMM, General Trond Furhovde, has stated that the issue is not “black and white” and urged that it be understood in its proper context. Furhovde echoed the position often adopted by the LTTE that the children had nowhere else to go. While this may be true of some of the cadre, human rights groups have pointed to the many documented incidents of conscription and abduction that indicate a much more active role played by the LTTE. The LTTE political propaganda, as well as the brutality with which the war has been fought, has meant that significant numbers of young people have responded to the LTTE’s recruitment drives. Jaffna residents have told of incidents where children have joined the LTTE after falling out with their parents.<sup>54</sup> The LTTE leadership has also been known to blame continuing child-recruitment on ill-disciplined junior ranks and on problems of communication within the organization.<sup>55</sup> United Nations Childrens Fund (UNICEF) has reportedly agreed to help the LTTE with this particular problem.<sup>56</sup>

In mid-2002 there were also allegations of sexual abuse of child soldiers by the LTTE. *The Island* of 6<sup>th</sup> September 2002 stated that an unnamed US State Department report on the “trafficking of persons” had alleged that the LTTE captures children for purposes of forced labour, military exploitation and, in some cases, sexually abuses them. Such allegations were unprecedented and the frequency of such cases is unknown.

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<sup>53</sup> Ibid.

<sup>54</sup> This trend can account only for a small percentage of total recruitment. Often children willingly return when parents seek them out. (Field work in Jaffna, Oct. 2002).

<sup>55</sup> Supra n.50.

<sup>56</sup> Fernando, Vimukthi. “Release of 350 young ones: UNICEF appreciates LTTE’s fine gesture”, *Sunday Observer*, 2<sup>nd</sup> February 2002.

The continuing recruitment of young children has worrying implications for the rehabilitation measures that are being proposed by various committees which include LTTE representatives among their members. The Sub-Committee on the Immediate Humanitarian and Rehabilitation Needs in the North and East (SIHRN), a body appointed by the plenary committee of the negotiating process representing the Government of Sri Lanka and the LTTE, decried the use of child labour. It stressed that "[children's] place is in schools and educational institutions - not in the workplace - whether civilian or military".<sup>57</sup> While this is only a small reference to a well-known problem, the fact that child recruitment continues to be reported suggests that the LTTE is adept at playing a double game. Looking at the broader picture, such a scenario begs the question of what kind of administration, with what levels of accountability, will be instituted for the North and East. It has long been argued by experts that child combatants must be rehabilitated in a civilian environment removed from ritualized military paraphernalia.<sup>58</sup> It remains to be seen how such a civilian administered rehabilitation program could be instituted within a culture that celebrates militarism, such as that of the LTTE.

Press reports towards the end of the year indicated that the LTTE was starting to demobilize its "baby brigade". *The Island* of 24<sup>th</sup> November 2002 reported that there had been "a rise in the number of child warriors freed by Tamil Tiger rebels since they entered into a Norwegian-brokered truce with government forces in February" and that "aid officials say a 'working group' consisting of international

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<sup>57</sup> *An Appeal for Immediate Humanitarian and Rehabilitation Support in the North and East of Sri Lanka* Submitted by the Sub-Committee at the Pledging Conference in Oslo on Monday, November 25<sup>th</sup>, 2002. In *CHA Bulletin*, Volume 6, Issue 11, November 2002.

<sup>58</sup> Dr. Elizabeth Jareg quoted in the *The Sunday Times*, 29<sup>th</sup> September 2002.

*humanitarian agencies and the authorities were finalizing minimum standards and conditions for reintegrating child soldiers into society.*"<sup>59</sup>

The report also adopted the softer, more apologist line regarding child soldiers, stating that *"poverty and lack of schooling are said to be among key causes that drove hundreds of young boys and girls to take up arms in Sri Lanka's north-east and many are likely to face starvation if they quit the guerrillas"*.<sup>60</sup> If a significant number of children were indeed released, this would augur well for the future.

Many human rights activists and international NGOs have also drawn attention to the lack of any plan for rehabilitating possibly hundreds of child soldiers, if peace prevails.<sup>61</sup> Although UNICEF stated that it was in the process of *"developing an action plan for the social reintegration of these children, including assistance to go to school, access to vocational training and other activities"*,<sup>62</sup> no such plan had materialized by the end of 2002.<sup>63</sup>

Prior to this statement, newspapers had featured the arrival of UNICEF head, Carol Bellamy, in Sri Lanka, and a new agreement between UNICEF and the LTTE. According to press reports, the LTTE had undertaken to work with UNICEF to implement a plan to reintegrate child soldiers into society and UNICEF had commended the LTTE for releasing 350 children since November 2001.<sup>64</sup> Nevertheless, it is worth noting that the SLMM recorded 313 confirmed new cases of child conscription by the LTTE for just part of 2002.<sup>65</sup> So it would seem that

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<sup>59</sup> *The Island*, 24<sup>th</sup> November 2002.

<sup>60</sup> Ibid.

<sup>61</sup> Supra n. 5.

<sup>62</sup> Supra n. 49.

<sup>63</sup> Supra n. 5.

<sup>64</sup> Supra n. 56.

<sup>65</sup> Supra n. 50.

the LTTE has been recruiting new child combatants at the same time as it has been releasing others.

### **3.1 International Obligations and the State Response to the issue of Child Combatants**

In response to the report to the United Nations Committee on the Rights of the Child submitted by Sri Lanka in 1994, the Committee requested the government to submit a special report on children affected by armed conflict with special reference to "their participation in combat and the way authorities handle child soldier prisoners of war."<sup>66</sup> Unfortunately, the Sri Lankan government never made such a submission. Sri Lanka's latest submission to the Committee on the CRC dated 1998 is scheduled to be heard in early 2003. Generated through consultation with non-state actors working on the issue, the report was fairly well received by the community of organizations working with children. Some issues, however, were commented upon by these organizations.

In a bid, perhaps, to counter its non-compliance with the committee's request for a comprehensive report on child soldiers, the most recent submission included 22 pages on children affected by armed conflict. It speaks at length on the LTTE's culpability over the issue of child recruitment, a much-publicized point during the previous People's Alliance (PA) regime. It also mentioned the ongoing work to formulate a plan to rehabilitate former combatants. The report states that:

*"the government is planning a comprehensive program not only to prevent recruitment but also to help in the rehabilitation and social integration of child soldiers. There are also plans to professionalize*

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<sup>66</sup> Committee on the Rights of the Child, Concluding Observations on Sri Lanka, (Ninth Session, 1995).

*psycho-social support training to be provided to former child combatants captured by or surrendered to the armed forces.*"<sup>67</sup>

The shadow report produced by the Save the Children in Sri Lanka office commented that while the government's efforts in this matter were commendable, there were several shortcomings on the part of the State. Sri Lanka is yet to demonstrate that it has taken the necessary steps to effectively prevent the recruitment of children for combat purposes.<sup>68</sup> In 1999 and 2000, according to the report, the Government, contrary to the advice of some of its own members, allowed press conferences and media coverage of child surrendees, during which children's faces were shown, which greatly undermined their chances of rehabilitation. The incident at Bindunuwewa in 2000, where a mob attacked a Government controlled rehabilitation facility for former combatants, killing 27 inmates including several children, was another instance of a serious failure on the part of the Government to safeguard these children.<sup>69</sup> The report also indicated recent incidents of mistreatment at a Rehabilitation Centre in Jaffna, where the inmates did not receive their meals due to a lack of funds. According to the report, both the National Youth Services Council and the Ministry of Defence were responsible for the functioning of the Centre.<sup>70</sup> Further,

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<sup>67</sup> Supra n.9.

<sup>68</sup> As reported below the LTTE continued to recruit children throughout the period under review and the Home Guards set up by the Sri Lankan government in the border areas have no minimum age of recruitment and there have been several reports of children under the age of 18 being recruited to paramilitary groups that worked with the government prior to their disarmament after the February MOU. Supra n.5.

<sup>69</sup> Interim Report of the Human Rights Committee on The Incidents at the Bindunuwewa Rehabilitation Centre, Bandarawela on 24<sup>th</sup> and 25<sup>th</sup> October 2000. (Nov.1<sup>st</sup> 2000). See also Ramani Muttetuwegama, "Integrity of the Person" in *Sri Lanka: State of Human Rights 2001*, Law and Society Trust, for a comprehensive account of the incident at Bindunuwewa and its implications.

<sup>70</sup> Supra n.5.

abuses of child combatants by security forces personnel frequently go unpunished. Amnesty International, documenting varied instances of rape in custody, reported the case of a 14 year old girl arrested with the Sea Tigers who had been sexually assaulted by more than ten navy personnel.<sup>71</sup> The report also called for the institutionalization of procedures to respond to child combatants when they are captured, when they surrender to the armed forces or when they escape from LTTE training camps to be established at the earliest possible date. The report further called for priority to be given to establishing the legal status of such children, provisions for their rehabilitation, and ensuring their rights as children in keeping with the CRC.

Sri Lanka does not have any domestic laws that guarantee special protection for children in armed conflict situations. However, conscription and recruitment of children for combat purposes contravene many of the Sri Lanka's obligations under international law. The recruitment of children less than 18 years for combat purposes is prohibited under ILO Convention No. 182<sup>72</sup> and Optional Protocol II to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (1999).<sup>73</sup> The ILO Convention requires that state parties provide penal sanctions regarding recruitment (Article 7). Optional Protocol II to the CRC calls for such acts to be treated as criminal offences (Article 4.3). Further, in terms of treatment of former child combatants, Sri Lanka is obliged under the CRC to establish a

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<sup>71</sup> Amnesty International: *Sri Lanka , Rape in Custody* : 28<sup>th</sup> January 2002.

<sup>72</sup> Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention: C182 of the ILO), 1999.

<sup>73</sup> Sri Lanka ratified these two instruments in 2001 and 2000 respectively and they came into effect in 2002 and 2003 respectively. While the Optional Protocol provides a sliding scale of between fifteen to eighteen for recruitment on a voluntary basis for the state armed forces, non state groups are prohibited completely from recruiting children under eighteen into their forces.



minimum age of criminal responsibility and to ensure that such children are dealt with as far as practicable without resorting to judicial proceedings (Article 40). Finally, Sri Lanka is obliged to take effective measures to prevent recruitment, to provide direct assistance to children who are already combatants and to provide access to free basic education and vocational training to former combatants under the commitments made to the Committee on the Rights of the Child and the provisions of the ILO Convention (Article 7). It is disappointing to report that there is no specific legislation banning the use of child combatants in Sri Lanka.<sup>74</sup> In addition, no clarification has yet been made regarding the primacy of the provisions with respect to juvenile justice in the Children and Young Persons Ordinance<sup>75</sup> and children continued to be arrested, detained and tried under the Prevention of Terrorism Act during the period under review.

Although the MOU between the UNF government and the LTTE does not contain any specific human rights obligations, it does contain prohibitions against certain harmful acts against civilians. For instance, Article 2.1 requires parties to act "*in accordance with International Law, abstain from hostile acts against the civilian population including such acts as torture intimidation abduction extortion and harassment.*"<sup>76</sup> Under the MOU the SLMM is empowered to receive complaints regarding conscription of children and raise the issue with

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<sup>74</sup> The Mobilisation and Supplementary Forces Act, No. 40 of 1985 prevents the recruitment of persons under eighteen to the voluntary forces and the Sri Lankan Armed Forces by regulation have restricted the recruitment of children into the forces. However, the only domestic measure in place that could be read as criminalizing such acts is that of "cruelty to children" under section 308 A (1) of the Penal Code. (Law & Society Trust (2001) *Protection of Children in War and Conflict: A Compilation of Laws and Legal Standards.*)

<sup>75</sup> Which more or less conforms to the requirements of the CRC – see chapter on Child Rights in *Sri Lanka: State of Human Rights 1993*, Law & Society Trust.

<sup>76</sup> *Supra* n.6.

the LTTE. This mechanism was somewhat under-utilized by the public in the SLMM's earlier days, but has been better utilized in the recent past. As noted above, of the 502 ceasefire violations by the LTTE since the MOU was signed, 313 were confirmed cases of child recruitment.<sup>77</sup> More recently, there were reports of a spate of complaints to the SLMM from parents whose children had been abducted prior to the MOU.<sup>78</sup> The status of such complaints has yet to be resolved.

#### **4. Conclusion: Future Prospects**

The UNF government has been culpable during the year under review for steadfastly refusing to address the issue of child recruitment. Despite numerous reports of conscription, extortion and abduction, the government had nothing to say on the issue. Much was made of the Minister of Defence, Tilak Marapana's, response to Amnesty International's reports in March 2002.<sup>79</sup> Interviewed on the BBC Sinhala service, Marapana described the reports of conscription as "unconfirmed gossip" of which the government had no evidence.<sup>80</sup> The LTTE also does not seem to be serious about either the demobilization of child combatants or halting child conscription. Despite its discussions with UNICEF and at the fifth round of peace talks, there was no sign of large-scale demobilization and reports of conscription continued. Recruitment strategies seem to have evolved in 2002 to take advantage of new conditions. For instance, the UTHR(J) recorded LTTE area leader Karuna's instructions to the cadres to change

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<sup>77</sup> Supra n.50.

<sup>78</sup> Supra n.51.

<sup>79</sup> Supra n.46.

<sup>80</sup> UTHR(J) Special Report No.14. *The Plight of Child Conscripts, Social Degradation and Anti-Muslim Frenzy*. 20<sup>th</sup> July 2002.

their tactics in keeping with the new situation. *"He asked them to use methods of enticement that the privileged position of the organization and its new access to resources would permit. These included promises of privileges for the families, social importance coming from power, and vehicles in which to run about."*<sup>81</sup> Further, the lists of children who have been released never indicate their date of recruitment. Much has been made of the 350 children reportedly released by the LTTE since November 2001, but the number recruited during that period was much larger and the number already part of the cadre is said to run into the thousands.<sup>82</sup> In a statement to the United Nations Security Council in May 2002, Olara Otunnu, UN Special Representative of the Secretary General for Children in Armed Conflict, stated that *"the Council must ensure that the protection and well being of children systematically became a part of negotiations to end conflict and the ensuing peace accords"*.<sup>83</sup> It is not clear yet if this will be the case in relation to the Sri Lankan peace process.

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<sup>81</sup> Ibid.

<sup>82</sup> The second country report to the UN CRC states that Sri Lanka Directorate of military intelligence estimates over 60 per cent of the LTTE cadre to be under 18 years of age. The report also states that estimates of LTTE fighters killed in combat reveals that at least 40 per cent of the force is under age. Given that the strength of the LTTE is said to be around 16,000, it can reasonably be estimated that the numbers of children who are trained fighters is currently in the thousands. *Supra* n.9.

<sup>83</sup> Jayasekere, Bandula *"Child Soldiers: The World Body has Spoken"* *The Island*, 18<sup>th</sup> May 2002.

## VI

# Freedom of Expression and Media Freedom

Kishali Pinto-Jayawardena\*

### 1. Introduction

*" .....the press, once thought of as an antidote to established power, is more likely to reinforce it, because access to the press - that is the mass media - is distributed as unequally as are other forms of power. It is not, of course, that the less powerful never speak in the mass media or that their doings are never reported or never sympathetically. But the deck is stacked against them, because the press is itself a formidable power in our society, allied intimately (although not simply), with other formidable powers....."*<sup>1</sup>

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<sup>1</sup> *Democracy and the Mass Media*, Cambridge University Press, 1990, ed. Lichtenberg, pp 102-105

The attractively imagined paradoxes implicit in this reasoning (relevant as they evidently are with regard to mass media structures in democratically deficient systems), take on even subtler connotations when such systems are in transition from media control to media freedom.

More freedom necessarily implies a more powerful media, carrying with it a heightened need for self-analysis and self-regulation. In the alternative, the consequences for a media striving to establish itself as a critical and credible force could be as grave – and, quite possibly, more destructive – as that which would result from open repression.

As the year 2002 saw radical shifts in the dynamics of political power as well as a ceasefire of the war between the government and the Liberation Tigers of Tamil Eelam (LTTE) in the North and East, these concerns increasingly preoccupied the media industry in the country.

The changes in administration, brought about by the United National Front (UNF) winning the December 2001 General Elections, posed new challenges to the print and the electronic media, private as well as state.

In addition, an often-strained ‘cohabitation’ process between a United National Front government and a People’s Alliance (PA) presidency, by virtue of the complexities of the Second Republican Constitution of 1978, resulted in its own tensions with regard to the media. The juxtaposition of these two developments will be examined in detail later in this chapter.

The signing of the Memorandum of Understanding (MOU) between the new government and the LTTE on 22<sup>nd</sup> February 2002 brought to a halt a destructive conflict in the North and East that had, for the past two decades, a very distinct toll on freedom of speech and media

freedom. Attempts were made to bring about a permanent solution to the conflict through peace talks leading to a negotiated settlement, putting into issue specific responsibilities of the media in promoting reconciliation rather than arousing simmering tensions.

Although active hostilities had ceased in the North, suppression of freedom of expression by the LTTE - of ordinary civilians, of journalists and of members of opposing political parties - continued. To a certain extent, the failure of activist human rights organisations in the South to respond to serious human rights concerns in the North, resulted in a deepening rift between the North and the South.

This chapter will analyse developments with regard to freedom of expression in the country and in relation to media law reform, both with regard to what the year saw accomplished and what remained to be done.

## **2. 'Cohabitation' and The Media – Specific Tensions**

In 1994, the People's Alliance (PA) captured power on a significant tide of goodwill from both the alternate and mainstream private media in the country. However, during the eight years of its rule, relations between the media and the government steadily worsened.

Using the state media for propaganda purposes, the government indulged in an unparalleled filing of criminal defamation suits against editors and journalists in the private print media. Wide ranging censorship of news was imposed, ostensibly due to the conflict in the North and East. The divide, therefore, between the private media and the PA had never been more perilous than when general elections were held in December 2001.



In contrast, the main opposition - the United National Party (UNP) - had been strongly critiqued by particular sections of the media for exhibiting 'weak opposition' to the government. However, after winning the December 2001 General Elections, the fledgling coalition administration set out to court the media with a vengeance, expanding on promises made in relation to media law reform while in opposition.

Accompanied as this was with the government annexing the state media, (as is always the case upon change of political power in Sri Lanka), the country entered upon the traditional 'honeymoon period' between the media and the United National Front (UNF) administration with more zest than was usual. This was further embellished by the difficult nature of the 'cohabitation' process between President Chandrika Kumaratunge and the UNF, headed by Prime Minister Ranil Wickremesinghe. While the President remained as head of the Cabinet, all ministries, including that of the media, were held by members of the UNF, many of them overtly hostile to the Presidency.<sup>2</sup>

The year saw many manifestations of this tug of war between the Presidency and the government in the media itself, particularly the electronic media. One such occasion was when state television (now in the control of the government) refused, mid-year, to allocate prime viewing time to President Kumaratunge after she requested time to explain her stance on charges that she was trying to topple the government. The refusal was on the basis that the scheduled sponsored programmes could not be cancelled and that alternative non-prime time viewing hours could be assigned to the President instead. Following an acrimonious exchange of letters between the Presidential

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<sup>2</sup> Article 43(2) of the Constitution states that the President shall be a member of the cabinet of Ministers and shall be Head of the Cabinet. Article 44(2) gives power to the President to assign to himself or herself any subject or function while subsection (3) states that the President may, at any time, change the assignment of subjects and functions and the composition of government.

Secretariat and the Chairman of the Sri Lanka Rupavahini Corporation (SLRC), the dispute was settled upon the direct intervention of the Minister of Media, whereupon President Kumaratunge was given prime time to address the nation.<sup>3</sup>

More ironically perhaps, later in the year, lawyers for the Prime Minister wrote to private television stations directing them to telecast an apology for having defamed the reputation of the Prime Minister. The private stations had telecast a speech made by President Kumaratunge containing unsubstantiated allegations that Prime Minister Wickremesinghe had asked her for a bribe in order to admit her son to school when he was the Education Minister in a previous UNP government, more than 20 years earlier. In the letter of demand to the private television channels, the Prime Minister's lawyers took pains to point out that although the President enjoys immunity from legal proceedings in respect of anything done or omitted to be done either in official or private capacity,<sup>4</sup> that same immunity cannot be availed of by television stations in respect of a presidential address.<sup>5</sup>

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<sup>3</sup> *The Island*, 7<sup>th</sup> and 8<sup>th</sup> August 2002. Another controversy in the electronic media arose when the Sri Lanka Rupavahini Corporation (SLRC) and Sri Lanka Telecom (SLT) battled over who should carry the bill of Rs 2.8 million owing to SLRC from SLT for the live satellite broadcast by President Chandrika Kumaratunge on SLRC during the 2001 general elections. Both institutions, in the control of the United National Front government by that time, refused to carry the tab on the basis that the speech was political and propagandist in nature (*The Sunday Times*, 30<sup>th</sup> June, 2002). In a similar development in the print media, Lake House sued the Sri Lanka Freedom Party (SLFP) (the major constituent partner of the Peoples Alliance) for the recovery of a sum of Rs 43.4 million as unpaid bills for print of propaganda material for the party while it was in government (*Daily News*, 4<sup>th</sup> May, 2002).

