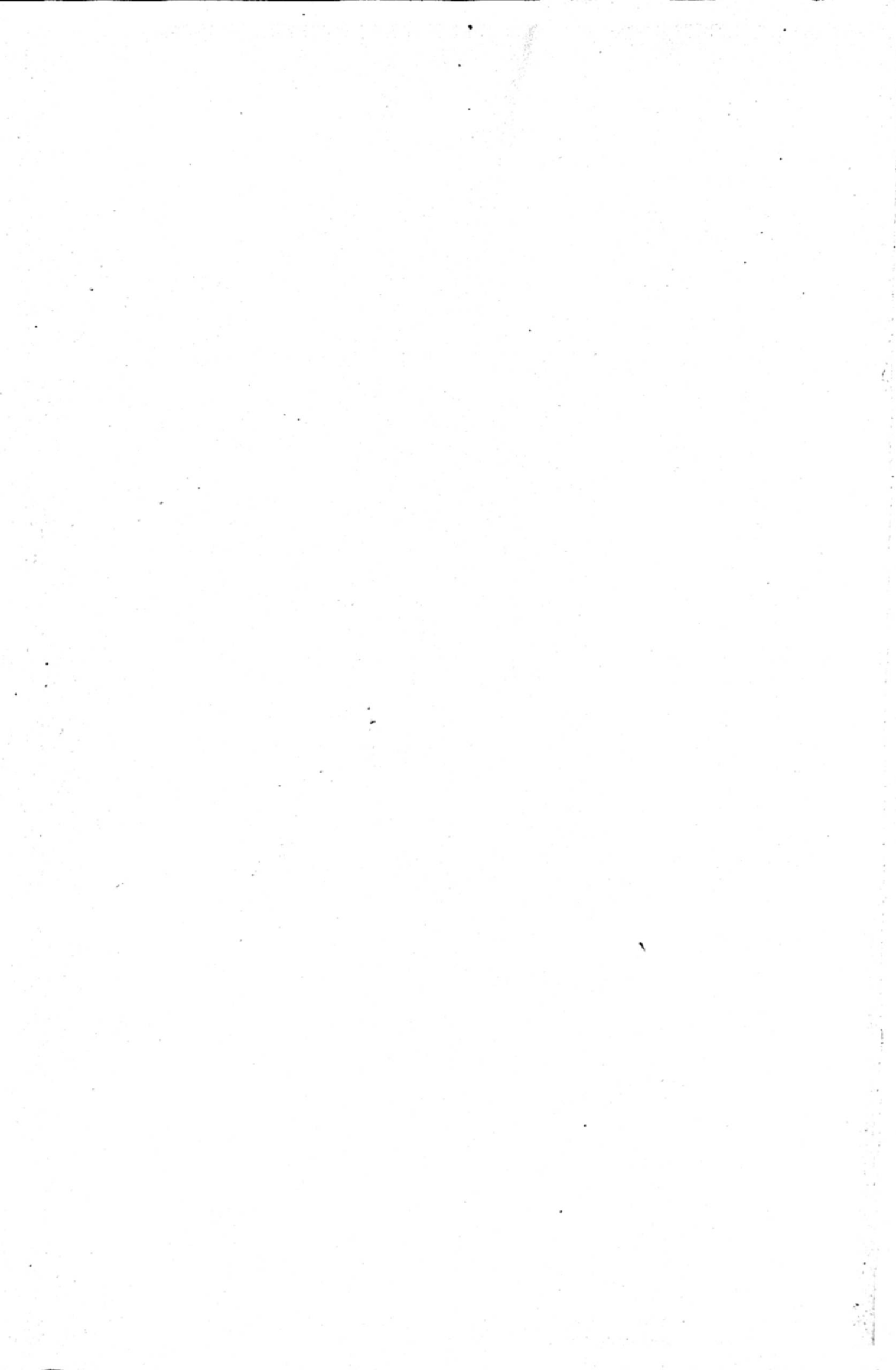


**SRI LANKA:
STATE OF HUMAN RIGHTS
2013**





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**This Report covers the period
January 2011 to December 2012**

**Law & Society Trust
3, Kynsey Terrace
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ABBREVIATIONS & ACRONYMS

APRC	All Party Representative Committee
CFA	Ceasefire Agreement
GA	Government Agent
GoSL	Government of Sri Lanka
HRCSL	Human Rights Commission of Sri Lanka
HSZ	High Security Zones
ICCPR	International Covenant on Civil and Political Rights
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally displaced person/s
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
NAPHR	National Action Plan for Human Rights
NFZ	No Fire Zone
NGOs	Non-Governmental Organizations
NHRAP	National Human Rights Action Plan
NPoA	National Plan of Action to Implement the LLRC Recommendations
POE	UN Secretary-General's Panel of Experts on Accountability in Sri Lanka
PSC	Parliamentary Select Committee
PSO	Public Security Ordinance

PTA	Prevention of Terrorism Act
PTF	Presidential Task Force
REPPIA	Rehabilitation of Persons, Properties and Industries Authority
SHR	State of Human Rights
TNA	Tamil National Alliance
UDHR	Universal Declaration of Human Rights
UN HRC	Human Rights Council of the United Nations
UNSG	United Nations Secretary General
UPR	Universal Periodic Review

FOREWORD

Since 1990, LST publishes the annual State of Human Rights report as a means of assessing Sri Lanka's compliance with international human rights norms and domestic obligations. The SHR serves both as a measure of Sri Lanka's achievements during the period, and also as a means of identifying the key areas of concern for human rights activists in that year. The chapters are authored by experts in their respective fields and necessarily contain some overlap due to the cross-cutting nature of many of the rights under review.