<sup>4</sup> Article 35(1) of the Constitution.

<sup>5</sup> *The Island*, 4<sup>th</sup> October 2002. The period also saw the settling in court, of a number of cases that had been filed by key members of the new administration, including Prime Minister Ranil Wickremesinghe while in the opposition, alleging mala fide, arbitrary and politically capricious reporting by the SLRC and the SLBC. See in this respect, *The Island*, 19<sup>th</sup> October, 2002.

These incidents illustrated the extremely fine line that the electronic media, in particular, was compelled to tread between a warring Presidency and an opposing government during the period under review. From another perspective, the incidents also pointed to the need to bring about extensive changes in the structure of the private and state owned electronic media, an aspect of media law reform which is discussed later this chapter.

### **3. Reform of Media Laws, Regulations and Practices**

Reform of the country's archaic media laws and regulations, many of them pre-independence in origin, had been a faltering process in the past. The first coherent attempt to address this problem was in 1995, when four committees were appointed by the PA government to look into: broad-basing ownership of the state-owned Lake House newspaper group; reform of laws relating to the media; establishing a media training institute and improving conditions for media personnel. Although all four committees submitted extensive reports to President Chandrika Kumaratunge, these lapsed into obscurity thereafter.

Subsequent attempts were made to resurrect this media law reform process. Though a Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media was established in 1997, this only indulged in a few sittings and called for public representations. No conclusive recommendations resulted.

In 1999, the combined opposition in Parliament introduced Parliamentary Motion, (No 218/99), on legal anomalies affecting the press. The Motion focused primarily on four areas: repeal of criminal defamation laws; repeal of the Press Council Law; and the enactment of a Freedom of Information Act and a Contempt of Court Act. However, intervening parliamentary elections resulted in the lapsing

of the Motion. Neither was the Motion rejuvenated later. Reform of the country's media law framework had stopped at this dismal point by the time the December 2001 general elections were held. Thereafter, the pace of the media law reform process quickened in many respects.

By the year 2002, emergency regimes under the Public Security Ordinance (PSO) No 25 of 1947 (as amended) and Prevention of Terrorism Act (PTA) No 48 of 1979 (as amended) had lapsed. These laws had been indiscriminately used to impose censorship of the media, seize printing presses and attempt to jail journalists. The PTA, in addition, prohibited the printing, publishing and distribution of particular publications without approval in writing of the competent authority. The lapsing of these emergency laws, (which had almost but replaced the normal laws of the land for decades), led to calls being made for the repeal/amendment of the PTA and amendment of the PSO in order to prevent a recurrence of its excesses. These demands were not met during the year.

However, the period under review witnessed the repeal or amendment of some ordinary laws that had long been detrimental to the media and freedom of speech. The push towards enacting new laws, with the objective of clarifying issues relating to freedom of information and contempt of court, continued. In a parallel development, the media also engaged in more systematic efforts to put into place effective mechanisms of self-regulation.

### **3.1. Media Law Reform**

#### **3.1.a. Repeal of Criminal Defamation Provisions in The Penal Code and Press Council Law**

In the first major fulfillment of election campaign promises relating to reform of Sri Lanka's regulatory framework governing the media, the

Government presented the Penal Code Amendment Act No 12 of 2002 in Parliament mid-year. This amendment, passed by the House on 18<sup>th</sup> June 2002, repealed Chapter 19 of the Penal Code and made consequential procedural amendments to Section 135 (f) of the Criminal Procedure Code. In addition, the House repealed Section 118 of the Penal Code, which had penalised attempts by contumacious or insulting words or signs to bring the President into contempt.

Meanwhile, the Press Council Amendment Act No 13 of 2002, repealed Section 15 of the Press Council Law No 5 of 1973. These amendments made substantive changes to the existing law. Criminal defamation, defined in Section 479 of the Penal Code, had been punishable under Section 480 of the Code with simple imprisonment not exceeding two years and/or with a fine.

Safeguards against arbitrary and politically motivated criminal defamation prosecutions had been available earlier in the Criminal Procedure Code. These safeguards specified *inter alia* that proceedings must first originate in the Magistrate's Court with the written sanction of the Attorney General pursuant to an investigation by the police, and after obtaining the authority of the Magistrate. However these preconditions were done away with in 1980, in a clearly political exercise.<sup>6</sup> Thereafter, prosecutions were launched against editors and journalists by successive governments at their pleasure. In the entire

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<sup>6</sup> Amending Act No 52 of 1980 which added Sections 135 (6) and 393 (7) to the prevailing provisions of the Criminal Procedure Code. This countered a ruling by the Court of Appeal in *R.P. Wijesiri v. The Attorney General* (1980, 2 Sri LR 317), to the effect that the Attorney General had no power to send a direct indictment to the High Court in a criminal defamation prosecution without lawful investigation by the police and preliminary inquiry by the Magistrate. The case concerned a Member of Parliament charged with criminally defaming President J.R. Jayewardena on a direct indictment issued by the Attorney General to the High Court, the validity of which was challenged.



history of the law, only one criminal defamation prosecution was instituted at the request of a private individual (as opposed to politicians).<sup>7</sup>

In addition, Section 15 of the Press Council Law No 5 of 1973 made defamation an offence and prescribed a maximum two-year imprisonment term of either description and/or the imposition of a fine. This section had also been utilised against the media after 1995 when relations between the People's Alliance government and the private media soured.

Positioning themselves against the harsh substance of these laws, media practitioners and activists argued that penal provisions - and the resources of the state - were being abused to serve political and partisan purposes or suppress information to the public. Journalists contended that the Penal Code provisions, though perhaps fit for conditions in 1883 when the Code had been enacted, were out of date in the modern context in that they denied the fundamental right to freedom of expression.

A vigorous seven year campaign carried out in this regard by media associations and lobby groups in the country, including the Editors Guild, The Newspaper Society and the Free Media Movement, emphasized that erring media professionals should be brought to brook under civil and not criminal codes and procedures. Civil society groups in this campaign included the Centre for Policy Alternatives. The campaign was supported by several international organisations,

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<sup>7</sup> This was when a book alleged to be defamatory of a retired Supreme Court judge, A.C. Alles, had been published. Although the accused publisher was charged in the Magistrate's Court with the sanction of the Attorney General (in case No 86835/4) the case was later settled. See *Sri Lanka: State of Human Rights 2000*, Law and Society Trust, Colombo, 2000, chapter on "*Freedom of Expression and Media Freedom*", for a more contextual discussion on the nature of the criminal defamation cases filed during this time.



including the International Press Institute, the World Association of Newspapers, The Commonwealth Press Union, the Committee to Protect Journalists and Article XIX.

National lobbying in this regard was buttressed by Mr Abid Hussain, Special Rapporteur on Freedom of Expression to the United Nations Commission on Human Rights, who denounced the "chilling effect" that defamation laws have on free expression and recommended that all criminal defamation laws be repealed in favour of civil laws, and that government officials and bodies be discouraged from bringing defamation cases as a means to silence their critics.<sup>8</sup>

In January 2002, a memorandum from International PEN (a world association of writers representing members in 94 countries) stated that government officials and bodies should be discouraged from bringing defamation cases as a means to silence their critics. The Memorandum referred to concerns raised about the manner in which writers and journalists had been prosecuted under criminal defamation legislation in Sri Lanka.<sup>9</sup>

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<sup>8</sup> See reports of the Special Rapporteur on Freedom of Expression to the United Nations Commission on Human Rights 2000 and 2001 (E/CN.4/2000/63 and E/CN.4/2001/64).

<sup>9</sup> Memorandum from International PEN, Freedom of Expression and Criminal Defamation, 15 January 2002. Twelve criminal defamation cases had been filed against editors and journalists of both the tabloid and the mainstream press by the year 2000 alone. While the forthrightly investigative *Raavaya* newspaper had borne the brunt of successive prosecutions at the outset, before long major newspapers, both Sinhala and English, such as *The Island*, *The Sunday Leader*, *The Sunday Times* and the *Lakbima* had to defend themselves in court against allegations of criminally defaming President Chandrika Kumaratunge or her Ministers.

Following these years of campaigning, repeal of the criminal defamation provisions by the unanimous vote of Parliament was a notable event in media history in Sri Lanka. This was followed by the withdrawal of a host of pending criminal defamation cases instituted by the government against editors and journalists of the private media, as well as appeals made thereto.

Among the appeals that were withdrawn was the appeal against the acquittal of the editor of the Sinhala language newspaper *Lakbima* in a criminal defamation case filed by President Chandrika Kumaratunge. Although the editor of the *Lakbima* had been acquitted of the charges against him in the High Court on the basis that the necessary intent was not found to lie, the then government had appealed against the acquittal.<sup>10</sup> Appeals against acquittals were, as a matter of practice, resorted to in the most exceptional of cases and this particular instance demonstrated the determination of the government in power to 'punish' those segments of the private media perceived as being antagonistic to the administration.

However, it had been another criminal defamation case that had long captured the headlines: the tumultuous and colourful 75 days of trial hearings over 15 months in a different High Court, following criminal

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<sup>10</sup> *The Democratic Socialist Republic of Sri Lanka v. P.A. Bandula Padmakumara*, High Court Case No. 7580/95D, in which President Kumaratunge contended that the publication of a report that she had attended the birthday party of a parliamentarian at midnight, entering through the back door of one of Colombo's five star hotels, had criminally defamed her. The report was later found to be factually incorrect.

defamation charges being filed against the editor of *The Sunday Times*, an English weekly.<sup>11</sup>

The editor of *The Sunday Times* was convicted of criminally defaming President Kumaratunge under both the Penal Code and the Press Council Law, a finding later affirmed by the Court of Appeal. The conviction and suspended sentencing of the *Sunday Times* editor,<sup>12</sup> supplemented by concerns that the imposition of suspended sentences would result in a far from subtle intimidation of the media, formed a substantive plank of the campaign to abolish criminal defamation laws wholesale in Sri Lanka.

Following repeal of the criminal defamation provisions, the *Sunday Times* editor, whose appeal was pending in the Supreme Court at that time, was discharged from all proceedings and the conviction set aside. The newspaper agreed meanwhile to publish a statement wherein the editor accepted responsibility for the impugned publication as editor, reiterated that there was no malicious intent whatsoever on the part of the writer, the newspaper or himself in wanting to defame the President and regretted the publication of the said erroneous excerpt.

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<sup>11</sup> *The Democratic Socialist Republic of Sri Lanka v. Sinha Tissa Migara Ratnatunge*, High Court Case No. 7397/95. Indictment was filed on two counts under the Penal Code and the Press Council Law over the publication of substantially the same report as in the *Lakbima* case, in the form of an item in a gossip column titled "Anura; Sootin says courting days are here". In issue were words such as 'Epicurean' and 'in the heat of the silent night' which the defence argued were mere journalese in a trivial report but which the prosecution maintained had harmed the reputation of President Chandrika Kumaratunge.

<sup>12</sup> The *Sunday Times* editor was sentenced to twelve months and six months simple imprisonment respectively on the first and second counts, suspended for seven years. The sentences were to run concurrently. A fine of Rs 10,000 on both counts (and imprisonment in default thereof) was also imposed.

In a wider sense, the debate in the House during the passing of the amendments, (despite the unanimous vote), had its own ambivalence. Thus, members on both sides of the House, while conceding (covertly if not overtly) that criminal provisions had been employed to browbeat the private media, emphasized the promotion of a responsible media culture and effective self-regulation.<sup>13</sup> These were, indeed, heavy responsibilities acknowledged by the media itself as reflected in opinions and editorials at that time.<sup>14</sup> As one analyst put it succinctly:

*"There is no longer the law of criminal defamation which makes it possible for the high and mighty in the land to take journalists to court at state expense (as opposed to a private libel case) and, what is more, send the journalists to jail if the court so orders. It is certainly a relief that this particular Sword of Damocles does not hang over us any more but will this make us better newspaper people? ... just as browbeating the media can be fatal, so will the complacency which will be induced in a government if the media are only hurrah boys or are just taken for granted. This then is the challenge which confronts both the government and the media."*<sup>15</sup> (emphasis mine)

### 3.1.b. Freedom of Information Act

Along with the repeal of criminal defamation provisions, considerable attention was devoted during the year to the drafting of a Freedom of Information (FOI) Act aimed at fostering transparency and accountability in public and quasi-public bodies.

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<sup>13</sup> *The Island*, 19<sup>th</sup> June, 2002.

<sup>14</sup> *The Island*, 18<sup>th</sup> June, 2002.

<sup>15</sup> "Sunday Essay" by Ajith Samaranayake, *The Sunday Observer*, 23<sup>rd</sup> June, 2002.

Specific information legislation had become imperative in the context of a culture of secrecy prevalent in government departments and ministries. Obtaining even the simplest information had become difficult if not impossible for journalists and even more so, for citizens.<sup>16</sup> Previous attempts to draft a FOI law by the Law Commission of Sri Lanka had been singularly unsuccessful.<sup>17</sup>

In discussions held on an FOI Act during the year between the media, some civil society groups and the government, a measure of consensus was sought in respect of particular basic principles before release of the draft to the general public for wider dissemination.

These basic principles included the following:

- a) *Standard as to Maximum Disclosure*: The Act should establish a presumption in favour of disclosure on the part of all public bodies and should prevail over existing laws restricting information. The definitions of information and public bodies should be broad, focusing on the type of service provided rather than formal designations, in line with international standards.<sup>18</sup>

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<sup>16</sup> In 2000, the Cabinet announced that it would implement Section 3 of Chapter XXXI of Volume 1 and Section 6 of Chapter XLVII of Volume 2 of the Establishment Code, which prohibits public officials from disclosing any information to the media. The threat led to jittery public servants refusing to release information of any kind to the media, including even refusing to confirm or deny information already in the hands of journalists, giving initials of public servants and giving statistical information without the sanction of the Secretary of the Ministry.

<sup>17</sup> The Law Commission of Sri Lanka released a narrowly conceptualised draft Access to Official Information Law in 1996 which gave limited access to official information and contained, in addition, significant exceptions that defeated the very purpose of the draft law.

<sup>18</sup> See the March 1999 Declaration by the Commonwealth Expert Meeting which was subsequently adopted by Commonwealth Law Ministers in May 1999 and by the Commonwealth Heads of Government in November 1999.

- b) *Standard regarding the Obligation to Publish* (proactive measures): An obligation should be imposed on ministries and public authorities to make public records and information of a particular kind coming under its purview within certain stipulated time periods. The duty to give reasons for decisions should be automatic and not upon request. The obligation to make public should include policy formulation discussions as well, subject to certain safeguards so as not to hinder the process.
- c) *Standard regarding Promotion of Open Government*: Public bodies must actively promote open government.
- d) *Standard as to Exceptions*: Access to official information should be subject only to narrow and clearly drawn exceptions (particularly with regard to national security), which would be subject to a substantial harm test and a public interest override.
- e) *Standard regarding Processes to Facilitate Access*: Requests for information should be processed fairly and rapidly and there should be independent review of refusals which allows appeal to a Freedom of Information Commission and finally to the appellate court. Arbitrary refusals should be subject to disciplinary action.
- f) *Standards as to Costs*: Costs for requests for information should be reasonable
- g) *Standard regarding Protection for Whistleblowers*: This internationally recognised principle gives protection to individuals from legal, administrative or employment related sanction for releasing information on wrong doing (such as



the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public authority). Protection is subject to the condition that they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of such wrongdoing.

Discussions on the draft FOI Act were ongoing at the close of the year.

### **3.1.c. Contempt of Court**

As with the Freedom of Information Act, media lobbying continued towards the enacting of a Contempt of Court Act.<sup>19</sup> This process was strengthened during the year by increased disputes between Chief Justice Sarath Nanda Silva and members of the minor judiciary, who alleged that they had been unfairly dismissed from service, without a proper hearing and on political grounds.

Two judges, (the President and the Secretary of the Judicial Services Association), alleged in petitions filed in court that they had been prevented from holding the Annual General Meeting of the Association due to arbitrary and coercive actions of the Chief Justice. They alleged that the Chief Justice wanted to prevent them from holding positions in the Association because they had criticised him in the past for behaviour which they felt was not fitting to the honour and dignity of the office of the Chief Justice.

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<sup>19</sup> The Report of the International Bar Association, 2001 *"Sri Lanka: Failing to Protect the Rule of Law and the Independence of the Judiciary"*. Also the report of the United Nations Special Rapporteur on the Independence of the Judiciary to the UN Commission on the Human Rights in April 2003 (E/CN.4/2003/65/Add.125. February 2003).

Heads of some media institutions whose journalists had reported on this case and who had published or broadcast interviews with the judges concerned, were sent letters by the Registrar of the Supreme Court, warning that contempt of court charges may be made against them. Strong protests were issued in this regard by the Free Media Movement.<sup>20</sup> The media institutions themselves, including the state run *Daily News* and the Sri Lanka Rupavahini Corporation (SLRC) immediately responded to the Registrar's letters, affirming that mere reportage of the disputes could not constitute contempt of court. Although there were no further developments thereafter, the whole incident was looked upon as an attempt to intimidate the media and to constrain the reporting of vital matters with regard to the independence of the judiciary in the country.

The Registrar's threats also illustrated the imprecise nature of contempt of court in Sri Lanka. Contempt of court had become a matter of increasing concern in recent years due to the position of the Chief Justice and, indeed, the entire judicial system itself, being wracked by unprecedented internal and external disputes.

Media focus on the disputes had been in extremes, ranging from a 'publish and be damned' attitude on the part of certain newspapers to the view of others that that an ostrich-like discretion is the better part of valour. This, in turn, further emphasized the need for a defined legal framework on contempt of court, useful for both citizens and the media, in order that the Sri Lankan judiciary be subjected to due and rigorous scrutiny whilst preserving basic respect for the institution itself.

The case law on contempt of court in Sri Lanka has hitherto inclined towards the conservative. Tussles between the judiciary and the media in the past have resulted in a range of contempt of court cases, some

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<sup>20</sup> *Daily Mirror*, 25<sup>th</sup> December 2002.

understandable in their rationale while others appreciably less so. These include the deliberate and willful publication of false and fabricated material concerning a trial held in court, calculated to hold the court or a judge thereof to odium and ridicule.<sup>21</sup> Contempt has also been found in published suggestions that judges were responsible for a serious breach of duty in taking unauthorized holidays by going to race meets and thereby contributing to arrears of work.<sup>22</sup>

A more extreme rationale underlay a ruling of the Criminal Justice Commission (Exchange Control) in the mid-seventies, when six months imprisonment was imposed on a deputy editor of the *Ceylon Daily News* for the publication of a comment – innocuous in retrospect – that censure by judges for improper attire of a witness was “not in keeping with the new legal trends of the day.”<sup>23</sup> The publication of a document, the Order Paper of Parliament forming part of the proceedings of Parliament, was also held not to be exempt from proceedings for contempt.<sup>24</sup>

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<sup>21</sup> *In the Matter of a Rule on De Souza* 18 NLR 41.

<sup>22</sup> *In Re Hulugalle*, 39 NLR 294.

<sup>23</sup> The *Ceylon Daily News*, 6<sup>th</sup> June 1974. The comment concerned a witness who had appeared in bush shirt and slacks before the Commission, whereupon the sittings had been adjourned and the witness ordered to return to give evidence properly attired. A day's imprisonment was also imposed on the acting editor of the paper.

<sup>24</sup> *Hewamanne v Manik de Silva and Another* (1983, 1 Sri LR, 1). The impugned publication, containing an account based on the Order Paper under the heading “*FDB's Pleadings Prepared in Judge's Chambers*” and “*Select Committee Probe of Mr K.C.E. de Alwis's representations*”, stated that a resolution was to be moved in Parliament appointing a Select Committee to probe into representations made by a former appellate court judge that a court ruling disintitling him to continue as a member of a Special Presidential Commission, was biased. Subsequently, Parliament upstaged the Supreme Court decision that the publication amounted to contempt by enacting Parliament (Powers and Privileges) Amendment Act No. 25 of 1984, which stipulated that the publication of any extract of any paper published by order of Parliament, bona fide and without malice, would not amount to contempt of court.

A similar conservatism had held sway with regard to comments on pending proceedings.<sup>25</sup> In Sri Lanka, where cases can drag on for interminable lengths of time, the *sub judice* rule has seriously impeded discussion on matters of public interest. Judicial attitudes on the *sub judice* rule have been strongly critiqued.<sup>26</sup>

Another concern related to the rule on disclosure of sources. The context within which a court can order disclosure of sources arose in *The Sunday Times* and *Lakbima* criminal defamation cases, demonstrating distinctly contrasting judicial attitudes in the different High Courts which tried the accused.<sup>27</sup>

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<sup>25</sup> *In Re Garuminige Tillekeratne* (1991 1 Sri LR 134), where a provincial correspondent of a Sinhala paper, the *Divaina*, sent a report of a speech made by a member of Parliament in the opposition at a time when the presidential election petition was being heard, in which the latter said that "*the petition had already been proved and if the petitioner did not win her case, it would be the end of justice in Sri Lanka...*" Contempt of court was found *inter alia* on the basis that the publication *might* or was *likely* to result in prejudice to the pending hearing of the presidential election petition, inferring that the judges had already made up their minds and thus possibly deterring potential witnesses from giving evidence.