This year there is a departure from the previous reports regarding the number of chapters covered. It is limited to 4 main areas of concern in the period under review in addition to the overview. Two chapters consider the levels of implementation by the state of the recommendations made by the LLRC in the areas of restitution, reconciliation and resettlement while the other two chapters deal with the judicial protection of human rights and the National Human Rights Action Plan. The report covers the period January 2011 to December 2012.

We deeply regret the considerable delay in the publication of the Sri Lanka: State of Human Rights 2013 report.

Law & Society Trust
Colombo

INTRODUCTION

The State of Human Rights (SHR) for the period 2011-2012 brings together critical reflections on five aspects of the state of human rights in Sri Lanka: the general state of human rights; reconciliation and restitution; resettlement; judicial interpretation of fundamental rights; and the policy of the state on human rights as reflected in the National Action Plan for Human Rights (NAPHR). These reflections effectively measure the degree of respect and protection available for human rights in Sri Lanka in each of these aspects. They also accurately identify the different factors that have led to the violations of human rights in the areas reviewed.

The *Overview of the State of Human Rights in 2011-2012* by Gehan Gunatilleke provides a useful diagnosis of the general levels of respect for human rights in the country during the period under review. This chapter accurately identifies several of the political and social factors that have contributed to what he terms a 'post-war culture of impunity' which has taken root in Sri Lanka, which makes it extremely challenging to enforce state responsibility for violations of human rights. These factors include post-war triumphalism; direct and indirect militarization; and the politicisation of public institutions.

In the first part of the chapter, Gunatilleke focuses specifically on the unfolding of the 'accountability discourse' in Sri Lanka with regard to the alleged violations of human rights law and international humanitarian law in the last phase of the internal armed-conflict in Sri Lanka. He presents an insightful analysis of the political and legal developments regarding accountability at both the domestic and international levels including an assessment of the report of the panel of experts appointed by

the Secretary-General of the United Nations; the report of the Lessons Learnt and Reconciliation Commission (LLRC); and the resolution adopted by the Human Rights Council of the United Nations (UNHRC). He points out that while the report of the panel of experts focused overwhelmingly on the question of accountability, the LLRC report provides an unsatisfactory and incomplete analysis of that same question. The UNHRC resolution perhaps seeks to bridge the gap between those two approaches by recognising the need for political reconciliation that upholds accountability for the conduct of the war by parties to the conflict.

The more general violations of human rights that occurred during 2011-2012 are considered in the second part of Gunatilleke's chapter. He identifies violations in relation to the right to liberty through extra-judicial killings, disappearances, arbitrary arrests and detentions. The restrictions on media freedom and the right to liberty of media personnel are pointed out and the cross cutting political and legal issues arising from militarization and the weakening of the rule of law are also analysed. Through a detailed comparison between the recommendations of the LLRC with regard to respect for human rights and the violations of human rights that took place in 2011-2012 Gunatilleke convincingly establishes the compounding relationship between the lack of accountability for violations of human rights in the last phase of the internal armed conflict and the post-armed conflict culture of impunity for violations of human rights. He argues that sustainable and meaningful political and legal solutions for both aspects of the state of human rights in Sri Lanka can only be arrived at if a holistic and complex approach is adopted. As Gunatilleke points out, such an approach is yet to be introduced.

The chapter on *Judicial Protection of Human Rights* by Madhushika Jayachandra critically documents the judicial interpretations of fundamental rights claims that came before the Supreme Court in the two years immediately preceding the impeachment of Chief Justice Shirani Bandaranayake. According to the cases analysed by Jayachandra, the contribution of the judiciary towards the recognition and vindication of human rights violations of human rights is varied. Where the right to equal access to education both at primary and tertiary levels were concerned, the judiciary upheld violations of the right to equality. However, where complaints were made of the weakening of the rule of law by way of violations of constitutional provisions of the then applicable Seventeenth Amendment of the Constitution by the President, the Court relied on the guarantee of immunity from suit for the President in rejecting the application.

Jayachandra presents a detailed analysis of the reasoning adopted by the judiciary in affirming the equal access to education. Even though the right to education is not recognised as a fundamental right in Sri Lanka, the judiciary follows previous and progressive jurisprudence which had interpreted the right to equality in light of the Directive Principles of State Policy and thereby recognises the right to education. As Jayachandra points out in her thorough analysis of this jurisprudence, the Court upholds at least two progressive trends of previous judgements in arriving at this outcome. One is the fertilization of the fundamental rights jurisprudence with principles of administrative law such as the concept of legitimate expectation and the 'no evidence' rule. This judicial approach adds clarity to the nature of state responsibility in respecting human rights and ensures a plurality of reasons in arriving at a progressive interpretation of the right to equality. The second trend that is continued is that of a liberal approach to rules

of standing for fundamental rights petitions. This approach affirms that the Court is primarily concerned with the injustice complained of in fundamental rights applications and that the specific interests of the petitioner are secondary.

The judicial protection of human rights during 2011-2012 is assessed through twenty-five determinations that were accessible. Jayachandra points out that no significant jurisprudence emerged during this time in relation to other human rights recognised under the Constitution such as the right to liberty. She also notes that her analysis is provisional in that it speaks to the cases identified for the period under review. The lack of access to all the fundamental rights petitions filed, dismissed, withdrawn or determined during a given period therefore, remains a problem and significantly undermines the understandings of the developments or the lack of it within this jurisdiction.

The next two chapters consider the levels of implementation by the state of the recommendations made by the LLRC in the areas of restitution, reconciliation and resettlement. The UNHRC resolutions (2011, 2013 and 2014) place a high emphasis on the LLRC recommendations and repeatedly call on the Government of Sri Lanka (GoSL) to ensure their implementation. However, as both chapters of this SHR points out, the implementation of the recommendations has been selective and in many cases, ineffective.

In the chapter titled *Implementation of LLRC Recommendations: Restitution and Reconciliation*, Ambika Satkunanathan underscores one of the most significant gaps in the LLRC report. That is the lack of a nuanced and balanced assessment of the question of accountability for the violations of human rights and international

humanitarian law during the last phase of the internal armed-conflict in Sri Lanka. She points out that existing international guidelines and standards such as *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* have not been drawn upon in the analysis undertaken in the LLRC report. For instance, the assessment of the existing reparations policy does not consider these principles in evaluating the performance of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA). Apart from these weaknesses, Satkunanathan rightly points out that the findings and recommendations of the LLRC on the right to liberty, rights of missing persons and their family members, the right to restitution, reconciliation and resettlement, among other issues, are to be welcomed. Focusing specifically on the recommendations related to reconciliation and restitution and the attempts (if any) of the GoSL to implement them, the analysis effectively demonstrates that much remains to be achieved in giving effect to the recommendations of the LLRC.

The chapter also considers the National Plan of Action (NPoA) for the implementation of the recommendations of the LLRC and demonstrates that while certain recommendations have not been included in the NPoA that even the recommendations that have been included have not been incorporated effectively. Furthermore, in practice, as pointed by Satkunanathan, the NPoA largely remains irrelevant due to its non-implementation or partial implementation. Drawing on incidents of the abuse of political power and the suppressions of freedoms in the areas affected by the armed conflict, this chapter makes the point that while not giving effect to the recommendations of the LLRC, the state has 'instead engaged in and supported activities that have deepened

existing inter and intra-communal divisions and created considerable obstacles to achieving meaningful reconciliation (...). The lack of political will to grant restitution and to work towards reconciliation is identified as the root cause of this problem.

The chapter by Juanita Arulanantham titled *Implementation of LLRC Recommendations on Resettlement* critically assess the degree to which resettlement efforts of the GoSL fulfils the recommendations of the LLRC. As with the findings of the previous chapter, Arulanantham too concludes that most of the recommendations in this regard have not been implemented and she too identifies the lack of political will as the main contributory factor. Analysing the administrative and policy based interventions by the GoSL, it is argued in this chapter that the responsibility of the state towards the resettlement of internally displaced persons largely remains unfulfilled. Furthermore, it is pointed out that the continuation of High Security Zones in the North and East is problematic both in light of the LLRC recommendations and the lifting of the state of emergency in the country. The chapter concludes with recommendations for the GoSL as to how these shortcomings could be addressed.

The final chapter of the SHR for 2011-2012 titled *The National Human Rights Action Plan*, examines the stated policy of the GoSL in fulfilling its responsibility with regard to respecting and protecting human rights. Through a two pronged approach, Kalana Senaratne finds that while the National Human Rights Action Plan (NHRAP) has some potential to contribute to the immediate and progressive realization of human rights in Sri Lanka, in practice, due to factors such as the lack of suitability of the institutions charged with the implementation of the policy, the