<sup>26</sup> *Freedom of Expression and Sub Judice*, Lakshman Kadirgamar, P.C., and *Free Press and Fair Trial*, H.L. de Silva P.C., OPA Journal, Vol. 15, 1992-3. The decision in the *Garumunige Case* was criticised on the basis *inter alia* that it did not take into account the need to demonstrate a 'substantial likelihood of prejudice' and in fact, accorded too much importance to what was essentially a political statement.

<sup>27</sup> *supra* end note 10 and 11. *The Sunday Times* editor refused to disclose the name of the writer of the gossip item in issue in the case, pleading that even though he accepted responsibility as editor, he had to protect the source of the information according to which the item had been written. The refusal was taken as amounting to exclusion or suppression of evidence, the court ultimately concluding that he himself had written the gossip item. In contrary reasoning, the trial court in the *Lakbima case*, responding to a similar refusal, declared that editors and journalists should not be compelled to disclose sources of information as this would be detrimental to freedoms of speech and communication.

These factors further fuelled the need for an Act on Contempt of Court along the lines of similar legislation in India and the United Kingdom. The draft laws proposed by the media reflected particular principles commonly accepted without controversy in the modern law of contempt as follows:

- a) Contempt should only be found if the impugned act is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice in active proceedings;
- b) The publication of discussion concerning public affairs or other matters of general public interest, made in good faith, should not amount to contempt of court, if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion;
- c) Equally, a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith should not amount to contempt of court as much as an abridged or condensed report of the same published contemporaneously and in good faith, provided it gives a correct and just impression of the proceedings;
- d) The defence of innocent publication or distribution should be made available;
- e) Contempt of court should not be found for publishing any fair comment on the merits of a case that has been heard and finally decided;
- f) No court may require a person to disclose, nor would a person be guilty of contempt of court for refusing to disclose,

nor may any adverse inferences be drawn against that person consequent to such refusal to disclose, the source of information contained in a publication for which that person is responsible. The only exceptions are: unless it be established to the satisfaction of the court that disclosure is necessary in a democratic society in the interests of justice or national security or for the prevention of disorder or crime. The media also urged appropriate safeguards to be imposed on an unwarrantedly wide interpretation of the concepts of 'national security' and "in the interests of justice" drawing from lessons learnt by the British media in the courts of the United Kingdom.

Along with substantive issues relating to contempt, the necessity to prescribe fair procedures for contempt inquiries (including contempt in the face of the court) was recognised in the drafting process, necessitating constitutional amendment if needs be. The 1971 Act on Contempt of Court in India mandates such procedures, for example.

In Sri Lanka, the power of subordinate courts to punish for contempt is strictly regulated. However, comparable powers of the superior courts are unrestricted. Section 105(2) of the Constitution empowers the Supreme Court and Court of Appeal to punish for contempt of itself.

Read with Article 136, these remain the only provisions that relate to procedure with regard to contempt of court proceedings in the appellate courts. Article 136 authorises the Chief Justice, (with any three Supreme Court justices nominated by him), to make rules regulating generally the practice and procedure of the Court, including the making of rules as to the proceedings in the Supreme Court and Court of Appeal in the exercise of the several jurisdictions conferred on such courts by the Constitution. No such rules relating to contempt of court have, to date, been formulated by the Supreme Court.



### **3.1.d. Parliamentary Privilege**

In 1994, the then PA government repealed the 1978 amendment to the Parliament (Powers and Privileges) Act No 21 of 1953 (as amended), giving Parliament concurrent power with the Supreme Court to punish in respect of breaches of privilege specified in Part A of the Schedule to the Act. Earlier, exclusive jurisdiction had been vested in the Supreme Court in this respect. The 1978 amendment was strongly critiqued on the basis that Parliament should not be empowered to sit as a court and impose punishments of imprisonment or fine. Its repeal therefore, was welcomed.

However, another equally undesirable amendment to the Act, affecting the right to free speech and expression including publication of the press in particular, still continues to be in force. This is amending Act No 17 of 1980, which penalises the willful publishing of any report of any debate or proceeding in Parliament containing words or statements after the Speaker has ordered such words or statements to be expunged from the official report of the Hansard. The amendment, worded as it is in undesirably general and vague terms, allows irresponsible members of the House to evade accountability for statements that they make on the floor. Repeal of this amendment continued to be urged by the media during the year.

Interestingly, mid-year, the government promised to amend the Privileges Act in order to allow the media to cover proceedings of meetings held by the Committee on Public Enterprise (COPE). This was on the initiative of opposition parliamentarian and chairman of COPE Jeyaraj Fernandopulle, who had requested media coverage given the public interest nature of the activities that COPE was engaging in: most importantly, the monitoring and interrogating of state institutions for corruption.<sup>28</sup>

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<sup>28</sup> *The Sunday Leader*, June 23, 2002.

Allegations of breach of privilege by members of parliament continued meanwhile. These included a publication in a daily newspaper of an article by Chairman of the Salaries Commission Tissa Devendra, attempting to clarify some issues in response to critical remarks made by the Minister of Finance about the Commission in the course of his Budget speech.<sup>29</sup> Mr Devendra had stated that the reforms announced by the Finance Minister were, in fact, identical with the reforms proposed by the Salaries Commission, pointing out that this was so in spite of the Minister's 'adverse and inaccurate comments' on the Commission. Relevant extracts of the Commission report were quoted for this purpose.

The Finance Minister as well as the Chief Government Whip, reacting to this article, was of the opinion that a breach of privilege had occurred thereby. The matter was referred to the Deputy Chairman of Committees for a ruling, demonstrating a somewhat bizarre instance of the unfair manner in which the law relating to parliamentary privilege could be used to intimidate citizens.

Limiting freedom of speech on the grounds of parliamentary privilege, although permitted by the Constitution,<sup>30</sup> is not defensible under international norms and standards that Sri Lanka is subject to, including the International Covenant on Civil and Political Rights (ICCPR).<sup>31</sup>

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<sup>29</sup> *Daily Mirror*, 6<sup>th</sup> December, 2002, see editorial of this issue for a forthrightly comment on why the law of parliamentary privilege ought to be reviewed.

<sup>30</sup> Article 15(2) of the Constitution.

<sup>31</sup> ICCPR (Article 19) and the European Convention on Human Rights (ECHR) (Article 10). The former is directly applicable to Sri Lanka while the latter is of considerable persuasive authority. Neither of these texts include parliamentary privilege as a ground on which the right to free speech could be prohibited.

### **3.1.e. The Public Performances Ordinance**

The Public Performances Ordinance No 7 of 1912 (as amended) is a pre-independence law that continues to be utilised in modern times, to enforce a rigorous system of pre-censorship with regard to films, dramas and other stipulated entertainments by a Public Performances Board (PPB), established under its provisions. The Ordinance also gives the Minister unfettered power to make rules for the regulation of the same, including the issue as well as the withdrawal or suspension of permits for the exhibition of such performances.

Media lobbying in this regard focused, in part, on the replacing of this regime of arbitrary censorship of the visual media by a film review board that would adopt more even handed procedures of scrutiny, primarily with regard to the screening of films.

### **3.1.f. Broadbasing The Associated Newspapers of Ceylon Limited**

In line with successive government policy in the past several decades, the UNF Government made no effort to bring about the broad basing of the Associated Newspapers of Ceylon Limited, commonly referred to as the Lake House Group.

In one of the more outrageous moves against the media in 1973, the then leftist inclined coalition government had passed the Associated Newspapers of Ceylon (Special Provisions) Law, changing the status of the company. The newspaper group, (publishing at the time of the take-over some sixteen newspapers in all three languages), had been founded by D.R. Wijewardene, considered by most to be the single most prominent figure in postcolonial press history. The group continued to be under the direction of members of his family consequent to his death.

The take-over of the group was subject to a particularly specific legal undertaking, namely that the newspaper company be broad based and that the majority of the shares acquired by the Public Trustee be gradually divested by sale of the shares to the public.<sup>32</sup> Since the law was passed, however, the broad basing has not been carried out by any government, whatever its political hue. The Lake House Group became subject to a callous manipulation of its resources, its Chairman routinely changed upon every shift of political power and its journalists coerced into following the party political line in their work.

In mid-1995, a committee appointed by the PA government strongly recommended that Lake House shares be redistributed in a manner that would ensure the creation of a broad based democratic newspaper company with the widest possible citizens' participation.<sup>33</sup> The committee took into account the fact that the election manifestos of major political parties in the country had promised to broad base Lake House, subject to the condition that no single person or group would be able to own more than a quarter of the shares so redistributed. However, the government wholly disregarded the committee's report.

As antagonism increased between the private media and the PA in the years thereafter, some government ministers went on to indulge in an abrasive politicisation of the Lake House newspapers. By the year 2001, therefore, the country had seen the integrity of what had *once* been a

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<sup>32</sup> Section 5(1), Section 6(1)(g) and Section 12. The debates in the National State Assembly at that time, make it perfectly clear that what was intended was broad basing and not nationalisation. See in particular, the high moral ground taken by the then Minister of Constitutional Affairs Dr. Colvin R. de Silva, that the law would make it possible for trade unions, co-operative societies, citizens, journalists and so on who will, of right, come into ownership of these papers, instead of the family of D.R. Wijewardene, in the Hansard of 17<sup>th</sup> July, 1973).

<sup>33</sup> See Report of the Ministerial Committee Appointed to Make Recommendations on Broadbasing Ownership of the Associated Newspapers of Ceylon Limited, 12<sup>th</sup> April 1995.

respected newspaper group in Sri Lanka degenerate into a veritable farce.

When the government changed late that year, the professed commitment of the UN F administration towards ensuring an independent media culture in the country, would have been best manifested through the broad basing of Lake House. This, though, was not to be.<sup>34</sup> In a poor substitution for broad basing ownership, the new Lake House management refrained from crowding the institution with political appointees. Instead, attempts were made to bring established media personnel into the institution and recover a minimum balance in the reporting and commentary on political issues.

However, lack of critical reporting with regard to the government and its ministers became increasingly evident as the year progressed. Action was also taken against certain journalists, reportedly on political grounds, leading to their leaving the institution mid-year.<sup>35</sup> The broad basing of Lake House remains an urgent media law reform issue.

### **3.1.g. The Electronic Media**

Akin to the state print media, the state electronic media, notably the Sri Lanka Broadcasting Corporation (SLBC), the Sri Lanka Rupavahini Corporation (SLRC) and the Independent Television Network (ITN), also saw changes in top-level decision making with a new government in place after December 2001.

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<sup>34</sup> For a poignant commentary on this issue, see 'What's UNF policy on Lake House?', E.E.C. Abeysekera, *The Island*, 8<sup>th</sup> June, 2002.

<sup>35</sup> *The Island*, 18<sup>th</sup> June 2002, also, *The Daily Mirror*, 21<sup>st</sup> June 2002.

Disputes prevalent during the period between the Presidency and the government, as reflected in the state visual media, have already been highlighted.<sup>36</sup> These disputes drew renewed attention to the need for extensive structural reform of the electronic media in order to ensure its independence from political pressure.

As far back as 1996, the Committee to Advise on the Reform of Laws affecting Media Freedom and Freedom of Expression pointed out that:

‘.... radio and television broadcasting by the state should be undertaken by separate corporations as now but with necessary changes in the law to guarantee both the independence of their governing bodies and their editorial independence. They should be governed by boards which are independent of government; members should see themselves as independent trustees of the public interest in broadcasting and not as representatives of any special interests. They should be appointed for a fixed term according to specified criteria. The selection process should be such as to ensure it is fair and not subject to political or other pressure.’<sup>37</sup>

By 2002, these changes remained imperative. The main focus was primarily the Sri Lanka Broadcasting Corporation (SLBC) Act No 37 of 1966 (as amended), and the Sri Lanka Rupavahini Corporation (SLRC) Act No 6 of 1982 (as amended).

Media and activist lobbies recommended the repeal of Section 44 of the SLBC Act (empowering the Minister to issue licenses for the establishment and maintenance of private broadcasting stations),

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<sup>36</sup> See *supra*, footnotes 3 and 5.

<sup>37</sup> Report of the Committee to Advise on the Reform of Laws affecting the Media Freedom And Freedom of Expression, page 50.



including Section 44(4) and its subsections which conferred extensive powers on the Minister to make regulations governing the functioning of such stations both in terms of their composition and the nature of the programmes.<sup>38</sup> Other concerns related to the need to stipulate qualifications and criteria in the appointing of members to the Board of the SLBC,<sup>39</sup> the removal of whom should be for reasons assigned and not on the arbitrary whim of the Minister.<sup>40</sup>

Similar objections were raised to particular provisions of the SLRC Act, later in point of time than the SLBC Act but retaining some of the problematic provisions of the latter. Recommendations made in this regard included the repeal of Section 28, the provisions of which specify, *inter alia*, that no person other than the Corporation under the Act shall maintain a television broadcasting station unless such person has obtained a licence from the Minister. The amendment of section 3(8) of the SLRC Act was also recommended, incorporating the safeguard that ministerial power of removal of a member should be for reasons specified.

More radical proposals by the Free Media Movement included the broad basing of the state owned media to public service broadcasting units.<sup>41</sup>

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<sup>38</sup> i.e.; in reference to the control and supervision of programmes by such stations, the prohibition, regulation or control of the ownership of private broadcasting stations by prescribed persons or classes of persons, the regulation or control of the transfer of shares in companies holding licences for private broadcasting stations and for the regulation of fees to be charges for such licences.

<sup>39</sup> i.e.; amendment of Section 6 of the SLBC Act.

<sup>40</sup> i.e.; amendment of Section 8(1) of the SLBC Act.

<sup>41</sup> Repeal of Section 44 of the SLBC Act and Section 28 of the SLRC Act.

As far as the private broadcasting media is concerned, the establishing of an independent broadcasting authority regulating the granting of licences to private broadcasters and the consequent repeal of existing legal provisions that prescribed ministerial intervention in the process, continued to be urged.<sup>42</sup> An important attribute of such a licensing body would be its procedural as well as substantive freedom from state control. Setting up a regulatory body with regard to the electronic media was also lobbied for during this time. Such a body could then exercise considerable influence in creating a fairer ethos with regard to the private electronic media. This had become vital in the wake of the latter capturing a sizeable segment of the market with a consequent huge impact on the public through the proliferation of political chat shows, interviews and phone-in sessions.

The period under review, however, did not see the same enthusiasm exhibited with regard to reform of laws and regulations relating to the electronic media as the print media. This was perhaps due, in part, to the absence of organised lobbying bodies in the electronic media.

Although the UNF Government announced its intention to enact new telecommunications, cable and broadcasting laws (including reform of the Telecommunication Regulatory Commission), this promise was not translated into concrete terms. Similarly, though a committee to work on policy formulation for all state owned media was appointed, no report on its functioning was thereafter made public.<sup>43</sup>

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<sup>42</sup> See 'Some Critical Issues', report on the state of the media in 2002, the Free Media Movement and INFORM, 3<sup>rd</sup> May, 2003, p3.

<sup>43</sup> *The Island*, 5<sup>th</sup> October 2002.

### **3.2. Media Self - Regulation**

A number of self-regulation initiatives took place during the year with regard to the print media. Foremost in this regard was the finalisation of moves by three main media organisations in the country - the Editors Guild, the Newspaper Society and the Free Media Movement - to set up the Sri Lanka Press Institute. Registered as a non-profit company under the Companies Act, the Institute is to be managed by a nine-member board of directors nominated by the three organisations.

The Institute is to spearhead the establishment of a college of journalism and a self-regulatory Press Complaints Commission (PCC). The first caters to a dire need for an institution that would provide professional training to practising journalists. The second objective is as important: creating a body independent of the government and the media industry to which citizens, aggrieved by actions of the press, could appeal without the arduous procedures and prohibitive costs that accompany court actions.

The PCC, an eleven-member entity to be established under the Companies Act, is also entrusted with the task of implementing and interpreting the Code of Professional Practice formulated by the Editors Guild. Its primary task is the conciliation, mediation and arbitration of disputes between the public and the press with the possibility for enforcement of its decisions through courts under the provisions of the Arbitration Act in the event of non-compliance by erring newspapers.<sup>44</sup>

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<sup>44</sup> Corresponding with the establishing of the PCC, repeal of the Press Council Law No. 5 of 1973 and the consequent abolition of the Sri Lanka Press Council was also urged. The Council had been wholly inefficient in regulating the print media in the past as well as exhibiting distinctly political overtones in its functioning. By year end, however, repeal of the Press Council Law had not taken place due to the delay in setting up the PCC.

These initiatives were well timed in so far as they underscored the acknowledgement of an increasingly severe public demand for media accountability. However their sufficiency is a different question altogether.

While on the one hand, the country had long been accustomed to the slanting of news on the part of the state owned media, media critics had been pointing to the far more subtle manner in which news reporting is shaped along political and/or personal lines by the private media.

These concerns were underlined by the marked absence of professionally-structured journalistic bodies agitating on issues of journalistic independence and editorial freedom in the country. Existing journalists associations in Sri Lanka continue to be divided on sharply political lines. From this standpoint therefore, the efficacy of these self-regulation mechanisms in taking up an aggressively pro-active role in ensuring media accountability and responsibility remains to be tested as would the independence of the PCC from its creators.

The year under review saw the right of reply being adhered to by an increasing number of newspapers in respect of news reports and commentaries published therein.

A charter regulating the interaction between the military and the media and incorporating provisions deterring inflammation of public opinion on racial and religious matters, was among the more picturesque measures suggested by the government during the year.<sup>45</sup> The practicality of such measures remained, however, in doubt.

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<sup>45</sup> *The Island*, 23<sup>rd</sup> January 2002.

#### **4. Freedom of Expression Issues and The Ethnic Conflict**

The cessation of hostilities in the North-East, peace negotiations between the LTTE and the government, and the opening up of war-torn areas to the South, posed several daunting challenges in the context of freedom of expression and media freedom during the year.

People to people communications between the North-East and the South featured prominently in the pages of the Southern print media, highlighting the stories of ordinary citizens caught in the conflict as well as accounts of members of the LTTE, personal as well as political. The state Rupavahini television channel opened transmission to the North after a lapse of 15 years in late 2002.

From a positive side, this period also witnessed a greater critique and heightened questioning in the South on the exact role of the media in times of conflict as well as in peace. Reflection by the media on its own moral responsibilities in this regard formed an essential part of this process.<sup>46</sup>

In a common paradox, the mass media in Sri Lanka has been one of the prime violators of freedom of expression in practising ethnic exclusivism in its reportage and commentary. This is borne out, for example, by the language medium playing a selective role in the manner in which ethnic issues are represented.<sup>47</sup> A more vigorous questioning of insensitive, inaccurate and non-issue based journalism in this regard took place both in the print and electronic media.

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<sup>46</sup> See in particular, "*Treading a minefield*" in '*Observations*' by Lakshman Gunasekera, *The Sunday Observer*, 24<sup>th</sup> February 2002 also the issue of 21<sup>st</sup> July 2002.

<sup>47</sup> *supra*, n40, p 6, for brief 'in-house' comments on this issue.

From another perspective altogether, some segments of the print media raised increasingly sharp questions during the period as to whether the government was embarking on news management or censorship of issues impacting on the North-East conflict. Arousing considerable unease in this regard was the submission of a government motion in November on an alleged misquote by a correspondent of Reuters, a reputed news agency, with regard to a statement that LTTE ideologue and chief negotiator Anton Balasingham had made in Oslo to the effect that the LTTE would not renounce violence. While this statement was not denied by Balasingham himself, the government reaction was subjected to strong criticism by the media as an unwarranted attempt to stifle legitimate publication.<sup>48</sup>

An equally prominent controversy followed the refusal of a visa extension to the Colombo correspondent of the London-based *Daily Telegraph* in November. While the official position was that he had violated the conditions of his visa by being a regular contributor to a daily local newspaper, the opposition – and the correspondent himself – contended that the actual reason was the critical position he had taken on human rights violations in the North-East by the LTTE, including child conscription and extortion.<sup>49</sup> Serious concern was expressed by media organisations in the country, including the Editor's Guild and the Foreign Correspondents Association, over the government refusal to extend this correspondent's visa.<sup>50</sup>

Towards the end of the year, the importing of equipment by the LTTE in order to operate a private radio station in the North-East without subjecting itself to the country's broadcasting and customs regulations

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<sup>48</sup> *The Island*, 30<sup>th</sup> November 2002.

<sup>49</sup> *The Island*, 8<sup>th</sup> November 2002.

<sup>50</sup> *The Sunday Times*, 10<sup>th</sup> November 2002.



and laws (and with the tacit acquiescence of the government) also gave rise to considerable – but short lived – controversy.

In the North, even though the LTTE had declared a ceasefire with the government, it increased its intimidation and repression of the freedom of expression of civilians, opposition parties and opposition newspapers. While the organisation publishes several newspapers, including one in the Sinhala language, and has its own radio station in the Vanni, its intolerance of opposition print organs has been marked.