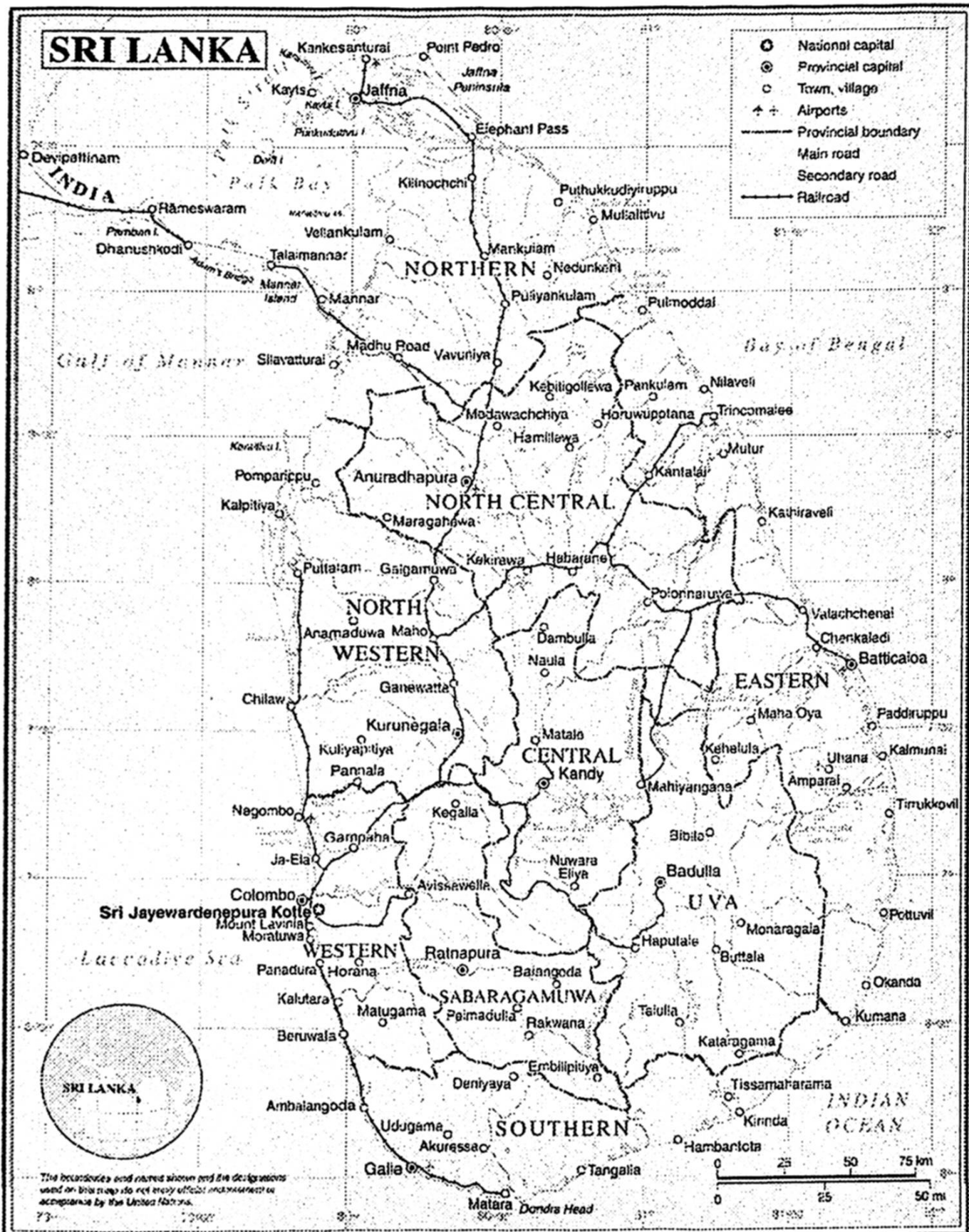
potential of the NHRAP remains unrealised. Senaratne rightly points out that the NHRAP has been noted and commented on at deliberations of the UN HRC and also that the GoSL has sought to rely on the NHRAP in seeking to establish its commitment to the protection of human rights before the international community. As such, the substance and the implementation of the NHRAP gains further significance. This chapter provides a balanced analysis of the context in which the NHRAP was conceptualised and is seemingly being implemented.

The SHR over the years has contributed to the documentation and analysis of the degree of respect afforded to human dignity and autonomy in Sri Lanka during a given period and this issue continues that tradition. Read as a whole this report brings together the specific concerns arising out of the country's post-armed conflict context as well as the more general concerns regarding human rights. The close relationship between the two has been critically analysed and commented on.

Dinesha Samararatne

Editor

SRI LANKA



I.

Overview of the State of Human Rights in 2011-2012

Gehan Gunatilleke¹

The greatest incitement to guilt is the hope of sinning with impunity.

Cicero (106 – 43

B.C.E)

1. Introduction

With war comes sacrifice. Centuries of sensitising the human consciousness to conflict have led us to cynically accept this certainty. Yet, along with the countless lives that are lost, we also see our values and ideas sacrificed at war. The idea of accountability, for instance, which dictates that wrongs must never go unpunished, appears to wane in the face of expediency. In the aftermath, we are compelled to contend with a new *status quo* distinctly predisposed towards impunity.

Post-war societies face the perennial challenge of restoring the structures necessary for protecting and promoting human rights. A post-war culture of impunity, however, amplifies this challenge. In Sri Lanka's case, the challenge is certainly far from being overcome, as the post-war era has witnessed continuing violations of human rights. In this context, the

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relationship between the lack of accountability for crimes committed during war and a culture of impunity in its aftermath warrants close scrutiny.

This overview chapter attempts to explore this relationship by examining events during the two-year period between January 2011 and December 2012.

Three watershed events took place during this period, each impacting the trajectory of post-war efforts to improve Sri Lanka's human rights record. First, a Panel of Experts appointed to advise the United Nations Secretary General (UNSG) on accountability in Sri Lanka released its report on 31 March 2011.² The Panel presented a narrative that, in its view, warranted a credible process for accountability. Second, the government-appointed Lessons Learnt and Commission (LLRC) published its final report in December 2011.³ Despite lapses in its analysis of accountability issues, the Commission presented findings and recommendations that created some space for a domestic discussion on Sri Lanka's human rights problem. Third, in March 2012, the United Nations Human Rights Council (UNHRC) adopted a resolution titled 'Promoting reconciliation and accountability in Sri Lanka'.⁴ The resolution classified some of the LLRC's recommendations as 'constructive' and called for their implementation. Yet the resolution specifically

² Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011 [UN Panel Report].

³ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011) [LLRC Report].

⁴ UN Human Rights Council Resolution 19/2, 'Promoting reconciliation and accountability in Sri Lanka', adopted at the 19th Session of the UN Human Rights Council, 3 April 2012, A/HRC/RES/19/2.

expressed concern that the LLRC report did not adequately address alleged violations of international law.

Immediately following the resolution, there appeared to be some consensus in terms of two needs: first, the need to implement the LLRC's 'constructive recommendations' on several key human rights issues, which could help mitigate ongoing human rights violations; and second, the need to establish a more credible mechanism to investigate past violations of international law. Meanwhile, a dichotomy emerged in the use of terminology. On the one hand, 'human rights violations' were associated with violations taking place outside the theatre of war and in the post-war era. On the other hand, 'accountability' was associated with investigations into violations of international humanitarian and human rights law during the final stage of the war.⁵ In this context, very few domestic civil society actors explicitly made accountability part of their vocabulary. In fact, some doubts were expressed as to whether accountability was even required.⁶

This Chapter seeks to present a snapshot of the human rights situation in Sri Lanka during 2011 and 2012 with a distinct focus on accountability discourse. The Chapter is presented in two parts. The first documents and analyses the various domestic and international efforts relating to human rights and accountability in Sri Lanka during the period of review.

⁵ See for example, the Joint-Civil Society Submission to the Universal Periodic Review (Sri Lanka), Submission to UN Universal Periodic Review of Sri Lanka 14th Session, October-November 2012.

⁶ See for example, the Joint-Civil Society Submission to the Universal Periodic Review (Sri Lanka), Submission to UN Universal Periodic Review of Sri Lanka 14th Session, October-November 2012. at p.10.

The second examines the present human rights situation in the country and the possible relationship between the absence of accountability for past crimes and the current culture of impunity. In examining these events and discourses, the chapter aims to present a compelling case for infusing accountability into mainstream human rights discourse, based on an understanding that accountability and human rights are mutually reinforcing ideals.

2. Accountability and Reconciliation: Domestic and International Efforts

2.1 The emerging demand for accountability

On 23 May 2009, merely days after the end of the war, the UNSG and the Government of Sri Lanka issued a Joint Statement. The Statement made strong reference to the government's 'commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations.'⁷ The Joint Statement also underlined the 'importance of an accountability process for addressing violations of international humanitarian and human rights law'.⁸ Accordingly, the government agreed to take measures to address those grievances.⁹ The Joint Statement was, in effect, a crucial agreement between the government and the UN. It set out the framework for future action on human rights protection and promotion. It also formed the basis for international expectations with respect to a credible domestic accountability process.

⁷ Joint Statement at the Conclusion of the UN Secretary-General's Visit to Sri Lanka, 23 May 2009, SG/2151, 26 May 2009.

⁸ *Ibid.*

⁹ *Ibid.*

Several developments during the year that followed the Joint Statement (i.e. 2009-2010) impacted on the accountability discourse in Sri Lanka. These developments warrant brief mention.

First, no progress was made on investigating alleged civilian deaths and disappearances during the war. In fact, the Ministry of Defence later claimed that no major offences were committed by the military during 2009—the crucial year in which the final stages of the war were fought.¹⁰ Meanwhile, in August 2009, Channel 4, a British news agency, released footage that appeared to depict the execution of combatants captured by government security forces, thereby raising serious questions regarding the possible commission of war crimes and crimes against humanity during the final stages of the war.¹¹ The authenticity of the footage was still debated throughout 2010.¹² Yet the existence of the footage kept the issue of accountability for international crimes current—particularly amongst international circles.¹³

¹⁰ Ministry of Defence, *Humanitarian Operation Factual Analysis: July 2006 – May 2009* (July 2011), at p.79. According to the report, only thirteen major offences were investigated between 2005 and 2010. Of the thirteen cases, nine were still pending inquiry. Of the remaining four, only three resulted in punishment or discharge. Interestingly, not a single offence was recorded for the year 2009.