In April, the management of the pro - Eelam People's Democratic Party (EPDP) (a party in opposition to the LTTE) weekly *Thinamurasu* complained to the Norwegian monitoring mission that the LTTE had banned their paper in Batticaloa. Similar complaints were also lodged by the *Thinakathir*, a regional newspaper.<sup>51</sup> Although the monitoring mission intervened in the matter, the *Thinamurasu* was banned again five weeks later and returned to the news stands only after the monitors made a further strong intervention in the matter. The staff of the newspaper complained of continued harassment by LTTE cadres in the area.<sup>52</sup>

In August, journalists as well as civilians in Batticaloa took part in a passive resistance campaign following a raid on the *Thinakathir* by a ten-member armed gang which had ransacked the newspaper office and then set fire to it after tying up and blindfolding the staff.<sup>53</sup> Towards the end of the year, the editorial office of the *Nawamani*, a Southern-based newspaper which advocates the cause of the Muslim community living in the East, was attacked by an unidentified gang.<sup>54</sup>

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<sup>51</sup> *The Island*, 13<sup>th</sup> April 2002.

<sup>52</sup> *The Island*, 12<sup>th</sup> June and 3<sup>rd</sup> May 2002.

<sup>53</sup> *Daily Mirror*, 11<sup>th</sup> August 2002.

<sup>54</sup> *The Island*, 1<sup>st</sup> December 2002.

Countless incidents of repression of freedom of speech and expression by the LTTE, including extortion, abduction and assault of North East citizens, continued meanwhile, as detailed in the reports of the University Teachers for Human Rights (UTHR) (Jaffna).

A particularly heinous incident was the assault on the Principal of a prominent school in the North - Hartley College - who had been opposing efforts by the LTTE to use students as propaganda tools against the government on various issues. Unlike other such incidents, this assault was protested against by activists in the South on the basis that 'peace is not merely the cessation of war but is also democracy, freedom and dissent'.<sup>55</sup>

In October, the international media watchdog, Reporters Sans Frontiers, (RSF) sent a letter to Prime Minister Ranil Wickremesinghe expressing its perturbation over the fact that the perpetrators of the murder of a Northern-based journalist, Mayilvanam Nimalarajan, had not yet been apprehended. Nimalarajan's killing, in the time of the previous government, had been commonly linked to his opposition to the activities of the Eelam Peoples Democratic Party (EPDP), a political party opposed to the LTTE.<sup>56</sup> Although arrests of some EPDP members took place in this respect, the investigations had petered out by the end of the year.

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<sup>55</sup> *The Island*, 6<sup>th</sup> October 2002.

<sup>56</sup> *Daily Mirror*, 19<sup>th</sup> October 2002.

## **5. Physical Assault and Intimidation in the South in Relation to Freedom of Expression**

Although the prevalence of these incidents was less during the year, some incidents attributed to the two major political parties in the country, the UNF and the PA, gave rise to grave concern.

In April, the Special Task Force (STF) attempted to obstruct photojournalists covering an anti-peace protest demonstration by the National Bhikku Front near the Pettah Bodhi in Colombo. A statement issued by the Free Media Movement condemned this action, likening it to attempts of the Presidential Security Division (PSD) during the previous regime to strangle press freedom.<sup>57</sup>

A more worrying incident took place towards the end of the year when four journalists and another citizen were injured after a mob, comprising some fifty persons wielding arms, broke up a non-violent protest campaign carried out by opposition supporters in the North Central city of Polonnaruwa. The protest had concerned two earlier attacks on opposition supporters, including agriculture officers. While it was alleged that the mob which attacked the journalists, who were covering the protest campaign, had the tacit support of a UNF Government politician in the area, there was no immediate intervention or investigation by the police.<sup>58</sup>

In a letter sent to President Chandrika Kumaratunge (as head of the coalition) in April meanwhile, Reporters Sans Frontiers (RSF) urged immediate action regarding death threats and intimidation of a journalist who had taped a controversial speech made by President Kumaratunge in Wattala during which she had made several negative remarks about the peace process. Intruders had broken into the journalist's house in

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<sup>57</sup> *Daily News*, 24<sup>th</sup> April 2002.

<sup>58</sup> *The Island*, 3<sup>rd</sup> October, 9<sup>th</sup> October 2002.

his absence, threatened his wife and stolen several cassettes and a tape recorder.<sup>59</sup>

In other incidents specifically involving police action, a reporter of the *Ravaya* newspaper was assaulted and detained by the police after he had attempted to prevent police officers assaulting two individuals in public. Another journalist belonging to the same newspaper was attacked on a bus following his consistent reporting of a woman who had been tortured in police custody in Wariyapola.

The period meanwhile witnessed continuing investigations into attacks on journalists and citizens that had occurred during the period of the previous government. These included the killing of the *Satana* editor Rohana Kumara and the attack on the residence of a popular actress Anoja Weerasinghe, who had been associated with the then opposition. However, the investigations did not result in any conclusive findings.

In April, six persons, including the former driver of President Chandrika Kumaratunge, were arrested in connection with the attack in June 1998 on the residence of the editor of the *Sunday Leader*, Lasantha Wickrematunge, whose weekly English newspaper had maintained a highly critical coverage of President Kumaratunge and her Ministers. An equally problematic attack on the residence of the defence columnist for the *Sunday Times*, Iqbal Athas, during which he and his family were threatened, came in for a well-considered measure of judgment in February when two air force officers were sentenced to nine years' imprisonment in this regard.<sup>60</sup>

In June 2002, the Supreme Court ruled on a rights violation of a journalist of a Tamil tabloid newspaper, who had been assaulted by

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<sup>59</sup> *Daily News*, 6<sup>th</sup> April 2002.

<sup>60</sup> *Supra*, n40, p 12.

the Akkaraipattu police and had his video camera snatched while covering an incident of police assault on people inside a mosque.<sup>61</sup>

## 6. Conclusion

The period under review reflected attempts by the Sri Lankan media to break free from past legacies of excessive politicisation, extreme repression and entrenched policies of intolerance.

In this process, the freedom of expression of the people and the media in the North, in the midst of a deeply troubled transition from war to peace, faced specific challenges. While people to people contact was manifested, in some cases testifying to the ability to work miracles if the spirit is courageous enough, there remained a need for more sustained awareness and support of the difficulties faced by the people in the North.

As far as general media law reform is concerned, irresistible parallels come to mind. In 1992, it had been remarked of Britain's media laws that "it is none the less regrettable that so much of (prevalent laws) should impinge on *public-interest reporting* and so little of it work to eradicate *discreditable press practices*."<sup>62</sup> (emphasis added)

At that point, Britain was, (as arguably it continues to be, but in a less agonised manner), like Sri Lanka is presently: at a crucial crossroads in trying to balance the scales of justice evenly between helping ethical journalism and outlawing errant media behaviour.

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<sup>61</sup> *Daily Mirror*, 18<sup>th</sup> June 2002.

<sup>62</sup> *Media Law*, Robertson and Nicol, 3<sup>rd</sup> Ed., Penguin Books, 1992, p xvii.

Commenting on British law then, it was hoped that 'the worst aspects of defamation, breach of confidence and official secrecy should die unlamented, replaced by a proper concern for public disclosure and protection of human rights.'<sup>63</sup>

As far as Sri Lanka is concerned, whether these expectations will be realised depends on the media fostering pride in itself as a responsible and responsive opinion maker as much as on the theoretical reform of laws. The year 2002 saw glimmerings of these ambitious strivings. Their fulfillment, however, remains a story for another time.

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<sup>63</sup> Ibid, p xviii.



## VII

### Judicial Protection of Human Rights

*Maduranga Rathnayake\**

#### 1. Introduction

This chapter seeks to discuss some of the important judgments delivered by the Supreme Court<sup>1</sup> in fundamental rights applications in the year 2002.

The Supreme Court's decisions in recent years in fundamental rights applications, including those under review in this report, shows that the majority of them are based on an alleged violation of Article 12(1)

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<sup>1</sup> The Constitution (Articles 17 and 126) gives sole power to the Supreme Court to look into any infringement or an imminent infringement of fundamental rights by executive or administrative action.

of the Constitution<sup>2</sup>. This phenomenon may have been triggered by the interpretation given by the Supreme Court to Article 12(1) of the Constitution premised on rights and accountability, thus bringing every arbitrary state action within the ambit of Article 12(1)<sup>3</sup>. This judicial development seems to have influenced litigants to resort to Article 12(1) more frequently in cases involving such matters as promotions and transfers in state institutions and irregularities in government tender procedures<sup>4</sup>.

It should be noted that there have been very few applications which have alleged violations of Article 12(2)<sup>5</sup>. However, in the year under review there was one case in which the petitioner alleged, *inter alia*, that he was subject to a "pass system" for travel to and from Vavuniya because he was a Tamil citizen<sup>6</sup>.

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<sup>2</sup> 17 of 26 fundamental rights cases decided in the year 2002 were filed in respect of Article 12. See also "Review of Fundamental Rights Jurisprudence" by Deepika Udugama, *Sri Lanka: State of Human rights 2001*, Law & Society Trust, "Judicial Protection of Human Rights" by Sumudu Atapattu, *Sri Lanka: State of Human Rights 2000*, Law & Society Trust.

<sup>3</sup> See *Gunarathna v. Sri Lanka Telecom* 1993 1 Sri LR 109, *Premachandra v. Major Montegu Jayawickrama* 1994 2 Sri LR 90, *Gunaratne v. Petroleum Corporation* 1996 1 Sri LR 315, *Priyangani v. Nanayakkara* 1996 1 Sri LR 399, *William Silva v. Shirani Bandaranayake* 1997 1 Sri LR 92.

<sup>4</sup> It appears that the litigants instead of filing writ applications, challenge arbitrary decisions of the state, frequently by way of fundamental rights applications, under Article 12(1) of the Constitution.

<sup>5</sup> Article 12(2) provides that "no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds".

<sup>6</sup> *Arumugam Vadivelu v. O.I.C., Sithambarapuram Refugee Camp Police Post, Vavuniya*, S.C Application No. 44/2002 (F.R.), S.C. Minutes 05.09.2002. However, on the merits the Court held that there was no violation of the petitioner's fundamental rights under Article 12(2).

While the cases decided in 2002 dealing with alleged violations of Article 12(1) have been routine, the Supreme Court's jurisdiction was invoked in relation to several shocking rape and torture cases during the year.

In a landmark judgement, the Supreme Court expanded *locus standi* in fundamental rights applications by allowing the wife of a deceased detainee husband to maintain an application on behalf of the deceased<sup>7</sup> as the deceased's legal representative.

## 2. Cases filed under Article 12<sup>8</sup>

As noted above the majority of the cases filed in the year 2002 were in respect of Article 12(1) of the Constitution. Most of these cases alleged the violation of Article 12(1) in cases involving awarding of government tenders<sup>9</sup>, appointments<sup>10</sup>, extensions of service<sup>11</sup>, transfers and

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<sup>7</sup> *Sriyani Silva v. OIC, Payagala Police Station and Others* S.C. (F.R.) Application 471/2000 S.C. Minutes 10.12.2002. The case was still pending at the end of the year.

<sup>8</sup> Article 12(1) of the Constitution guarantees equality and the equal protection of the law.

<sup>9</sup> *Floor Care Cleaning Services (Pvt) Ltd. v. The University of Ruhuna and Others* S.C. Application No. 285/2001(F.R.) S.C. Minutes 09.05.2002, *Ebert Silva Touring Company Ltd. and Another v. Air Lanka Ltd. and others* S.C. Application 548/96 (F.R.) S.C.Minutes 27. 06. 2002, *Sam Samarasekara & Co. Ltd. v. Municipal Council, Kandy* S.C.Application No.53/2000 (F.R.) S.C. Minutes 16.09.2002.

<sup>10</sup> *K.S. Jayasinghe v. the National Institute of Fisheries and Nautical Engineering (NIFNE) and Others* S.C. Application 692/2000 (F.R.) S.C. Minutes 20 03. 2002, *Somapala Pattiwidana v. the Monetary Board of the Central bank and Others* S.C. Application No. 450/2000 and S.C. Application No. 565/2001 S.C. Minutes 30. 04. 2002, *W.R.R. Rabel and Another v. the National Savings Bank* S.C. Application No. 531/2000(F.R.) S.C. Minutes 30.04.2002.

<sup>11</sup> *Gamage Upasena v. Richard Pathirana, Minster of Education and Others* S.C. application No. 50/99 (F.R.) S.C. Minutes 31. 05.2002.

promotions<sup>12</sup> in government institutions. In one case<sup>13</sup>, the petitioner complained that the first respondent, a state bank, violated its fundamental right under Article 12(1) by denying it relief under a debt relief scheme introduced by the Sri Lanka Government in 1998. Another case involved the cancellation of a dealership<sup>14</sup>. One case was filed against an order for vacation of post<sup>15</sup>. In another case,<sup>16</sup> the petitioner alleged an imminent infringement of his fundamental rights under Article 12(1) on the basis that his right to purchase the government vehicle assigned to him at the time of retirement, was going to be denied.

While most of the applications and decisions have been rather routine, a *dictum* of Fernando, J. in *Somapala Pattiwidana v. The Monetary Board of the Central Bank*<sup>17</sup> warrants attention. The petitioner filed two fundamental rights applications. In one application the appointment

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<sup>12</sup> *N.D.J. Narangoda and Others v. B.L.V. De S. Kodithuwakku, Inspector General of Police and Others* S.C. Application No. 397/2000 S.C. Minutes 11. 02. 2002, *W.R.R. Rabel and Another v. the National Savings Bank* S.C. Application No. 531/2000(F.R.) S.C. Minutes 30. 04. 2002, *Dayarathna and Others v. National Savings Bank and Others* S.C. Application No. 452/2001 (F.R.) S.C. Minutes 05.09.2002, *U.B Rasaputhra and Others v. Bank of Ceylon and Others* S.C. Application No.381/01 S.C. Minutes 16.09.2002.

<sup>13</sup> *Veyangoda Textile Mills Ltd. v. the People's Bank* S.C.application 404/99 (F.R.) S.C. Minutes 18. 01.2002.

<sup>14</sup> *Colombo South Corporative Society v. Anuruddha Rathwatte, Minister of Power and Irrigation and Others* S.C.Application 698/98 (F.R.) S.C. Minutes 25. 03. 2002.

<sup>15</sup> *Wimal Weerasinghe v. Dr. S.A.K. Gamage, Director General Hospital Kegalle and Others* S.C. Application No.682/2001 (F.R.) S.C. Minutes 19.09.2002.

<sup>16</sup> *L.M. Fernando v. R.A.A. Ranaweera, Secretary – Ministry of Cultural and Religious Affairs and Others* S.C. Application No. 46/99(F.R.) S.C. Minutes 24. 05. 2002.

<sup>17</sup> S.C. Application No. 450/2000 and S.C. Application No. 565/2001, S.C. Minutes 30.04.2002

of the third respondent as the Deputy Governor of the Central Bank was challenged and in the other refusal of his fourth extension of service by the Central Bank was challenged. In both these applications, the Supreme Court held with the petitioner. In the application that challenged the third respondent's appointment, the respondents *inter alia* took up the position that since only the third respondent and one Mr. D had been short-listed for consideration for the post of Deputy Governor, the petitioner had no status to challenge the said appointment because it was if at all Mr. D and not the petitioner who would have been affected. While holding that the petitioner was entitled to a fair selection process Fernando, J. further observed that anyway the petitioner was entitled "...as a citizen, to complain that the 3<sup>rd</sup> respondent's appointment was arbitrary".

This judicial thinking assumes much significance in the area of public interest litigation as the Supreme Court has so far allowed public-spirited citizens to challenge executive and administrative actions only within a limited scope.

### 3. Cases filed under Article 14

Two citizens challenged the "pass system"<sup>18</sup> that was in force for travel to and from Vavuniya<sup>19</sup> contending *inter alia* that the requirement to obtain a pass, which involved a tedious procedure, was a restriction

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<sup>18</sup> Government had made it compulsory for persons who travel from Vavuniya to Colombo to obtain a "travel pass".

<sup>19</sup> *Jagath Soloman Dias v. Secretary Ministry of Defence* S.C. Application No. 604/2001(F.R.) S.C. Minutes 05.09.2002, *Arumugam Vadivelu v. OIC, Sithambarapuram Refugee Camp Police Post, Vavuniya*, S.C. Application No. 44/2002 (F.R.) S.C. Minutes 05.09.2002. However, by the time these two applications were taken up for hearing, on 05.03.2002 the "Pass system" had already been abolished.

on their constitutionally guaranteed freedom of movement as enshrined in Article 149(1)(h) of the Constitution<sup>20</sup>.

In Vadivelu's case, the petitioner, who was living in a welfare centre in Vavuniya, alleged that the State had violated his fundamental rights guaranteed under Articles 11<sup>21</sup>, 12(1), 12(2) and 14(1)(h) of the Constitution<sup>22</sup>. The Court while holding that the petitioner's fundamental right under Article 14(1)(h) had been infringed by the State as a result of the pass system observed that:

*"...those procedures went far beyond maintaining a record of the identity of persons travelling to and from Vavuniya and their places of residence. They were quite burdensome, time-consuming and costly, and effectively restricted the right to travel and residence".*

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<sup>20</sup> *The Soloman Dias* case however failed on technicalities and the weakness of his allegation. The Court did not consider the issue of imminent infringement as alleged by Soloman Dias because by that time the pass system had already been removed. On the question whether the particular incident alleged by the petitioner had violated his constitutional rights, the Court observed that then his application was out of time.

<sup>21</sup> Leave to proceed was not granted in respect of Article 11 which guarantees freedom from torture or cruel, inhuman or degrading treatment or punishment.

<sup>22</sup> The petitioner complained that from the inception they were not permitted to leave the camp premises without obtaining a pass. At first the pass is valid only for the date of issue, but later it was valid for three months at a time. The pass entitled the holder to travel only in the areas "cleared" by the security Forces and that too only within the Vavuniya district.



*"...the fact that the relevant circulars and memorandum governing all these matters were unpublished and inaccessible to the petitioner was itself an unacceptable restriction. Laws and regulations affecting fundamental rights must necessarily be published and accessible to citizens".<sup>23</sup>*

The Court further observed that,

*"...the right of citizens to travel on public highways and to have access to public places may only be curtailed by restrictions imposed in terms of Article 15(6) and 15(7).<sup>24</sup>*

In this case it was further contended on behalf of the petitioner that the pass system violated the non-discriminatory clause, namely Article 12(2) of the Constitution, as the petitioner was required to obtain a pass because he was a Tamil citizen. On this issue the Court held that the pass system applied not only to those living in refugee camps in Vavuniya, but to all persons travelling to and from Vavuniya belonging to any community and hence did not violate Article 12(2).

#### **4. *Locus Standi* in fundamental rights petitions**

In an unprecedented judgment, the Supreme Court by a majority permitted the wife of a deceased detainee to file a fundamental rights petition as the legal representative of the victim<sup>25</sup>. The judgment was

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<sup>23</sup> Would not then the non-publication of rules and regulations affecting fundamental rights violate the citizen's fundamental rights? In other words would such a situation give rise to a cause of action for a fundamental rights application?

<sup>24</sup> Under Article 15(6) the freedom of movement and choosing one's residence can be restricted in the interest of national economy. Article 15(7) provides for the restriction of Articles 12, 13(1), 13(2) and 14 on grounds of national security, public order and the protection of public health or morality.

<sup>25</sup> *Supra* n. 7.

hailed as a manifestation of the Court's judicial boldness in protecting and promoting the fundamental rights of the people. In this case the Legal Aid Commission filed a fundamental rights application on behalf of the petitioner<sup>26</sup>. However, on the day the application was listed for support for leave to proceed, the petitioner's Counsel moved to amend the caption of the Petition to read as "on behalf of the wife as legal representative of the deceased" and the prayer was sought to be amended to seek compensation for the deceased's wife and the minor child. The Court allowed these amendments.

At the hearing of the application two preliminary objections were raised on behalf of the respondents, that, (a) the petitioner had no *locus standi* to make the application, and (b) the petitioner's application was out of time.

The respondents contended that Articles 17 and 126(2) of the Constitution must be interpreted to give their plain grammatical meaning and therefore only a person whose fundamental rights have been allegedly violated can file and maintain a fundamental rights application. They also relied on the case of *Somawathie v. Weerasinghe and Others*<sup>27</sup> in which the Supreme Court held that the wife of a detainee

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<sup>26</sup> The petitioner complained that her husband was taken into custody on 12.06.2000 and was produced before the Magistrate on 17.06.2000 and thereafter he was handed over to the Remand Prison, Kalutara. The detainee made a statement to one of the Prison officials that he was severely assaulted while he was kept at the Payagala Police station. The petitioner further stated that on 18.06.2000 though the mother and the sister of the detainee visited the Prison they were not allowed to meet the detainee. On the following day the Uncle of the detainee visited the Prison and was informed that the detainee was transferred to the Magazine Remand Prison. However, on 21.06.2000 the Payagala Police informed the petitioner that the detainee had died on the previous night at the Magazine Remand prison.

<sup>27</sup> (1990) 2 Sri LR 121.

had no *locus standi* in a fundamental rights application made on the detainee's behalf.