¹¹ Jonathan Miller, 'Sri Lanka execution video: evidence of war crimes?', *Channel 4 News*, 25 August 2009, at <http://www.channel4.com/news/sri-lanka-execution-video-evidence-of-war-crimes>.

¹² 'Deeming Sri Lanka execution video authentic, UN expert calls for war crimes probe', *UN News Centre*, 7 January 2010, at http://www.un.org/apps/news/story.asp?NewsID=33423#.Um_CvJQpaR1.

¹³ *Ibid*

Second, efforts to introduce vital constitutional reform—which could have potentially addressed some of the political grievances of minorities—failed to reap results. An All Party Representative Committee (APRC), appointed to recommend such reforms, had already submitted a set of proposals to the President. Yet, in January 2010, the President unequivocally rejected the APRC proposals, and promised to put forward his own solution.¹⁴ In the months that followed the presidential and general elections of 2010, no such solution was announced. The Eighteenth Amendment to the Constitution, which abolished the term limit of the President and removed constitutional checks on politicisation of public offices, exacerbated fears that the present government was not serious about power sharing.¹⁵ This perceived lack of progress on the political front also impacted on accountability discourse, as accountability became a critical leverage point through which the government could be compelled to negotiate on a political solution.

Third, 2009 and 2010 failed to witness improvement in the human rights situation. The continuation of extra-judicial killings and enforced disappearances, the extended presence of the military in the North and East, the arrest and detention of civilians under a prolonged state of emergency and the continued targeting of the media reflected a breakdown in

¹⁴ Charles Haviland, 'President rejects APRC proposals', *The BBC Sinhala.com*, 15 January 2010, at http://www.bbc.co.uk/sinhala/news/story/2010/01/100115_mahinda_tamil.shtml.

¹⁵ For an in-depth discussion on the constitutional and political consequences of the Eighteenth Amendment to the Constitution, see Rohan Edrisinha & Aruni Jayakody (Eds.), *The Eighteenth Amendment to the Constitution: Substance and Process*, Centre for Policy Alternatives (2011).

the rule of law and a rise in impunity.¹⁶ The problem of impunity proved to be a systemic problem, which warranted a systemic response. Thus the post-war state of human rights significantly impacted on accountability discourse.

2.2 The UN Secretary General's Panel of Experts

By mid 2010, doubts were raised over the prospect of the government honouring its commitments in the Joint Statement of 23 May 2009. These doubts encouraged the UNSG to appoint a Panel of Experts to 'advise him on the implementation of the joint commitment' included in the Joint Statement.¹⁷ The Panel comprised Marzuki Darusman of Indonesia, Yasmin Sooka of South Africa and Steven Ratner of the United States. The Panel's mandate was often misunderstood as including an investigation of allegations. On the contrary, the purpose of the Panel was merely to advise the UNSG on the extent of the allegations and on whether these allegations were credible and based on available information.¹⁸ In essence, the report was an initial legal opinion and was never meant to establish guilt or innocence. The Panel was also not required to concern itself with the possible political fallout of pursuing an accountability process. The report was only meant to be a clinical assessment of the application of the law. It proceeded on the basis that both international humanitarian and human rights law were applicable to the war in Sri Lanka. It thus opined that neither the 'publicly expressed aims of each side

¹⁶ See Law & Society Trust, *Sri Lanka: State of Human Rights 2009-2010* (May 2012).

¹⁷ UN Panel Report, at i. The Panel understood that its Terms of Reference did not extend to fact finding or investigation.

¹⁸ *Ibid.*

(combating terrorism, in the case of the government, and fighting for a separate homeland, in the case of the LTTE)', nor the 'asymmetrical nature of the tactics employed' affected such applicability.¹⁹

The much-anticipated report of the Panel was published on 31 March 2011. The contents of the report significantly altered the discourse on accountability in Sri Lanka and placed accountability at the helm of the public debate on reconciliation.

The Panel presented a narrative that characterised the government's prosecution of the war as a 'grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.'²⁰ Within the context of this narrative, the Panel found credible allegations of war crimes and crimes against humanity committed by both the government and the LTTE during the final stages of the war.

The Panel's observations—particularly those found in the Executive Summary of the report—appeared to venture beyond a purely clinical legal assessment of allegations. It made several observations that read more like conclusions. It observed that the government 'systematically shelled hospitals on the frontlines...despite the fact that their locations were well-known to the government.'²¹ It further observed that the government 'systematically deprived people in the conflict zone of humanitarian aid, in the form of food

¹⁹ *Ibid.*

²⁰ *Ibid.* at para.258.

²¹ *Ibid.* at ii.

and medical supplies, particularly surgical supplies, adding to their suffering' and that the government 'purposefully underestimated the number of civilians who remained in the conflict zone.'²² It also observed: 'Tens of thousands lost their lives from January to May 2009, many of whom died anonymously in the carnage of the final few days.'²³ Observations of this nature shaped the government's response, which was unequivocally negative.²⁴ Meanwhile, Sri Lankan civil society actors remained largely silent on their appraisal of the report, except perhaps for a strong critique by the Marga Institute.²⁵

The Panel's report contributed towards an adversarial discourse on accountability in Sri Lanka. This type of discourse perhaps pushed the government, its supporters and large sections of the Sri Lankan public towards a defensive and non-cooperative stance in relation to accountability. The term 'accountability' became singularly associated with war

²² *Ibid.* at iii.