The Supreme Court<sup>28</sup> in this case adopted a rights based approach to the issue of standing. The Court distinguished Somawathie's case by observing that it is factually different from the present case because in the latter the detainee was dead. The Supreme Court further observed that,

*"...It could never be contended that the right ceased and would become ineffective due to the intervention of the death of the person, especially in circumstances where the death in itself is the consequence of injuries that constitutes the infringement. If such an interpretation is not given it would result in a preposterous situation in which a person who is tortured and survives could vindicate his rights in proceedings before this court, but if the torture is so intensive that it results in death, the right cannot be vindicated in proceedings before this court. In my view a strict literal construction should not be resorted to where it produces such an absurd result...." (emphasis added)*

In this case the Supreme Court further held that,

*"... when there is a causal link between the death of a person and process which constitutes the infringement of such person's fundamental rights, any one having a legitimate interest could prosecute that right in a proceeding instituted in terms of Article 126(2) of the Constitution...." (emphasis added)*

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<sup>28</sup> The majority – Justice Shiranee Bandaranayake delivering the Judgment of the Court and the Chief Justice agreeing. Justice Edussuriya dissented.

The respondents' second contention was that when the amended petition was filed the application was time barred. The Supreme Court observed that since the initial application had been filed within the statutory time limit, the amended petition was deemed to have been filed within time.

Justice Edussuriya dissenting upheld the two preliminary objections raised on behalf of the respondents. Dealing firstly with the question of time limit he held that, at the date of filing the original application under Article 126 of the Constitution namely 18.07.2000, the person on behalf of whom it was filed was already dead and as such there was no application which the Court could have entertained. Therefore it should necessarily have been rejected. Consequently, the amended Petition filed on the 25.09.2000 with a different person as the petitioner, namely the widow as the legal representative of the deceased, becomes a new application, which then is time barred. However, he did not express an opinion on the issue whether the deceased's rights could devolve on the widow in a fundamental rights case.

Upholding the preliminary objection regarding the petitioner's *locus standi*, His Lordship held that Article 126(2) of the Constitution is plainly clear as to what it meant by "...any person...may by himself or by an Attorney-at-Law...apply to the Supreme Court by way of Petition...". Justice Edussuriya further remarked that the remedying of absurdities should be left to the Legislature. He approved Amarasinghe, J.'s judgment in Somawathie's case.

Several other issues of interest emerged from the judgement. The Supreme Court arriving at its conclusion noted that unlike in Somawathie's case, the detainee in the present case had died as a result of torture in police custody, which was the reason for the fundamental rights application. The question then arises as to whether this means that the judgement would apply only to torture cases where the victim

has died as a result of such torture inflicted upon him? If so, would not the proposition established with regard to *locus standi* in Somawathie's case still remain the general rule, while the present case would be an exception? How is the phrase "*anyone having a legitimate interest*" to be interpreted? Would this include only the dependants of the deceased, like in a delictual action? Would the heirs of the deceased be allowed to maintain a fundamental rights action on behalf of the deceased? Would the principle laid down in the judgement not extend beyond torture cases?

The Supreme Court seems to have been influenced in this case by the overwhelming need to avert a clear instance of miscarriage of justice when it expanded *locus standi* in an ostensibly limited way in this case.

## 5. Cases filed under Article 11

The year under review recorded two cases of custodial rape involving extreme cruelty, which abundantly epitomized the extent of human barbarism and reaffirmed the miserable status of the law enforcement institutions of the country.

In one case a Tamil woman alleged that she had been raped near a police checkpoint located in Colombo<sup>29</sup>. The petitioner complained that the first respondent came to her residence at about 3.00 a.m. and ordered her to accompany him to the Maradana Police Station. She complied with the request. However, she was not taken to the Maradana Police station and instead was forcibly taken to a place behind a checkpoint away from the main road where she was gang-raped.

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<sup>29</sup> *Velu Arasa Devi v. H.P. Kamal Priyantha Premathilaka, RPC of the Police Force and Others* S.C. Application No. 401/2001 S.C. Minutes 24.01.2002.

The State Counsel informed the Court that the Attorney General would prosecute the first to third respondents<sup>30</sup>. The Attorney General did not appear for these respondents as is usual in fundamental rights cases.

On the basis of the medical reports, the Court concluded that the petitioner had been gang-raped and subjected to unlawful restraint of her liberty and that the petitioner's fundamental rights under Articles 11 and 13(1) had been infringed by executive action. The petitioner was awarded Rs.150,000 as compensation payable by the State. It was of considerable interest to note that the Court held that rape could amount to torture under Article 11 of the Constitution.

The other case was an explicit outrage of human dignity<sup>31</sup>, where a 27-year-old Tamil woman was brutally tortured and raped. The case warrants attention for its inconceivable savagery.

The petitioner in this case alleged that she had been arrested by a group of policemen in civilian dress and then taken to Negombo. There, at about 6.30 p.m., she was put into a garage and handcuffed and was kept there till about 10.00. p.m. While she was inside the garage the police had accused her of being an LTTE suicide bomber and had assaulted her with a club on her knees, chest, abdomen and back, which gave her unbearable pain. Thereafter, she was put into a cell at Negombo Police station where she was again severely tortured. The petitioner alleged that her face had been covered with a shopping bag containing chilli powder mixed in petrol, which led her to suffocate. Her fingernails and her toenails had been pricked with pins. On one occasion she had

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<sup>30</sup> Since there is no formal channel to obtain information, it is not possible to know whether the criminal proceedings have in fact been initiated against the respondents.

<sup>31</sup> *Yogalingam Vijitha v. Wijesekara, RSI Negombo Police Station and Others*, S.C. Application No. 186/2001 (F.R.) S.C. Minutes 23.05.2002.



been stripped and assaulted with a club and wire and when she had fallen down, she had been trampled on by police officers who were wearing boots. On another occasion she had been hung by her arms and while she was suspended she had been assaulted. The petitioner further alleged that the policemen asked her to sign some documents and that when she refused to do so, they made her lie on a bench, held her legs apart and then shoved a plantain flower soaked in chilli powder into her vagina and pulled it in and out for about fifteen minutes. Being unable to bear the torture she had signed those documents. Later at the Vavuniya "Pass Office" she had been mercilessly assaulted when she failed to identify any member of LTTE from the bundle of applications for the issuance of "passes".

The first, second and ninth respondents<sup>32</sup> of the case submitted as a preliminary objection that the petitioner's application was out of time since an Attorney-at-Law had visited her when she was detained at the Terrorist Investigation Division. The third respondent's position was that since an Attorney-at-Law had represented her when she was produced before the Magistrate, the application should have been filed within one month from such date. The basis of both these objections was that the petitioner had the opportunity to file a fundamental rights application.

The Supreme Court, citing two early decisions, held that although an Attorney-at-Law had visited the petitioner when she was detained and an Attorney-at-Law had appeared for her previously, the petitioner was under restraint and that time did not begin to run until the petitioner was free enough to secure a copy of the Judicial Medical Officer's (JMO) report. On that basis, the preliminary objection was ruled out.

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<sup>32</sup> The 1<sup>st</sup> respondent is a Reserve Sub-Inspector of Police, the 2<sup>nd</sup> respondent is the Head Quarters Inspector and the 9<sup>th</sup> respondent is an Inspector of police attached to the Negombo Police Station.

The Supreme Court further observed that the B Report filed by the police and the detention order issued by the DIG contained different reasons for the arrest and detention of the petitioner and that therefore the respondents had failed to establish any acceptable or plausible reason upon which the petitioner was arrested and detained.

In addition to the JMO's report, which the Court held to be consistent with the petitioner's allegations, the consultant psychiatrist had reported that the petitioner possessed suggestive features of post-traumatic disorder with depressive features. The findings in the reports of the consultant obstetrician and gynaecologist and the consultant radiologist also confirmed the petitioner's allegation, which led the Supreme Court to the conclusion that the petitioner had been raped and severely tortured.

The Court awarded the petitioner Rs.250,000 as compensation and costs, of which Rs.150,000 had to be paid personally by the first, third and ninth respondents in equal shares and the balance Rs.100,000 by the State.

## **6. Right to conscience**

In *Angeline Roshana v. O.I.C., Narahenpita Police Station and Others*<sup>33</sup>, the Supreme Court, in addition to its finding on custodial torture, dealt with an interesting issue with regard to right to conscience. The petitioner alleged torture, illegal arrest and illegal detention. The petitioner was working as a domestic at the complainant's house and the first respondent, the O.I.C. of the Narahenpita Police Station, arrested the petitioner by virtue of a complaint lodged by the complainant that the petitioner had stolen a gold wristwatch from her house.

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<sup>33</sup> S.C. Application No. 1/2001 (F.R.) S.C. Minutes 02.08.2002.

Evidence revealed that the petitioner had been detained for two days before she was produced before the Magistrate. The petitioner complained to the Magistrate that she had been assaulted while she was at the police station and showed to the Magistrate some of the injuries she had sustained as a result of torture. In the JMO's report it was concluded that the injuries were due to an assault with a blunt object and were about two days old. The court observed that the petitioner's allegations were amply established by medical evidence and the affidavits given by her mother, father, sister and a neighbour.

A preliminary objection was raised on behalf of the first respondent on the basis that the petitioner's affidavit was defective and that therefore the application should be dismissed *in limine*. The affidavit read, "... do sincerely, truthfully and solemnly swear and affirm...I am the affirmant named above..." and the jurat was worded as "I have read and understood the above declaration and signed it under oath on 31<sup>st</sup> day of December 2000". It was contended by the first respondent that a person could not both swear and affirm; that it was contradictory for the petitioner to purport to take an oath and yet to describe herself as an "affirmant" and the jurat should contain a statement by the Commissioner for Oaths and not a statement by the petitioner herself in the first person.

Referring to sections 181 and 438 of the Civil Procedure code No. 2 of 1889 as amended the Court observed that although a person who makes an affidavit is usually described as a "deponent" it would not be incorrect to describe him as a "declarant". The Court held that,

*"A person who does believe in a binding force of an oath may make without doing violence to his beliefs a solemn declaration or affirmation. Of course, such an affirmation alone may not suffice to constitute a valid affidavit, but the addition of an affirmation will not vitiate an otherwise valid oath; and the description of the*

*petitioner as an "affirmant" did not invalidate the oath which she took"*

The Court however held that the jurat was defective as contended by the respondents. Nevertheless, it was observed that since the Commissioner's attestation confirmed that the document was signed under oath in his presence, the affidavit was still valid. The Court indicated that in any event if the opportunity arose the Court would have allowed the petitioner to correct those defects.

The Court further observed that,

*"While it is inappropriate for a person to take an oath or swear, if for him an oath has no binding force or if he has a conscientious objection to make an oath, the converse is not true."*<sup>34</sup>

## 7. Torture

In addition to the cases of rape discussed above, several other cases dealt with the issue of torture.

In *Rohana Chandrakumara v. O.I.C., Special Investigation Unit-Peliyagoda Police Station and Others*<sup>35</sup>, the petitioner complained of

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<sup>34</sup> It is however not clear whether the Court was further influenced by the considerations found in Article 10 of the Constitution. Article 10 provides that "Every person is entitled to *freedom of thought, conscience and religion* including the freedom to have or to adopt a religion or belief of his choice". (Emphasis added).

<sup>35</sup> S.C. Application No. 681/2000 (F.R.) S.C. Minutes 05.06.2002.

torture, illegal arrest, and illegal detention<sup>36</sup>. However, leave was only granted in respect of Articles 11 and 13(1).

The first, third, and fourth respondents submitted that the petitioner's injuries were caused by a fall, which he sustained as a result of fleeing from the respondents. The Court observed that the first respondent's notes did not reveal any fall and that one constable in his notes had categorically stated that he dealt some blows with his baton to the petitioner's leg in order to overpower him and to remove a bomb in his hand. The medical evidence showed that the petitioner's right knee had been dislocated. If the injury had occurred as a result of a fall there would have been no necessity for the first respondent to deal any blows to overpower him. The Court held that on a balance of probability it was evident that first respondent was responsible for the injury caused to the knee of the petitioner.

With regard to the alleged violation of Article 13(1), the Court held that the petitioner had been informed of the reason for his arrest.

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<sup>36</sup> The petitioner complained that he had been arrested on 2.11.2000 by the first, third, and fourth respondents who had arrived in a trishaw and thereafter transferred to a police jeep. He had then been blindfolded and taken to Peliyagoda Police station and then to Meegahawatta Police station. On the way the petitioner had been made to lie on the floorboard of the jeep. At Meegahawatta Police station he had been stripped and hung and assaulted with batons. As a result his right leg had been injured. Thereafter he had been taken back to the Peliyagoda Police station on 03.11.2000.

*Nilruk Ihalakathrige v. Commanding Officer, Sri Lanka Corps of Military Police, Vavuniya*,<sup>37</sup> was an application filed by a mother who alleged that the respondents by their action had infringed her daughter's fundamental rights by subjecting her to torture and inhuman and degrading treatment.<sup>38</sup>

Nilusha Hemali had been seen by a consultant physician at the National Hospital Colombo and the Court observed that the medical evidence was consistent with the petitioner's allegation that her daughter had been assaulted while she was detained at the Medawachchiya camp. The Court observed that the respondents had not revealed the nature of the offence allegedly committed by Nilusha and held that the petitioner's rights under Article 11 of the Constitution had been infringed by the respondents. The Court directed the State to pay Rs. 25,000 to the petitioner by way of compensation. The petitioner was also granted Rs. 5,000 as costs.

In *Don Siripala v. SI Nandana Wijesinghe, Matugama Police Station and Others*<sup>39</sup> the petitioner, a 50-year-old casual labourer, stated that

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<sup>37</sup> S.C. Application No. 691/2000, S.C. Minutes 04.06.2002.

<sup>38</sup> The petitioner alleged that her daughter, a lance corporal, had been tortured by personnel at the Medawachchiya Army camp. The petitioner's mother submitted that when she called the Anuradhapura Camp on 08.12.2000 she was informed that her daughter had been sent to the Medawachchiya Camp in order to obtain a statement. Since her daughter did not call her as promised, the petitioner went to the Anuradhapura camp with her sister and brother-in-law and Nilusha told them that she had been taken to the Medawachchiya camp was severely assaulted by the third to the sixth respondents. She said that these respondents had chained her to a window and assaulted her with their boots. She said that on 9.12.2000, when she had refused to sign a statement, the first respondent had assaulted her on her legs, arms and spine with a rod and pricked her arms with a sharp instrument. She had also been subjected to an "extra pack drill" at the Medawachchiya camp. Later she was hospitalised.

<sup>39</sup> S.C. Application No. 213/2001 (F.R.) S.C. Minutes 31.05.2002



he had been taken into custody by some officers of the Matugama Police Station and had been severely assaulted. The petitioner further stated that the police officers had removed his clothes and blindfolded him and assaulted him with an iron rod. He had been made to sit on the head of a bed and given a severe blow. He had later been hospitalised and the medical records revealed that he had sustained fractures. He underwent surgery and his hands had been fitted with metal plates. The respondents submitted that the petitioner had sustained injuries at the time of his arrest due his resistance to the arrest.

The Court observed that the petitioner could not have sustained all his injuries at the time of his arrest and held that the petitioner had been tortured.

## 8. Emergency Regulations (ER)

In *Manickam Thavarasa v. O.I.C. STF Camp, Thirukkivil and Others*<sup>40</sup>, the petitioner, a 48-year-old manual labourer, complained that he had been unlawfully arrested and detained and had been severely assaulted while in police custody<sup>41</sup>. The Court ruled on evidence that the arrest of the petitioner by the respondent had not been unlawful and the first respondent had given the petitioner sufficient reasons for his arrest.

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<sup>40</sup> S.C. Application No. 09/2002 S.C. Minutes 16.09.2002.

<sup>41</sup> The petitioner was arrested on 07.02.2001 by the officer of the Thirukkivil STF camp and handed over to the second respondent, the OIC STF Camp at Ampara on 08.02.2001. The petitioner was kept at the Ampara STF Camp until 07.05.2001 and he alleged that during the period 9.02.2001 to 7.05.2001 while being interrogated he had been hand cuffed and assaulted with wooden poles and burnt with ignited cigarette butts. Though the petitioner was produced before the Magistrate on two occasions, it was only on the second occasion that he complained to the Magistrate that he had been assaulted while he was in custody at Ampara STF Camp. As ordered by the Magistrate, the JMO examined the petitioner on 07.05.2001.

It was submitted on behalf of the petitioner that he had first been produced before a Magistrate only three months after his arrest. The second respondent relied on two detention orders issued under Regulation 19(2) of the Emergency Regulations No. 1 of 2000 to justify detention up to 90 days. The Supreme Court observed that,

*“ Regulation 19(2) provided for the detention of any person in terms of Regulation 18 for a maximum period of ninety days. This does not mean that the detention of a suspect for the full period is mandatory. The purpose of detention of a suspect under Regulation 19 is for further investigation, which should be completed without undue delay and steps must be taken either to indict or to discharge a detenu as early as possible.”*

The court further observed that according to evidence before it, the second respondent had unnecessarily prolonged the detention of the petitioner without any valid reason, which resulted in the infringement of the petitioner's fundamental rights guaranteed under Article 13(2) of the Constitution.

The second respondent submitted that the petitioner had not been assaulted while he was in his custody and that the petitioner himself had inflicted the alleged injuries with the intention of getting discharged from custody. The Supreme Court dismissed this contention and based on the medical evidence tendered, the Court accepted the petitioner's allegation that he had been severely assaulted and burnt by the officers under the second respondent's charge.

In *Abeyratna Banda v. Keerthi Gajanayake Director, C.I.D. and Others*,<sup>42</sup> the petitioner was a civil officer who was in charge of the Bindunuwewa rehabilitation camp. The inmates had demanded that

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<sup>42</sup> S.C. Application No. 653/2000 (F.R.) S.C. Minutes 02. 08.2002.

they be allowed to leave as soon as they had finished a three months rehabilitation period. Despite the petitioner's promise to look into the matter the next day, the inmates had started a protest which subsequently turned violent. The Headquarters Inspector of the Bindunuwewa police and the army officers who arrived at the scene from Diyatalawa managed to calm the inmates. The Army thereafter left while the police stayed on overnight to maintain security at the camp. The next morning by about 7.30 a.m. outsiders had gathered near the camp shouting slogans against the inmates and the petitioner. By about 8.15 a.m. a mob of about 2000 persons armed with clubs, swords and axes and fire arms broke into the Camp and attacked the inmates. The police did nothing to stop them and within minutes the intruders had killed 24 inmates in the most gruesome manner. On 26.10.2002 the first, second and third respondents questioned the petitioner about the incident. The petitioner was then told to get into a Criminal Investigation Department (C.I.D.) vehicle and was taken to the 4<sup>th</sup> Floor of the C.I.D. in Colombo, wherein a further statement was recorded. He was thereafter detained and released on bail on 21.03.2001.

According to the notes of arrest of the third respondent, the charge against the petitioner was that he had acted and behaved in such a manner as to create disaffection between the Sinhala and Tamil communities, and thereby contravened Emergency Regulation 24(1) (a), (b) and (3) and Emergency Regulation 26(a) and (c). However, the petitioner had not been taken to the Bindunuwewa Police, but to Colombo.

The respondents' position was that the petitioner had to be arrested because the above Emergency Regulations included illegal omissions, that the inaction of the police officers present at the time constituted illegal omissions, that the petitioner knew of those illegal omissions and that petitioner as the officer in charge of the camp was responsible

for the illegal omissions or culpable inaction of those police officers. The Supreme Court observed that,

*"The available evidence overwhelmingly indicates that the petitioner's responsibility was confined to administration of the camp and did not extend to the security of the camp or the safety of its inmates (which fell within the sole purview of the Bandarawela police through their police post within the camp). He had no power to give orders to the police and cannot be held liable for the failure to exercise an authority, which he did not have. Despite his lack of authority over the police, he nevertheless asked them and pleaded with them to restrain the mob. What is more, despite being unarmed, and at some risk to himself, he even went up to the mob and asked them to disperse and, later, to spare the inmates."*

The Supreme Court further observed that having arrested the petitioner for the specific reasons set out in the second respondent's notes of arrest, the respondents could not now contend different reasons. The Court declared that,

*"If there is credible information or reasonable suspicion that a person has committed an offence, he cannot be arrested for the purpose of investigation, fishing for evidence against him"*

The Court observed that any person detained under Emergency Regulation 18(2) who is arrested under Emergency Regulation 18(1) should be handed over to the nearest police station within 24 hours. Although Regulation 19(1) excludes the application of Sections 36, 37 and 38 of the Criminal Procedure Code, a person arrested and detained under Regulation 18 should be produced before a magistrate within a reasonable time. The Court held that the Criminal Investigation Department (C.I.D.) had failed to follow the prescribed procedure under

the Emergency Regulations by failing to hand over the petitioner to the Bandarawela police station and that the C.I.D.'s act would have been justified if the C.I.D. had been prevented from producing the petitioner before a magistrate in Bandarawela for whatever reason.