²³ *Ibid.*

²⁴ In a briefing to the diplomatic community on 28 April 2011, the Minister of External Affairs, Prof. G.L. Peiris described the report as having 'fundamental deficiencies, inherent prejudices and malicious intentions' and that it was 'legally, morally and substantively flawed' See Ministry of External Affairs Sri Lanka, *Minister of External Affairs Briefs Diplomatic Community on Darusman Report*, 28 April 2011, at: http://www.mea.gov.lk/index.php?option=com_content&task=view&id=2746&Itemid=75.

²⁵ See Godfrey Gunatilleke, *Truth and Accountability: The Last Stages of the War in Sri Lanka – An Analysis and evaluation of the Report of the UN Secretary General's (UNSG) Panel of Experts on Accountability in Sri Lanka* (2011), at <http://www.margasrilanka.org/Truth-Accountability.pdf>. The author comments: 'The root of the problems in the report lie in their outrageous interpretation of the government's military strategy as designed at the extermination of Tamils without any humanitarian intention or effort at rescuing hostages. With this interpretation the panel puts on the blinkers that distort all their perceptions of the government's actions.'

crimes and crimes against humanity, and with the individual criminal responsibility of decision-makers. Thus the term became stigmatised and momentarily lost its meaning as a process based on truth, justice and victim reparation.²⁶

Whatever misgivings one might maintain towards the language and tenor of the Panel's report, its final recommendations warrant separate consideration. The Panel clearly placed an onus on the Sri Lankan government to initiate an accountability process, instead of diverting the responsibility to the international community. The Panel recommended that the government 'immediately commence genuine investigations into alleged violations of international humanitarian and human rights law committed by both sides involved in the armed conflict.'²⁷ It also recommended that the UNSG establish an independent international mechanism to: (1) monitor and assess the extent to which the government is carrying out an effective domestic accountability process; (2) conduct investigations independently into the alleged violations; and (3) collect and safeguard for appropriate future use information provided to it that is relevant to accountability for the final stages of the war.²⁸

The Panel was thus successful in propelling a more structured international campaign on accountability in Sri Lanka. Contrary to the original purpose of the Panel, its report was used as an advocacy tool at international fora to gather momentum for an accountability process. This momentum

²⁶ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005, E/CN.4/2005/102/Add.1.

²⁷ UN Panel Report, at 120.

²⁸ *Ibid.*

certainly increased pressure on the government to begin a domestic accountability process. Accordingly, expectations were raised with regard to the LLRC's mandate to deal with accountability issues.

The panel dismissed the LLRC as 'deeply flawed' and failing to meet 'international standards for an effective accountability mechanism'.²⁹ However, the LLRC was yet to release its final report. Hence there was little doubt that the LLRC would grapple with the question of accountability and present a counter-narrative in its report.

2.3 The Lessons Learnt and Reconciliation Commission

President Mahinda Rajapaksa appointed the LLRC on 15 May 2010 amidst domestic and international pressure to address accountability issues and present a framework for national reconciliation. At its inception, the mandate of the LLRC was limited, as it was only officially tasked with inquiring into the facts and circumstances that led to the failure of the Ceasefire Agreement (CFA) of 2002 and the sequence of events that followed thereafter up to 19 May 2009.³⁰ The LLRC did not have a direct mandate to address accountability issues. Nevertheless, developments following the appointment of the LLRC—particularly the Channel 4 footage and the Report of the UNSG's Panel of Experts—signalled a growing need for the Commission to deal with the question of accountability. The LLRC did, however, possess a mandate with respect to ensuring national unity

²⁹ *Ibid.* at v.

³⁰ LLRC Report, at iii.

and the non-recurrence of ethnic tensions in the future.³¹ Since accountability may be considered an important element of such a process, the LLRC appeared to have had an indirect mandate to consider accountability issues.

The final report of the LLRC was released to the public on 16 December 2011. It presented 180 distinct recommendations to the government³² dealing with a range of issues including displacement, land dispute resolution, detention, media freedom, investigation into extra-judicial killings and enforced disappearances, and the independence of public institutions.³³ It also analysed the conduct of the security forces during the war and evaluated the need for further investigations into alleged violations of international humanitarian and human rights law. In this regard, it concluded that the security forces had conducted themselves in 'an exemplary manner'³⁴ and that only isolated incidents warranting investigation had taken place.³⁵

³¹ *Ibid.* at iv. Clause V of the Warrant issued to the LLRC by the President empowered the LLRC to: '[Inquire and report on] the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.'

³² See Gehan Gunatilleke & Nishan de Mel, *Sri Lanka: LLRC Implementation Monitor - Statistical and Analytical Review No. 1* (November 2012), at p.2.