The Court held that the detention was illegal as the Emergency Regulation 19(2) extends only to any person detained in pursuance of Emergency Regulation 18 and because it does not include a person detained in pretended or purported pursuance or in abuse of that provision, but only a person who is lawfully and properly detained under that provision, and further the only material available to the fourth respondent was the petitioner's statement and that did not incriminate the petitioner in any way.

The Court further held that,

*“ ER 19(2) authorised detention for the purpose of investigating offences, and not just any offences, but the offences for which he was arrested”.*

## 9. Conclusion

The year under review saw several important judgements being handed down by the Court, in addition to the now “routine” matters under Article 12(1). To allow the wife of a deceased detainee to maintain a fundamental rights action as the legal representative is a significant development in fundamental rights jurisprudence. What is salutary is the recognition in this judicial thinking of the *sui generis* character of the Constitution and the constitutional guarantees enshrined in its fundamental rights chapter. Several other important judicial pronouncements can be observed. The Supreme Court has ventured to

define the limits in the application of some of the laws that impinge particularly on civil liberties. It must be noted that laws which have been condemned as "draconian" are still in force, such as Prevention of Terrorism Act and therefore, it is submitted that the very strict interpretation of such laws by the Supreme Court in order to safeguard the rights of persons presents clear evidence of an increasing judicial activism.

The reported incidents of custodial rape manifest an absolute disregard for the integrity of the woman. The case where a woman was raped behind a checkpoint located in the capital city of the country raises serious concerns about the safety of women in Sri Lanka. Action must be taken to eliminate incidents of this nature.

The incidence of torture in the custody of the law enforcement officers is reprehensible and must be vehemently condemned by everybody in society. It is a must that severe disciplinary action be taken and criminal action be instituted where necessary against the officers responsible. The gravity of reported incidents provides good reason for an inquisition into these officers' psyche, which seems replete with sadism. It is essential that law enforcement officers are educated on the importance of the protection of human rights. It is equally important that they be sensitised on issues concerning women, children and the other vulnerable groups in society. Further, measures should be introduced to dispel the inimical attitude of these law enforcement institutions towards the ordinary citizens by building up a close relationship between such institutions and the people.



## VIII

### Rights of Prisoners

*H.G. Dharmadasa\**

#### 1. Introduction

Prisons have existed for a long time. The Bible mentions prisons, prisoners and jailors. King Herod imprisoned John the Baptist and was later beheaded in prison (Matthew 14). The Jewish leaders sent Jesus to Roman governor Pilate's prison. The Buddhist scriptures (Anguttara Nikaya) and the Hindu Mahabharatha and Ramayana refer to imprisonment. In England, both lay and ecclesiastical authorities had prisons. There is historical evidence that prisons existed in ancient Sri Lanka. The Mahawamsa mentions the imprisonment of Wijaya

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and his seven hundred men by Kuveni. Robert Knox in his book *An Historical Relation of Ceylon* mentions the Maha Hirage and the royal villages that held prisoners like him in captivity in the 17<sup>th</sup> century Kandyan kingdom. In Part II, Chapter II he says about the King's prisoners: "*Moreover he hath a great many prisoners, whom he keepeth in chains, some in the common gaol, some committed to the custody of Great men.*"

However, the modern prison, the imprisonment of offenders as the main form of punishment and prisoner rehabilitation are relatively new concepts even in developed countries. Prior to the 19th century, the traditional forms of punishments widely used were fines, the infliction of physical pain or mutilation, execution and banishment. A large number of offences carried the death penalty. In those early times prisons were places that usually held persons awaiting trial or punishment. Only persons who had committed certain specific offences were convicted to undergo sentences of punishment in prison. Imprisonment as a deliberate punitive device to deal with criminal offenders was introduced less than two hundred and fifty years ago. This was mainly the situation in the Western world.<sup>1</sup>

Until the first half of the 20<sup>th</sup> century, prisoners were considered as persons who had few or no rights. In 1891 a federal court in the United States declared that the convicted criminal has, as a consequence of his crime, not only forfeited his liberty, but also his personal rights. He was for the time being considered a 'slave of the state'.<sup>2</sup>

It was not until the 1940s that the courts in the USA changed their attitude towards the rights of prisoners. In 1944 a federal court declared

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<sup>1</sup> Sue Titus Reid, *Criminal Justice*, Florida State University, (1996) Chapter 10, pp324-325.

<sup>2</sup> *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796(1871)].

that, "a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not deny his right to personal security against unlawful invasion."<sup>3</sup> In another landmark judgement of the American Supreme Court, Justice White said: "But though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the constitution and the prisons of this country."<sup>4</sup> The rights referred to here were the rights enshrined in the American Constitution. However, during the early period the courts intervened only if necessary to protect prisoners from death or serious bodily harm at the hands of prison authorities. The Supreme Court of India, more recently in *Sunil Batra (II) v. Delhi Administration* (1980) 3 S.C.C.488 stated that courts had jurisdiction and a duty to intervene to protect the fundamental rights of prisoners. The Court further said that judges are the guardians of prisoners' rights because they have a duty to secure the execution of the sentences without excess and to sustain the personal liberties of prisoners without violence or violation of the inmate's personality. In *Amal Sudath Silva v. Kodituwakku* (1987) 2 Sri LR 119, the Supreme Court of Sri Lanka stated: "The petitioner may be a hard-core criminal whose tribe deserves no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set up, it is essential that he be not denied the protection guaranteed by our Constitution."

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<sup>3</sup> *Coffin v. Reichard* 143 F.2d 443.

<sup>4</sup> *Wolff v. McDonnell* (1974) 41.L Ed. 2d 935.

## **2. International Instruments**

Some of the principles set out in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 and the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 had a significant impact on the rights of prisoners. These international instruments were adopted to promote the dignity of all human beings, including those accused of and convicted of crime. In addition these instruments embodied specific provisions for the protection of such persons. These include the right to a fair trial, the presumption of innocence and the right to appeal against any conviction. They are also protected by the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and have the right to freedom from arbitrary arrest or detention. These broad protections provided for detained persons or prisoners in the UDHR and the ICCPR have been spelt out in about 30 UN instruments relating to the control of crime and treatment of offenders. Some of these instruments are multilateral treaties while the others are resolutions adopted by the General Assembly and its subsidiary bodies. While the latter instruments are not binding on states, they are useful in interpreting and implementing broader human rights standards and guarantees in national legislation. Sri Lanka ratified the ICCPR in 1980.

The UN instruments on crime control and treatment of offenders can be classified under six subject categories. They are:

- 1) Instruments dealing with prison conditions;
- 2) Instruments prohibiting torture and ill-treatment;
- 3) Instruments prohibiting arbitrary executions;
- 4) Instruments supporting access to lawyers and the judicial process;
- 5) Instruments encouraging alternatives to imprisonment;

6) Instruments promoting appropriate treatment of juvenile offenders.

The most important instrument under the first category is the Standard Minimum Rules for the Treatment of Prisoners adopted by the first UN Congress on the Prevention of Crime and Treatment of Offenders held in Geneva in 1955. These rules, adopted by the Economic and Social Council in 1957, set out the minimum standards that are acceptable for holding prisoners. They contain extensive guidelines setting out the minimum requirements for the physical conditions in which all prisoners should be held. The rules also provide protection against mistreatment, particularly in relation to the enforcement of discipline and the use of instruments of restraint in penal institutions.

Another important instrument under the first category is the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, promulgated by the UN General Assembly in 1988, which provides important guidelines for the application of the general principles of the UDHR and the ICCPR to persons in detention or imprisonment. It contains the measures that are necessary for the protection of the rights of detainees.

With regard to the second category, the most important instrument is the Declaration on the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1975. The provisions of this Declaration were given the force of international law by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984. Sri Lanka ratified this Convention in 1994. Prohibition of torture and ill treatment is now a norm of customary international law. The Committee against Torture, established under the Convention, supervises the implementation of the Convention by State parties and seeks to resolve cases of alleged torture

brought to its attention. Another instrument that is applicable to prisoners under the second category is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985. This Declaration calls upon States to provide remedies, including restitution and/or compensation, and necessary material, medical, psychological and social assistance to victims of official abuse and to provide them with access to justice. To this category may be added the Declaration on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.

The instruments under the third category – disappearances and arbitrary execution – are relatively new. The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions were adopted by the UN Economic and Social Council in 1989 and the Declaration on the Protection of All Persons from Enforced Disappearances was adopted by the UN General Assembly in 1992.

Instruments supporting access to lawyers and the judicial process that fall under the fourth category are particularly relevant to detained and convicted persons. The assistance of legal counsel is considered so important to preserving the human rights of persons in custody that it is spelt out in Article 14 of the ICCPR. The Standard Minimum Rules For the Treatment of Prisoners also stresses the importance of effective access by detained persons to their legal counsel. The other instruments of relevance are the Basic Principles on the Role of Lawyers, adopted by the 8<sup>th</sup> UN Congress on Prevention of Crime and Treatment of Offenders in 1990, and the Basic Principles on the Independence of the Judiciary, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985. The independence of the judiciary is important to persons in detention to ensure that their cases are decided according to the rule of law, free from improper pressure.



Instruments under the fifth category encourage alternatives to imprisonment or non-custodial measures for both convicted and unconvicted prisoners. Article 9(3) of the ICCPR states that: *"It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial..."* The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), adopted by the General Assembly in December 1990, seeks to interpret and give effect to this provision. The Tokyo Rules define the term "non-custodial measures" as any decision made by a competent authority, at any stage of the administration of criminal justice system, which requires a person suspected of, accused of, or convicted of an offence to submit to certain conditions or obligations that do not include imprisonment. As most states use imprisonment as the main form of punishment for criminal offences, these rules are of great importance. It is most important for states to look into ways of keeping the greatest number of potential prisoners out of prison, since overcrowding in prisons due to the indiscriminate use of imprisonment for detention and punishment is the major factor contributing to the abuse and denial of prisoners' rights.

The instruments discussed under categories one to five above are applicable to both adults and juveniles, while the sixth category deals exclusively with the treatment of juvenile offenders. In 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules. Two other instruments interpreting the Beijing Rules in detail were adopted by the General Assembly in 1990. They are the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. These instruments were promulgated with a view to providing better care-oriented treatment of juvenile offenders in keeping with the provisions of the Convention on the Rights of the Child. These rules focus on the reform of the

juvenile offender in order to reduce or eliminate any subsequent criminal behaviour.

### **3. Prisoners' Rights and National Legislation**

The successful implementation of United Nations instruments depends on the efforts made by national governments. Incorporation of the norms, guidelines and conventions into national law is a major part of these efforts. Being a signatory to the ICCPR, Sri Lanka has incorporated some of these rights into the Constitution of the Republic; Article 10- Freedom of thought, conscience and religion, Article 11- Freedom from torture, Article 12-Right to equality, Article 13-freedom from arbitrary arrest, detention and punishment, Article 14-freedom of speech assembly, association, occupation, movement, &c. The fundamental rights enshrined in Articles 10, 11, 12 and 13 of the Constitution are applicable to all persons, including prisoners. However, the rights under Article 14 are applicable to prisoners subject to such restrictions prescribed by law and other necessary implications that arise as a result of his status as a prisoner.

The Bail Act No. 30 of 1997 has enacted laws for the release of persons awaiting trial in keeping with Article 9(3) of the ICCPR and the UN Standard Minimum Rules for Non-Custodial Measures. The Act declared that the guiding principle in the implementation of the provisions of the Act shall be that the grant of bail shall be the rule and its refusal shall be the exception.

The Community Based Corrections Act No. 46 of 1999 is another important statute which provides for community-based correction orders to be issued by a court in lieu of a prison sentence.

The other important piece of national legislation giving effect to an international convention is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994. Torture has been made an offence punishable with imprisonment under this law. This is an addition to its incorporation in the fundamental rights chapter of the constitution.

The laws governing the administration of prisons in Sri Lanka are contained in the Prisons Ordinance of 1878 and the Prison Rules (subsidiary legislation). One would not expect the Prison Ordinance passed in 1878 and amended only a few times later or the Prison Rules established under the Ordinance to contain the standards stipulated under the UN Standard Minimum Rules (UNSMR). However, Sri Lanka is fortunate that the laws governing the administration of its prisons contain most of the standards stipulated under the UNSMR. The main reason for this is that by the time the British colonial rulers introduced the Prisons Ordinance to Sri Lanka, many revolutionary prison reforms had taken place in the United Kingdom and many changes had been introduced to UK prison laws. The prison reforms that took place in the 19<sup>th</sup> century in the UK, other European countries and the USA finally led to the introduction of the UNSMR. By the time they were introduced in the UN, a large part of these standards had already been introduced in many western countries and in their colonies, such as in Sri Lanka.

A few examples may be cited to demonstrate how compatible our prison regulations are with the UNSMR.

Rule 8 of the UNSMR stipulates the minimum standard to be observed in the separation of categories of prisoners. Prison Rules 177 and 178 are almost identical to Rule 8 of UNSMR. Similarly Section 70 of the Prisons Ordinance and prison rules 157 and 160 are completely compatible with UNSMR 15 and 16 regarding the personal hygiene of

prisoners. According to Rule 20 of UNSMR: "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served." Prison Rule 222 states that: "Every prisoner shall be supplied with a sufficient quantity of plain and wholesome food." Further to this, Prison Rule 55 states that: "The Medical Officer shall daily examine the food provided for the prisoners, in order to see that it is of proper quality, and shall enter in his journal any defect in quantity or quality which he may note." Prison Rule 25 states that the superintendent shall frequently inspect the provisions furnished for the prisoners, and satisfy himself by personal observation regarding the quality of the different articles of food supplied for their use.

Although many of the standards set out in the UNSMR have already been incorporated into prison statutes there are some that have been omitted. These include special accommodation for pre-natal and post-natal care and treatment. Provision also has to be made for nursery facilities with qualified staff for the care of the infants in prison and for indemnifying a prisoner in the event of industrial injury.

Despite Sri Lanka's national law being fairly compatible with international standards on administration of prisons and the treatment of prisoners much still remains to be done in this area. For example, Sri Lanka does not have a separate parole law or proper legal framework for home leave and work release programmes. For over thirty years these programmes have been implemented under just one section of the Prevention of Crimes Ordinance of 1926 and ad-hoc administrative directives. In the absence of a proper legal framework for the operation of these programmes, politicians tend to tinker with the administrative regulations in an arbitrary manner. After 1997, there was a complete suspension of the programme for releasing of prisoners on license (the Sri Lankan equivalent of parole) for the mere reason that the minister responsible did not favour such releases.

Attempts were made by the Ministry of Justice (which until 2002 was the ministry responsible for prisons) to revise the entire body of prison law in keeping with national and international developments. Just when this review was about to be concluded, the subject of prisons was assigned in 2002 to the newly established Ministry of Interior and the project was discarded; the documents are presumably gathering dust in some corner of the Ministry of Justice.

#### **4. Current Situation Regarding Rights of Prisoners in Sri Lanka**

When Sri Lanka gained independence in 1948 it inherited a well-established prison system from the British, though most prisons were about 75 years old even then. Since independence prisons have received a very low priority in the development programmes of successive governments and today prisons continue to receive very low priority within the criminal justice system. While the police service and the court system have seen vast improvements during the last few decades, there has been hardly any improvement in the prison structure. Most prisons are well over one hundred years old. The three main prisons - Welikada, Bogambara and Mahara - are over 125 years old. The multi-storied buildings in them, built of bricks, lime and sand with wooden floors, have long outlived their usefulness and cannot accommodate present-day needs.

The most serious problem that the prison administration faces today is severe overcrowding, a problem which is aggravated by under-funding. The authorized accommodation available in prisons country-wide is for 7,641 prisoners, including the facilities added in recent years at Polonnaruwa, Moneragala and Kuruwita. According to unpublished prison statistics, during the year 2002, the daily average number of prisoners was about 18,000. This is an overcrowding level of about 135% on average.

This problem becomes even more grave when figures for convicted and remand prisoners are analyzed separately. Of the total of 18,000 prisoners, about 8,000 are convicted prisoners and about 10,000 are remand prisoners. The authorized accommodation for convicted prisoners is about 5,500 and that of remand prisoners is about 2,200. Therefore the rate of overcrowding is 45% for convicted prisoners and 345% for remand prisoners.

Overcrowding in prisons has reached catastrophic proportions resulting in the inevitable violation of the UNSMR and deprivation of the rights of prisoners. The problem is not only that there is a lack of space or accommodation for all these prisoners, it is also that there is insufficient provision of water, sanitary and recreational facilities and essential items of equipment such as bedding, plates, mugs, towels and clothing.

From the point of view of the human rights of prisoners, Sri Lanka is fortunate that there has been an international external monitoring mechanism in operation over the last twelve years. Since 1991, officials from the International Committee of the Red Cross (ICRC) have visited Sri Lanka's prisons on a regular basis and reported their observations to the government. The ICRC has access to any part of a prison and is permitted to speak to prisoners in private without any interference from prison officials. In the year 2002, the ICRC had visited Mahara, Bogambara (Kandy), New Magazine, Kuruvita, Anuradhapura, Tangalle, Badulla, Matara, Batticaloa and Polonnaruwa prisons as well as Welikada Female Prison.



## **5. Observations of the Research Team on Physical Conditions of Detention**

The writer and two research assistants visited prisons and interviewed prison officials and prisoners on the physical conditions of detention. The research team also drew on the reports made by the ICRC on these issues.

### **5.1 Remand Prisoners**

During its visit to Welikada prison in February 2003, the premier penal institution in the country, the research team found the conditions deplorable, especially in the remand section. The prison has an authorized capacity of 1,500 prisoners, but was holding nearly 4,000. Welikada prison, which is the designated prison for first offender convicts, was also holding a large number of remand prisoners due to overcrowding of remand prisoners in Colombo prisons. Remand prisoners were housed in a three-storied building known as the L-Hall. The authorized number that can be housed in this building is 307, but officials informed us that throughout 2002 an average of some 1,400 remand prisoners were housed there. This is an overcrowding level of over 450 per cent. During the research team's visit, which was in the morning, hundreds of inmates were lying on the floor with nothing to do. The building, a part of the old colonial structure, was in a very bad state of disrepair. Inmates and officers informed us that the roof leaks during the rainy season, flooding the floors. The walls were so dirty that it was not possible to see any paint on them. Plaster on the walls had come off in several places. At the far end of the building the ground floor was wet, slippery and filthy. Electrical wiring dangled from sockets in many places, sometimes with bare wires exposed, posing a risk of fire and electrocution.

The lack of ventilation in the entire building created a suffocating atmosphere. The small openings in the cells that passed off for windows

did not permit sufficient inflow of fresh air. The situation was made worse by the severe overcrowding. The odour and heat emanating from unkempt human bodies and the filthy surroundings were overwhelming. Cells and corridors were infested with bugs and cockroaches. Although officials informed the team that insecticide is sprayed several times a month, the prisoners said that spraying was not done regularly and that the cells are always infested with bugs, cockroaches and other insects.

Prisoners complained that there were no electric light bulbs in the cells, saying that at night, lights were available only in the corridors. This meant they had to spend the entire night in dark cells. However, the officials informed the team that prisoners in the L-Hall were not locked up in cells due to severe overcrowding and that large numbers of prisoners slept in the corridors.

Prisoners also complained of inadequate water for both drinking and washing. As running tap water was available for only a short period each day, prisoners had to collect water in plastic containers. Bathing facilities were scarce. While officials claimed that each prisoner had a bath once every two or three days, most remand prisoners the team interviewed said they could bathe only once a week and even then they could only use a few buckets of water. Toilet facilities were also woefully inadequate. There were only eight functioning toilets for the entire population of 1,400 prisoners – that is, one lavatory for 175 people. It was also very apparent that the remand prisoners did not have sufficient facilities to cut their hair or shave. Many prisoners had long unkempt hair and unshaven beards. The officials informed the research team that prisoners were not permitted to use razors for security reasons and that the barbers cannot cope with the large numbers of prisoners.

Remand prisoners at Welikada Prison were provided with very little bedding. The team observed that some prisoners were provided with

plastic mats, but others slept on gunny bags and yet others lay on the bare cement floor. No remand prisoner was provided with a pillow or bed sheets. Clothing was also woefully inadequate. Most remand prisoners did not have proper clothing and some wore dirty, worn-out rags. It is degrading and humiliating for prisoners to be held in such conditions. Although the Prisons Ordinance and the Rules make provision for remand prisoners to exercise their right to get clothing, bedding and other necessities from private sources, only a small proportion of the prisoners are actually able to exercise this right. Prison Rule 191 states, "Where any unconvicted prisoner is unable to provide himself with sufficient clothing or bedding, the Superintendent shall supply him with such clothing or bedding as may be supplied in similar circumstances to a civil prisoner under section 61 of the Prisons Ordinance". However the prison officials said that it was difficult to comply with this legal provision, as no funds were available for such purposes.

Remand prisoners had little or no facilities for recreation. They were locked up in the L-Hall throughout the day. There were no indoor games such as carom or draughts. There was one television set for all 1,400 prisoners. Officials informed the team that there was a centrally-operated radio system and prisoners have the opportunity to listen to the radio. However, prisoners complained that very often the speakers malfunctioned.

## **5.2 Convicted Prisoners**

The convicted prisoners at Welikada Prison were housed in a three-storied building spread out over four wings known as the Chapel Side. Here too, the buildings are over 125 years old and made of bricks, lime and sand with wooden floors. Inside, the building was gloomy as no sunlight filters in. The ground floor sections were damp and humid. The research team observed from the records that in most cells more

than five prisoners were locked up for the night. Given that there is 54 square feet of floor space in a cell, they were badly overcrowded. The advantage that the convicted prisoners had over the remand prisoners was that they spent only the night (from 6 pm to 6 am) in the cells. During the daytime they were employed in the workshops.

Convicted prisoners at Welikada prison had similar problems to their remand counterparts with regard to bedding, clothing, water and recreation. Prison Rule 223(1) states that 'every convicted prisoner shall be provided with and be compelled to wear and to use prison clothing and equipment respectively of a type approved by the Government and in accordance with the scales laid down in Schedule II to these rules.' The Schedule states that each prisoner should be issued with the following items:

Trousers, white	3
Jumpers, white	3
Blanket or cumby	1
Hand towel	1
Pillow and slip	1

However, it was observed that a large number of prisoners were wearing worn-out, dirty clothes while only a small number wore clean white prison suits made of better material. The officials explained that it was not possible to issue clothing according to the schedule to all prisoners due to lack of funds. They said that because large numbers of short-term convicted prisoners were admitted daily, they were compelled to issue clothes used by the discharged prisoners without washing them, which needless to say is a very unhealthy practice. Due to the shortage of official prison clothing, the authorities have unofficially permitted prisoners who can afford it to have clothes brought from home which conform to the prison type. Only a limited number of long-term

prisoners have been issued with blankets or bed sheets while hand towels have not been issued to any prisoners for many years. Large numbers of prisoners are not issued with pillows and slippers.

Although the prisoners were provided with an adequate quantity of food, the quality was poor, largely due to poor preparation. Prisoners cooked food themselves under the supervision of prison officers. There were no qualified cooks among the staff or the prisoners. The kitchen surroundings were unclean and the drains were blocked with kitchen refuse; there were flies everywhere. Some prisoners complained that some food items go missing even after reaching the kitchen. All this has resulted in the prisoners being deprived of wholesome meals which meet their nutritional needs.

Prisoners at Welikada prison also complained about the inadequate medical facilities there. They said that a medical officer is present only for about two hours a day, during which time only a limited number of prisoners are seen. Although there are as many as 40 prison rules on the Prison Medical Officer in the legislation, most of the rules were observed in the breach as there was no permanent medical officer at Welikada prison.

Convicted prisoners at Welikada Prison also suffer from inadequate toilet facilities. Most toilets were unclean and not properly maintained. Prisoners complained that they have to queue for a long time to answer a call of nature. They said some prisoners use polythene bags to defecate into, which they then throw into the toilets, blocking them up. Further, when prisoners are locked up for the night the cells contain no toilet facilities. They have to use a bucket, which must be kept in the cell until the following morning. With five or six prisoners in a cell of just 54 square feet, this is very humiliating and degrading.

Convicted prisoners also have very few facilities for recreation and sports. For the entire convicted population of over 2,500 people, there were only three volleyball courts, and these could only be used on weekends and holidays. Very few carom boards and draughts boards were available for indoor games. Prisoners had common television facilities but these were inadequate.

### **5.3 Observations made by the International Committee of the Red Cross.**

The International Committee of the Red Cross (ICRC) has visited the prisons in Sri Lanka on a regular basis for over twelve years. Upon an agreement entered with the Sri Lankan government the officials of the ICRC have been granted unrestrained access to all the prisons in the country for the purpose of evaluating the conditions and treatment of prisoners. They are permitted to talk to the prisoners freely and without the presence of prison officials. This internationally recognized external monitoring mechanism for prisons has enabled the Sri Lankan Government to make a valid assessment of the standards maintained in the treatment of prisoners in the country without any official bias. The ICRC officials have visited every prison in the country at least once each year and made a confidential report to the Acting Commissioner General of Prisons. I am thankful to the Commissioner General of Prisons for allowing me access to these reports.

On 19<sup>th</sup> of September 2002, ICRC officials made their annual visit to Bogambara Prison (Kandy) and reported to the Commissioner General of Prisons. The report stated that certain prison staff had ill-treated prisoners for several years. The ICRC had already expressed its concern about this in its reports to the Commissioner General in May 1999, September 2000 and October 2001. The 2002 report also stated that during the visit in September 2002 the delegates had received allegations about the violent nature of some guards, especially those



involved in searches for drugs and other banned items. The report further stated that prisoners alleged that they had been beaten for complaining about the quality of prison food. The delegates reported that they had seen physical marks on two prisoners which were consistent with their allegations of ill treatment and that due to fear of reprisals these prisoners were not willing to have their complaints conveyed to higher prison authorities. However, the ICRC delegates expressed appreciation of the efforts made by the new Superintendent to discipline staff members for ill treatment of prisoners.

With regard to buildings at Bogambara prison, the ICRC stated that the buildings were in 'quite a poor state of repair due to the age of the prison and the lack of maintenance, although recently some much needed repairs have started'. The delegates also pointed out that the conditions in the prison kitchen were extremely poor. Due to poor ventilation, the kitchen was unbearably hot and smoky. Furthermore, the kitchen floor was cracked and pitted with holes which allowed dirty water and food to collect, creating an unsanitary environment.

The ICRC delegates also noted that in one special section of the prison the prisoners were given only 30 minutes of outdoor time, which was a clear violation of Rule 21 of the UNSMR.

In August 2002 the ICRC delegates visited New Magazine Prison in Colombo. The delegates raised concerns on overcrowding, the personal security of prisoners, sanitation, medical facilities and the issue of clothes. The report stated that 'as in the majority of prisons in Sri Lanka, chronic overcrowding was observed'. Two Tamil detainees held under the Prevention of Terrorism Act had complained to the ICRC delegates that they were locked up in a special section with Sinhala prisoners and that their situation was precarious and insecure. They had stated that they narrowly escaped a gang beating by Sinhala inmates a month before the delegates' visit. The Superintendent had informed

the delegates that he had not been able to avoid placing these prisoners with the Sinhala prisoners and that the matter had been brought to the notice of the Commissioner General, with a request for their immediate transfer back to Kalutara Prison. On the subject of sanitation, the delegates reported that the toilets were regularly blocked in one section of the prison. The delegates had received complaints about shortages of certain essential drugs. They also reported that clothing was in short supply. The convicted prisoners, they reported, only received one set of prison clothing, and so did not have a change of clothing.

In their report on their visit to Kuruvita Remand Prison on 31<sup>st</sup> July 2002, the ICRC delegates expressed their grave concern regarding the severe overcrowding problem as follows:

“The number of prisoners had increased by 173 this time and apart from the female section, all the wards were acutely overcrowded. In both A and B wards, prisoners had to sleep in the toilet areas as well as in the water tanks due to lack of space. In all the wards, except from E, prisoners reported that they could hardly turn themselves over during their sleep at night.”

“The ICRC recommends that the minimum space per prisoner is at least 2 square metres. In a ward for example, the space available per prisoner is 0.52 square metres. The average available space per prisoner is less than 1 square metre in most of the wards.”

“The overcrowding and the heat generated in the confined space of the wards were major factors helping the spreading of skin diseases. The vast majority of male prisoners suffered from scabies as well as heat rash on the buttocks and in the groin area.”

These observations are sufficient to prove that the basic minimum standards regarding accommodation of prisoners are being violated in

Sri Lanka. The above situation may be assessed in the light of the provisions made under Rule 10 of the Standard Minimum Rules for the Treatment of prisoners:

“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”

The ICRC delegates commented on the inadequate supply of bathing water, blocked and overflowing toilets and lack of recreation and sports facilities for the prisoners in Kuruvita Remand Prison.

On 1<sup>st</sup> October 2002, ICRC delegates visited Tangalle Prison in the south of the country. Their visit took place about three months after a serious uprising, when prisoners took some prison officers hostage and took over the prison. The ICRC stated that the principle factors that led to this disturbance were the acute shortage of water, severe overcrowding, poor quality of food, judicial delays and the lack of interest in and response to prisoners' complaints. After the riot was over, all the prisoners had been transferred to other prisons (which presumably aggravated the problems there) but by the time of the ICRC's visit, a good number had been brought back. The ICRC noted that the tension between prisoners and prison guards was still evident at the time of their visit.

Ten prisoners complained to the ICRC delegates that they had been assaulted with wooden batons by four guards on 26<sup>th</sup> September when they were returned to Tangalle Prison from Boossa Prison. They alleged that they had been refused medical treatment and had been threatened with further violence. The ICRC report stated that one week after the incident, on the day of the ICRC visit, the bruises and tramline marks on the shoulders and the backs of these prisoners were still visible.

Several other remand prisoners complained that during the same week, on two consecutive nights, a prison officer had come to their ward apparently under the influence of liquor and harassed the inmates, waking them up and pushing them around.

The ICRC delegates also reported that access to water was a matter of major concern in Tangalle Prison, although they acknowledged that this was a wider problem throughout Hambantota District due to the severe drought prevalent at that time of year. They observed that prisoners could only have a full bath once a week and stated that inmates had complained of skin rashes on their arms, legs and in the groin area due to lack of regular bathing. The Superintendent of the prison had informed the delegates that arrangements are being made to deliver water to the prison through bowzers.

The ICRC delegates had also visited the Correctional Centre for Youthful Offenders at Pallansena-Negombo and observed that the main issue of concern was, again, severe overcrowding. Prisoners complained to the delegates that overcrowding created very uncomfortable conditions at night. The delegates also observed that the buildings needed repairs and that the toilets were often blocked.

During 2002, the ICRC delegates also visited Matara Prison, Polonnaruwa Prison and Batticaloa Prison. They made no adverse observations with regard to these institutions mainly because there was no overcrowding. At the time of their visit, both Polonnaruwa and Batticaloa prisons held prisoners below their holding capacity. Overcrowding at Matara Prison had eased due to a new two-storied building being constructed there.

The ICRC delegates were so disturbed by the denial of decent living conditions for prisoners that in June 2002 they conducted a seminar on "Living conditions in Sri Lankan Prisons" for the senior staff of the

Prison Department in order to highlight the issues and generate ideas for solutions. Two water and sanitation engineers from Geneva conducted the seminar. As a follow-up to this seminar, the ICRC procured the services of Mr. Andre Saudan, a water and sanitation engineer from Geneva, in October 2002 to advise on improving the water and sanitation facilities in these institutions.

## **6. Conclusion**

It is very clear from the above discussion that severe overcrowding is a major cause for the deprivation of many rights of prisoners in Sri Lanka. Overcrowding has been worsening for several decades. Every year the Administration Report of the Commissioner General of Prisons has pointed out the worsening situation on account of the increasing number of prisoners. The situation was further aggravated over the last 12 years. The conflict in the north and east added only detainees to the number of prisoners held overall – numbers ranging from 1,000 to 1,500 at its peak; but it also prevented a greater number entering the prisons as there were no police or courts functioning in most parts of north and east. In 1990 the authorized accommodation for remand prisoners in the entire country was 1,009 but there was a daily average of 6,222 people held in prisons. This was an overcrowding level of 516.7%. In the year 2001, the daily average of remand prisoners was 8,596, an increase of 2,374 over the 1990 figure. Between 1990 and 2001, new accommodation was added for less than 600 prisoners, so there was still an overcrowding level of about 435% among remand prisoners in the year 2001. This situation continued through 2002 without much change.

For many years, the number of convicted prisoners did not pose a problem of overcrowding. The authorized accommodation for convicted prisoners was about 5,500 and the daily average held was

also about 5,500 until 1996. However, because overcrowding of remand prisoners led to them overflowing into prisons meant for convicted prisoners, the convicted prisoners, too, had to suffer serious deprivations with over five prisoners being held in cells which are meant for one person. The overcrowding of convicted prisoners became more acute from 1996 and 2001. The daily average of convicted prisoners in 1996 was 5,511. In 2001 it was 8,439, an increase of 2,928 or 53% over the 1996 figures. The main reason for the sharp increase was the suspension of special amnesties and the Release of Prisoners on License Scheme (Parole) during this period.

Thus, from 1996 to 2001, there was a significant increase in the daily average of the total number of prisoners. In 1996, the daily average of both convicted and remand prisoners was 11,972 whereas in 2001 it was 18,132, an increase of 51% in just five years. When compared with the approved accommodation of about 7,100, the average overcrowding of prisoners at the end of 2001 was over 255%. This situation prevailed throughout 2002.

Unless urgent steps are taken to reduce the numbers admitted to prisons or to build new facilities to accommodate the increasing numbers, the human suffering and the violation of basic human rights in prisons cannot be avoided. Building new prisons to accommodate the increasing numbers has proved to be a very expensive and futile exercise even in wealthy countries like the United States of America. A more appropriate strategy for Sri Lanka would be to expand the use of non-custodial sentences such as probation and community based correction orders. Sri Lanka also needs to introduce parole laws to enable suitable prisoners to be released on parole.

In order to reduce the number of remand prisoners, enhanced use of bail and the relaxation of stringent bail laws must be given serious consideration. Since the introduction of the new Bail Act in November



1997, both the annual admission and the daily average of remand prisoners have gone up considerably. For example, the annual admissions from 1997 – 1999 were as follows:

1997	71,350
1998	76,930
1999	77,374

The daily average number of remand prisoners held in those years was:

1997	6,702
1998	7,530
1999	7,960

The trend of ever-increasing numbers continued through 2000, 2001 and 2002. For example, on 30<sup>th</sup> September 2001 there were 8,439 remand prisoners whilst on 15<sup>th</sup> April 2003 there were 9,244 such prisoners. Without an in-depth study, it is not possible to say what effects the new Bail Act had on this increase.

If overcrowding is the cause for many of the ills in prisons, under-funding is responsible for the other problems. Prisons are a very low priority for government expenditure and the available funds are often inadequate to provide even the minimum equipment for prisoners that is stipulated by the statute. The shortage of clothing, bedding and other items such as mugs, plates and buckets are mainly due to under-funding. The poor state of buildings and the unsatisfactory cooking, toilet and bathing facilities are also a glaring reflection of under-funding. Most superintendents of prisons told ICRC delegates that insufficient funding was a major problem, particularly when coupled with severe overcrowding.

The incidents of assault and other forms of harassment of prisoners by prison officers, though small in number, cannot be condoned and need to be taken seriously. The management must take every step to both deal with the culprits and to prevent the recurrence of such incidents. In this regard, it was heartening to note that several training courses, seminars and workshops in the area of human rights were conducted for different grades of prison officers during 2002. It is fervently hoped that such training will help prison officers to understand their role as custodians of the prisoners better and to realize that prisoners also enjoy human rights, just like any other citizen, other than those restricted by the fact of imprisonment.

The authorities must take serious note of the fact that keeping prisoners under inhuman conditions is tantamount to cruel and unusual punishment. Lack of funds is not a defense for running an unconstitutional prison system.

Finally, Sir Winston Churchill's views on the treatment of prisoners provide a fitting conclusion to this chapter. Several years before the adoption of the UDHR by the United Nations, he said:

*"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused and even of the convicted criminal against the State; a constant heart-searching of all charged with the deed of punishment; tireless efforts towards the discovery of regenerative processes; unfailing faith that there is a treasure, if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminals make and measure the stored-up strength of a nation and are sign and proof of the living virtue in it."*

## **Schedule I**

### **UN Conventions on Human Rights and International Conventions on Terrorism Signed, Ratified or Acceded to by Sri Lanka as at 31st December 2002\***

- Convention on the Prevention and Punishment of the Crime of Genocide.  
**Acceded on 12<sup>th</sup> October 1950.**
- International Covenant on Economic, Social and Cultural Rights.  
**Acceded on 11<sup>th</sup> June 1980.**
- International Covenant on Civil and Political Rights.  
**Acceded on 11<sup>th</sup> June 1980.**

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\* The consent of a State to be bound by a treaty is expressed by the signature of its representative when the treaty provides that signature shall have that effect. In many instances, the parties may agree either in the text of the agreement or in the negotiations accompanying the formulation of the text, that signature alone is not sufficient; a further act is required to signify consent to be bound which is called ratification. Treaties in which this approach is adopted usually intend that the signature will merely authenticate the text of the agreement. The purpose of ratification is to provide the government of the states concerned with a further opportunity to examine whether they wish to be bound by a treaty or not. For those States which did not participate in the original negotiation and were not signatories to the treaty but nonetheless wish to become parties to the treaty, can do so by acceding to the treaty. Once a State has become a party to the treaty, it enjoys all the rights and responsibilities under the treaty irrespective of whether it became a party by signature and ratification or accession.

- Convention on the Elimination of All Forms of Discrimination against Women.  
**Ratified on 5th October 1981.**
- International Convention on the Elimination of All Forms of Racial Discrimination.  
**Acceded on 18th February 1982.**
- International Covenant on the Suppression and Punishment of the Crime of Apartheid.  
**Acceded on 18th February 1982.**
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.  
**Acceded on 27th February 1991.**
- Convention on the Rights of the Child.  
**Ratified on 12th July 1991.**
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.  
**Acceded on 3rd January 1994.**
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.  
**Acceded on 11<sup>th</sup> March 1996.**
- Optional Protocol 1 to the International Covenant on Civil and Political Rights.  
**Acceded on 3<sup>rd</sup> October 1997.**

- International Convention for the Suppression of Terrorist Bombings.  
**Ratified on 23rd March 1999.**
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.  
**Ratified on 6<sup>th</sup> September 2000.**
- International Convention against the Taking of Hostages.  
**Acceded on 6<sup>th</sup> September 2000.**
- Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation.  
**Acceded on 6<sup>th</sup> September 2000.**
- International Convention for the Suppression of Financing of Terrorism.  
**Ratified on 6<sup>th</sup> September 2000.**
- United Nations Convention against Transnational Organised Crime.  
**Signed on 15<sup>th</sup> December 2000.**
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children - supplementing the United Nations Convention against Transnational Organised Crime.  
**Signed on 15<sup>th</sup> December 2000.**
- Protocol against the Smuggling of Migrants by Land, Sea and Air - supplementing the United Nations Convention against Transnational Organised Crime.  
**Signed on 15<sup>th</sup> December 2000.**

- **Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution, and Pornography.**

**Ratified on 8<sup>th</sup> May 2002.**



## **Ratification of ILO Conventions by Sri Lanka**

<b>Con. No.</b>	<b>Name of the Convention</b>	<b>Date of ratification</b>	<b>Present Status</b>
C4	Night Work (Women) Convention 1919	08.10.1951	Denounced
C5	Minimum Age (Industry) Convention 1919	27.09.1950	Denounced
C6	Night Work of Young Persons (Industry) Convention 1919	26.10.1950	Denounced
C7	Minimum Age (Sea) Convention 1920	02.09.1950	Denounced
C8	Unemployment Indemnity (Shipwreck) Convention 1920	25.04.1951	
C10	Minimum Age (Agriculture) Convention 1921	29.11.1991	Denounced
C11	Right of Association (Agriculture) Convention 1921	25.08.1952	
C15	Minimum Age (Trimmers and Stockers) Convention 1921	25.04.1951	Denounced
C16	Medical Examination of Young Persons (Sea) Convention 1921	25.04.1950	

Con. No.	Name of the Convention	Date of ratification	Present Status
C18	Workmen's Compensation (Occupational Diseases) Convention 1925	17.05.1952	
C26	Minimum Wage Fixing Machinery Convention 1928	09.06.1961	
C29	Forced Labour Convention 1930	05.04.1950	
C41	Night Work (Women) Convention (Revised) 1934	02.09.1950	Denounced
C45	Underground Work (Women) Convention 1935	20.12.1950	
C58	Minimum Age (Sea) Convention (Revised) 1936	18.05.1959	
C63	Convention concerning Statistics of Wages and Hours of Work 1938	25.08.1952	
C80	Final Articles Revision Convention 1946	10.09.1950	
C81	Labour Inspection Convention 1947	03.04.1950	

<b>Con. No.</b>	<b>Name of the Convention</b>	<b>Date of ratification</b>	<b>Present Status</b>
C87	Freedom of Association and Protection of the Right to Organise Convention 1948	15.11.1995	
C89	Night Work (Women) Convention (Revised) 1948	31.03.1966	Denounced
C90	Night Work of Young Persons (Industry) Convention (Revised) 1948	18.05.1959	
C95	Protection of Wages Convention 1949	27.10.1983	
C96	Pre-charging Employment Agencies Convention (Revised) 1949	30.04.1958	
C98	Right to Organise and Collective Bargaining Convention 1949	13.12.1972	
C99	Minimum Wage Fixing Machinery (Agriculture) Convention 1951	05.04.1954	
C100	Equal Remuneration Convention 1951	01.04.1993	
C103	Maternity Protection Convention (revised) 1952	01.04.1993	

Con. No.	Name of the Convention	Date of ratification	Present Status
C106	Weekly Rest (Commerce and Offices) Convention 1957	27.10.1983	
C108	Seafarers Identity Documents Convention 1958	24.11.1995	
C110	Conditions of Employment of Plantation workers Convention 1958	24.04.1995	
C111	Discrimination (Employment and Occupation) Convention 1958	27.11.1998	
C115	Radiation Protection Convention 1960	18.06.1986	
C116	Final Articles Revision Convention 1961	26.04.1974	
C131	Minimum Wage Fixing Convention 1970	17.03.1975	
C135	Workers Representatives Convention 1971	16.11.1976	
C138	Minimum Age for Admission to Employment 1973	11.02.2000	

<b>Con. No.</b>	<b>Name of the Convention</b>	<b>Date of ratification</b>	<b>Present Status</b>
C144	Tripartite Consultations to Promote the Implementation of ILO Convention 1976	17.03.1994	
C160	Labour Statistics Convention 1985	01.04.1993	

## **Humanitarian Law Conventions Ratified by Sri Lanka**

Geneva Convention for the Amelioration of the Condition of the  
Wounded and Sick in the Armed Forces in the Field 1949

**Ratified on 28th February 1959.**

Geneva Convention for the Amelioration of the Condition of the  
Wounded, Sick and Shipwrecked Members of the Armed Forces at  
Sea 1949

**Ratified on 28th February 1959.**

Geneva Convention Relating to the Treatment of Prisoners of War  
1949

**Ratified on 28th February 1959.**

Geneva Convention Relating to the Protection of Civilian Persons in  
Time of War 1949

**Ratified on 28th February 1959.**



## **Schedule II**

### **Some Human Rights Instruments not Ratified by Sri Lanka**

- Optional Protocol II to the International Covenant on Civil and Political Rights.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1968.
- ILO Convention (No. 105) concerning the Abolition of Forced Labour.
- Declaration regarding Article 21 of the above (relating to the entertainment of complaints by one State Party against another).
- Declaration regarding Article 22 of the above (relating to the entertainment of complaints by individuals).
- ILO Convention (No. 102) concerning Minimum Standards of Social Security.
- ILO Convention (No. 143) concerning Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.
- ILO Convention (No. 122) concerning Employment Policy.

- ILO Convention (No. 141) concerning Organisations of Rural Workers and Their Role in Economic and Social Development.
- ILO Convention (No. 151) Concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service.
- Convention Relating to the Status of Refugees 1951
- Protocol to the 1951 Refugees Convention 1967
- Protocol Additional to the Geneva Convention of 12th August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Convention of 12th August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

## Schedule III

### Fundamental Rights Cases decided in 2002

#### Article 11, 12(1)

*Sujeewa Nilruk Ihalakathrige v. Upali Jayanetti Officer Commanding, Sri Lanka Corps of Military Police (SLCMP) and Others, S.C. Application No. 691/2000, S.C. Minutes 04/06/2002*

#### Article 11, 13(1)

*Velu Arasadevi v. H.P. Kamal Priyantha Premathilaka, Reserve Police Constable of the Police Force and Others, S.C. Application No. 401/2001, S.C. Minutes 24/01/2002*

*Jayakody Arachchige Don Ajith Rohana Chandrakumara v. Inspector Samudrajeewa O.I.C. Special Investigation Unit, Police Station, Peliyagoda and Others, S.C. Application No. 681/2000, S.C. Minutes 05/06/2002*

#### Article 11, 13(1) & 13(2)

*Samarakkody Arachchige Don Siripala v. S.I. Nandana Wijesinghe, Police Station, Matugama and Others, S.C. Application No. 213/2001, S.C. Minutes 31/05/2002*

*Angeline Roshana Micheal v. Selvin Saleh, O.I.C. (Crimes), Police Station, Narahenpita and Others, S.C. Application No. 1/2001, S.C. Minutes 02/08/2002*

*Yogalingam Vijitha v. Wijesekara, Reserve Sub Inspector of Police, Police Station, Negombo and Others*, S.C. Application No. 186/2001, S.C. Minutes 23/05/2002.

*Manickam Thavarasa v. O.I.C., S.T.F. Camp, Thirukkivil, S.C.* Application No. 09/2002, S.C. Minutes 16/09/2002

### **Article 12(1)**

*Veyangoda Textile Mills Ltd. v. The People's Bank and Others*, S.C. Application No. 404/99, S.C. Minutes 18/01/2002

*N.D.J Narangoda and Others v. B.L.V De S. Kodituwakku, Inspector General of Police*, S.C. Application No. 397/2000, S.C. Minutes 11/02/2002

*J.A.D.S.K.S Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others*, S.C. Application No. 692/2000, S.C. Minutes 20/03/2002

*Colombo South Co-operative Society Limited v. Hon. Anuraddha Ratwatte and Others*, S.C. Application No. 698/98, S.C. Minutes 25/03/2002

*Somapala Pattiwidana v. The Monetary Board of the Central Bank and Others*, S.C. Application No. 450/2000, S.C. Minutes 30/04/2002

*Somapala Pattiwidana v. The Monetary Board of the Central Bank and Others*, S.C. Application No. 565/2001, S.C. Minutes 30/04/2002

*W.R.R Rabel and Another v. The National Savings Bank*, S.C. Application No. 531/2000, S.C. Minutes 30/04/2002

*A.M Somapala and Others v. The National Savings Bank, S.C.*  
Application No. 532/2000, S.C. Minutes 30/04/2002

*M.S.R Perera and Others v. The National Savings Bank, S.C.*  
Application No. 533/2000, S.C. Minutes 30/04/2002

*Floor Care Cleaning Services (Pvt) Ltd. v. The University of Ruhuna and Others, S.C.* Application No. 285/2001, S.C. Minutes 09/05/2002

*W.D.B.L.M Fernando v. R.A.A Ranaweera, Secretary, Ministry of Cultural and Religious Affairs and Others, S.C.* Application No. 46/99, S.C. Minutes 24/05/2002

*Godigamuwa Gamage Upasena v. Hon. Richard Pathirana and Others, S.C.* Application No. 50/99, S.C. Minutes 31/05/2002

*Ebert Silva Touring Company Ltd. and Another v. Air Lanka Ltd. and Others, S.C.* Application No. 548/96, S.C. Minutes 27/06/2002

*M.L Dayaratne and Others v. National Savings Bank and Others, S.C.* Application No. 452/2001, S.C. Minutes 05/09/2002

*U.B. Rasaputra and Others v. Bank of Ceylon and Others, S.C.* Application No. 381/01, S.C. Minutes 16/09/2002

*Sam Samarasekara and Co. Ltd. v. Municipal Council, Kandy and Others, S.C.* Application No. 53/2000, S.C. Minutes 16/09/2002

*Weerasinghe Arachchige Wimal Weerasinghe v. Dr. S.A.K Gamage, Director General Hospital Kegalle and Others, S.C.* Application No. 682/2001, S.C. Minutes 19/09/2002

**Article 12(1), 14 (1) (h)**

*Gardiyawasam Seekkuhewase Lakshman Jagath Soloman Dias v. Secretary, Ministry of Defence and Others*, S.C. Application No. 604/2001, S.C. Minutes 05/09/2002

**Article 12(1), 12(2), 14 (1) (h)**

*Arumugam Vadivelu v. O.I.C. Sithambarapuram Refugee Camp Police Post, Vavuniya and Others*, S.C. Application No.44/2002, S.C. Minutes 05/09/2002

**Articles 13(1), 13(2)**

*Yatiwelle Koralage Abeyratne Banda v. Keerthi Gajanayake, Director, Criminal Investigation Department and Others*, S.C. Application No. 653/2000, S.C. Minutes 02/08/2002

**Articles 11, 13(2), 17**

*Kotabadu Durage Sriyani Silva v. Chandana Iddamalgoda, O.I.C. Police Station, Payagala and Others*, S.C. Application No.471/2000, S.C. Minutes 10/12/2002



## **Schedule IV**

# **Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam**

### **Preamble**

The overall objective of the Government of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the GOSL) and the Liberation Tigers of Tamil Eelam (hereinafter referred to as the LTTE) is to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka.

The GOSL and the LTTE (hereinafter referred to as the Parties) recognize the importance of bringing an end to the hostilities and improving the living conditions for all inhabitants affected by the conflict. Bringing an end to the hostilities is also seen by the Parties as a means of establishing a positive atmosphere in which further steps towards negotiations on a lasting solution can be taken.

The Parties further recognize that groups that are not directly party to the conflict are also suffering the consequences of it. This is particularly the case as regards the Muslim population. Therefore, the provisions of this Agreement regarding the security of civilians and their property apply to all inhabitants.

With reference to the above, the Parties have agreed to enter into a ceasefire, refrain from conduct that could undermine the good intentions or violate the spirit of this Agreement and implement confidence-building measures as indicated in the articles below.

## **Article 1: Modalities of a ceasefire :**

The Parties have agreed to implement a ceasefire between their armed forces as follows:

- 1.1 A jointly agreed ceasefire between the GOSL and the LTTE shall enter into force on such date as is notified by the Norwegian Minister of Foreign Affairs in accordance with Article 4.2 hereinafter referred to as D-day.

### **Military operations :**

- 1.2 Neither Party shall engage in any offensive military operation. This require, the total cessation of all military action and includes, but is not limited to, such acts as:
  - a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian or military property, sabotage, suicide missions and activities by deep penetration units;
  - b) Aerial bombardment;
  - c) Offensive naval operations.
- 1.3 The Sri Lankan armed forces shall continue to perform their legitimate task of safeguarding the sovereignty and territorial integrity of Sri Lanka without engaging in offensive operations against the LTTE.

Separation of forces :

- 1.4 Where forward defence localities have been established, the GOSL's armed forces and the LTTE's fighting formations shall hold their ground positions, maintaining a zone of separation of a minimum of six hundred (600) metres. However, each Party reserves the right of movement within one hundred (100) metres of its own defence localities, keeping an absolute minimum distance of four hundred (400) metres between them. Where existing positions are closer than four hundred (400) metres, no such right of movement applies and the Parties agree to ensure the maximum possible distance between their personnel.
- 1.5 In areas where localities have not been clearly established, the status quo as regards the areas controlled by the GOSL and the LTTE, respectively, on 24 December 2001 shall continue to apply pending such demarcation as is provided in article 1.6.
- 1.6 The Parties shall provide information to the Sri Lanka Monitoring Mission (SLMM) regarding defence localities in all areas of contention, of Article 3. The monitoring mission shall assist the Parties in drawing up demarcation lines at the latest by D-day +30.
- 1.7 The Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party.
- 1.8 Tamil paramilitary groups shall be disarmed by the GOSL by D-day +30 at the latest. The GOSL shall offer to integrate individuals in these units under the command and disciplinary structure of the GOSL armed forces for service away from the Northern and Eastern Province.

- 1.9 The Parties' forces shall initially stay in the areas under their respective control, as provided in Article 1.4 and Article 1.5.
- 1.10 Unarmed GOSL troops, shall as of D-day + 60, be permitted unlimited passage between Jaffna and Vavuniya using the Jaffna-Kandy road (A9). The modalities are to be worked out by the parties with the assistance of the SLMM.
- 1.11 The Parties agree that as of D-day individual combatants shall, on the recommendation of their area commander, be permitted, unarmed and in plain clothes, to visit family and friends residing in areas under the control of the other Party. Such visits shall be limited to six days every second month, not including the time of travel by the shortest applicable route. The LTTE shall facilitate the use of the Jaffna-Kandy road for this purpose. The Parties reserve the right to deny entry to specified military areas.
- 1.12 The Parties agree that as of D-day individual combatants shall, notwithstanding the two-month restriction, be permitted, unarmed and in plain clothes, to visit immediate family (i.e. spouses, children, grandparents, parents and siblings) in connection with weddings or funerals. The right to deny entry to specified military areas applies.
- 1.13 Fifty (50) unarmed LTTE members shall as of D-day + 30, for the purpose of political work, be permitted freedom of movement in the areas of the North and the East dominated by the GOSL. Additional 100 unarmed LTTE members shall be permitted freedom of movement as of D-day + 60. As of D-day + 90, all unarmed LTTE members shall be permitted freedom of movement in the North and the East. The LTTE members shall carry identity papers. The right of the GOSL to deny entry to specified military areas applies.

## **Article 2: Measures to restore normalcy**

The Parties shall undertake the following confidence-building measures with the aim of restoring normalcy for all inhabitants of Sri Lanka:

- 2.1 The Parties shall in accordance with international law abstain from hostile acts against the civilian population, including such as acts as torture, intimidation, abduction, extortion and harassment.
- 2.2 The Parties shall refrain from engaging in activities or propagating ideas that could offend cultural or religious sensitivities. Places of worship (temples, churches, mosques and other holy sites, etc.) currently held by either of the parties shall be vacated by D-day + 30 and made accessible to the public. Places of worship which are situated in "high security zones" shall be vacated by all armed personnel and maintained in good order by civilian workers, even when they are not made accessible to the public.
- 2.3 Beginning on the date on which this Agreements enters into force, school buildings occupied by either party shall be vacated and returned to their intended use. This activity shall be completed by D-day +160 at the latest.
- 2.4 A schedule indicating the return of all other public buildings to their intended use shall be drawn up by the Parties and published at the latest by D-day + 30.
- 2.5 The Parties shall review the security measures and the set-up of checkpoints, particularly in densely populated cities and towns, in order to introduce systems that will prevent harassment of the civilian population. Such systems shall be in place from D-day + 60.

- 2.6 The Parties agree to ensure the unimpeded flow of non-military goods to and from the LTTE-dominated areas with the exception of certain items as shown in Annex A. Quantities shall be determined by market demand. The GOSL shall regularly review the matter with the aim of gradually removing any remaining restrictions on non-military goods.
- 2.7 In order to facilitate the flow of goods and the movement of civilians, the Parties agree to establish checkpoints on their line of control at such locations as are specified in Annex B.
- 2.8 The Parties shall take steps to ensure that the Trincomalee-Habarana road remains open on a 24-hour basis for passenger traffic with effect from D-day + 10.
- 2.9 The Parties shall facilitate the extension of the rail service on the Batticaloa-line to Welikanda. Repairs and maintenance shall be carried out by the GOSL in order to extend the service up to Batticaloa.
- 2.10 The Parties shall open the Kandy-Jaffna road (A9) to non-military traffic of goods and passengers. Specific modalities shall be worked out by the Parties with the assistance of the Royal Norwegian Government by D-day + 30 at the latest.
- 2.11 A gradual easing of the fishing restrictions shall take place starting from D-day. As of D-day + 90, all restrictions on day and night fishing shall be removed, subject to the following exceptions: (i) fishing will not be permitted, within an area of 1 nautical mile on either side along the coast and 2 nautical miles seawards from all security forces camps on the coast; (ii) fishing will not be permitted in harbours or approaches to harbours, bays and estuaries along the coast.



2.12 The Parties agree that search operations and arrests under the Prevention of Terrorism Act shall not take place. Arrests shall be conducted under due process of law in accordance with the Criminal Procedure Code.

2.13 The Parties agree to provide family members of detainees access to the detainees within D-day +30.

### **Article 3: The Sri Lanka Monitoring Mission :**

The Parties have agreed to set up an international monitoring mission to enquire into any instance of violation of the terms and conditions of this Agreement. Both Parties shall fully cooperate to rectify any matter of conflict caused by their respective sides. The mission shall conduct international verification through on-site monitoring of the fulfilment of the commitments entered into in this Agreement as follows:

- 3.1 The name of the monitoring mission shall be the Sri Lanka Monitoring Mission (hereinafter referred to as the SLMM).
- 3.2 Subject to acceptance by the Parties, the Royal Norwegian Government (hereinafter referred to as the RNG) shall appoint the Head of the SLMM (hereinafter referred to as the HoM), who shall be the final authority regarding interpretation of this Agreement.
- 3.3 The SLMM shall liaise with the Parties and report to the RNG.
- 3.4 The HoM shall decide the date for the commencement of the SLMM's operations.

- 3.5 The SLMM shall be composed of representatives from Nordic countries.
- 3.6 The SLMM shall establish a headquarters in such place as the HoM finds appropriate. An office shall be established in Colombo and in Vanni in order to liaise with the GOSL and the LTTE, respectively. The SLMM will maintain a presence in the districts of Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai.
- 3.7 A local monitoring committee shall be established in Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai. Each committee shall consist of five members, two appointed by the GOSL, two by the LTTE and one international monitor appointed by the HoM. The international monitor shall chair the committee. The GOSL and the LTTE appointees may be selected from among retired judges, public servants, religious leaders or similar leading citizens.
- 3.8 The committees shall serve the SLMM in an advisory capacity and discuss issues relating to the implementation of this Agreement in their respective districts, with a view to establishing a common understanding of such issues. In particular, they will seek to resolve any dispute concerning the implementation of this Agreement at the lowest possible level.
- 3.9 The Parties shall be responsible for the appropriate protection of and security arrangements for all SLMM members.

3.10 The Parties agree to ensure the freedom of movement of the SLMM members in performing their tasks. The members of the SLMM shall be given immediate access to areas where violations of the Agreement are alleged to have taken place. The Parties also agree to facilitate the widest possible access to such areas for the local members of the six above-mentioned committees, of. Article 3.7.

3.11 It shall be the responsibility of the SLMM to take immediate action on any complaints made by either Party to the Agreement, and to enquire into and assist the Parties in the settlement of any dispute that might arise in connection with such complaints.

3.12 With the aim of resolving disputes at the lowest possible level, communication shall be established between commanders of the GOSL armed forces and the LTTE area leaders to enable them to resolve problems in the conflict zones.

3.13 Guidelines for the operations of the SLMM shall be established in a separate document.

## **Article 4:**

### **Entry into force, amendments and termination of the Agreement :**

- 4.1 Each Party shall notify its consent to be bound by this Agreement through a letter to the Norwegian Minister of Foreign Affairs signed by Prime Minister Ranil Wickremesinghe on behalf of the GOSL and by leader Velupillai Pirabakaran on behalf of the LTTE, respectively. The Agreement shall be initialled by each Party and enclosed in the above-mentioned letter.
- 4.2 The Agreement shall enter into force on such date as is notified by the Norwegian Minister of Foreign Affairs..
- 4.3 This Agreement may be amended and modified by mutual agreement of both Parties. Such amendments shall be notified in writing to the RNG.
- 4.4 This Agreement shall remain in force until notice of termination is given by either Party to the RNG. Such notice shall be given fourteen (14) days in advance of the effective date of termination.

## **Annexes :**

Annex A: List of goods

Annex B: Checkpoints

## **Annex A :**

The Parties agree to ensure the flow of non-military goods, to and from LTTE dominated areas of the Northern and Eastern Province as well as unimpeded flow of such goods to the civilian population in these areas. Non military goods not covered by article 2.6 in the Agreement are listed below:

Non military arms/ammunition

Explosives

Remote control devices

Barbed wire

Binoculars/Telescopes

Compasses

Penlight batteries

Diesel, petrol, cement and iron rods will be restricted in accordance with the following procedures and quantities.

### **Diesel and petrol :**

The Government Agents (GA) will register available vehicles; tractors and motorcycles in the LTTE controlled areas. The GA will calculate the required weekly amount of diesel and petrol based on the following estimate:

Trucks/Buses 250 litre/week

4 wheel tractor 310 litre/week

2 wheel tractor 40 litre/week

Petrol vehicle 30 litre/week

Motorcycles 7 litre/week

Fishing vessels 400 litre/week

**Cement :**

Cement required for rehabilitation and reconstruction of Government property; registered co-operatives; or approved housing projects implemented by the GOSL and international NGOs and more affluent members of the society; will be brought in directly by relevant institutions under licences issued by Government Agents. The GA shall stipulate the monthly quantities permitted for such project based upon planned and reported progress.

Cement required for individual shops/constructions/house owners rehabilitation initiatives will be made available through the co-operations on a commercial basis.

Cement required for individual shops/constructions/house owners/rehabilitation - initiatives will be made available through the co-operations on a commercial basis. The monthly import for this purpose will be limited to 5000 bags during the first month and thereafter 10,000 bags/month. Individual sales by the co-operatives will be registered and limited to 25 bags per household.

**Iron rods :**

Iron rods for building constructions will be brought in to the LTTE controlled areas under licences issued by the GA.

A monthly reassessment will be made to assess the possibilities of removal of the above restrictions.



## **Annex B :**

Checkpoints agreed in section 2.7 are as follows:

- Mandur, - Paddirupur, - Kaludaveli Ferry Point, - Anbalantivu Ferry Point, - Mamunai Ferry Point, - Vanvunateevu, - Santhiveli Boat Point, - Black Bridge, - Sitandy Boat Point, - Kiran bridge, - Kinniyadi Boat Point, - Valachenai, - Makerni, - Mahindapura, - Muttur, - Ugilankulam, - Omanthai.

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# **SRI LANKA: STATE OF HUMAN RIGHTS 2003**

This is a detailed account of the state of human rights in Sri Lanka focusing on events which occurred in the country in 2002.

The report considers Internally Displaced Persons; Some Key Human Rights Issues; Integrity of the Person; The Status of Women in Sri Lanka; An Overview of Some Critical Aspects; Children Affected by Armed Conflict in Sri Lanka; The Year in Review; Freedom of Expression and Media Freedom; Judicial Protection of Human Rights and the Rights of Prisoners. The report, therefore, represents an important watershed with regard to human rights in Sri Lanka.



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