³³ Subsequent chapters in this volume deal with the LLRC Recommendations in more depth. Specific attention is paid to the recommendations on return and resettlement, and the recommendations on restitution and reconciliation.

³⁴ LLRC Report, at para.4.319.

³⁵ LLRC Report, at paras.4.106, 4.107, 4.109, 4.110, and 4.111. The incidents include the alleged Navy attack on civilians in Chundikulam on 10 May 2009; an incident which took place on 20 April 2009 at Mathalan Pokkanai, where the Army allegedly forced civilians to recover the body of an army personnel and prevented them from crossing over to government controlled area; and the government shelling of civilians in Pokkanai.

The Tamil National Alliance (TNA) was perhaps the first to critique the Commission's analysis of accountability issues.³⁶ It dismissed the LLRC's analysis as flawed for a number of reasons including weaknesses in methodology³⁷ and in the application of international law to the facts.³⁸ Meanwhile, the party expressed its willingness to support a number of recommendations dealing with human rights issues.³⁹

Several states including the United States, the United Kingdom, Australia, Canada and South Africa appeared to share the TNA's sentiments on the LLRC's work on accountability.⁴⁰ The emerging discourse pointed to a dichotomy in the value of the LLRC. On the one hand, its analysis on accountability was seen as inadequate, thereby requiring the government to undertake additional measures to deal with violations of international law. On the other, several recommendations on a range of human rights issues were acknowledged as important, thereby requiring the government to expeditiously implement them.

³⁶ See Tamil National Alliance (TNA), *Response to the Lessons Learnt and Reconciliation Report* (January 2012).

³⁷ *Ibid.* at 26.

³⁸ *Ibid.* at 30-60.

³⁹ *Ibid.* See Chapter 2: Issues unrelated to Accountability, at b. The response specifically acknowledges these recommendations as having 'positive elements', and states that 'if vigorously implemented, would be welcomed and supported by the TNA'.

⁴⁰ See United States Department of State, *Daily Press Briefing*, 19 December 2011; Foreign and Commonwealth Office (United Kingdom), *Foreign Office Minister responds to report on the conflict in Sri Lanka*, 12 January 2012; Department of Foreign Affairs and Trade (Australia), *Australia's response to Sri Lanka's LLRC Report*, 13 February 2012; Government of Canada, *Minister Baird Comments on Final Report of Sri Lanka's Lessons Learnt and Reconciliation Commission*, 11 January 2012; Department of International Relations and Cooperation, *South African Government position on the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) in Sri Lanka*, 30 January 2012.

2.4 The UN Human Rights Council Resolution

In March 2012, a U.S. sponsored resolution on Sri Lanka was tabled at the 19th Session of the UNHRC.⁴¹ Several key recommendations of the LLRC, most of which related to specific human rights issues, were defined as 'constructive recommendations' in the resolution.⁴² Eight categories of constructive recommendations were accordingly identified in the resolution:

1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances;
2. Demilitarising the North of Sri Lanka;
3. Re-evaluating detention policies;
4. Promoting and protecting the right of freedom of expression for all;
5. Implementing impartial land dispute resolution mechanisms;
6. Strengthening formerly independent civil institutions;
7. Reaching a political settlement on the devolution of power to the provinces; and
8. Enacting rule of law reforms.

The resolution on Sri Lanka was eventually passed by a majority of the member states, including India.⁴³ Interestingly, the Council re-emphasised the dichotomy in the value of the LLRC. On the one hand, the Council called on the

⁴¹ See United States of America: Draft Resolution, '19/... Promoting reconciliation and accountability in Sri Lanka', 8 March 2012, A/HRC/19/L.2.

⁴² *Ibid.* at preambular clause 5.

⁴³ UN Human Rights Council Resolution 19/2, 'Promoting reconciliation and accountability in Sri Lanka', adopted at the 19th Session of the UN Human Rights Council, 3 April 2012, A/HRC/RES/19/2. ['UNHRC Resolution'].

government to implement the 'constructive recommendations' of the LLRC and to 'present, as expeditiously as possible, a comprehensive action plan detailing the steps that the government has taken and will take to implement the recommendations...'⁴⁴ On the other, the Council noted with concern that the LLRC report 'does not adequately address serious allegations of violations of international law'.⁴⁵

The new median point appeared to be the LLRC's constructive recommendations. The UNHRC resolution placed pressure on the government to demonstrate good faith by implementing at least part of the LLRC's recommendations it deemed 'constructive'. Yet the resolution made it clear that such implementation would not satisfy the requirements of accountability for 'violations of international law'—no doubt meaning international humanitarian and human rights law. Significantly, the term 'accountability' and the government's responsibility to 'take necessary additional steps' to 'initiate credible and independent actions' to ensure accountability are retained in the text of the resolution.⁴⁶

⁴⁴ UNHRC Resolution, operative clause 2. Subsequently, the Presidential Secretariat published a 'National Plan of Action for the Implementation of the LLRC Recommendations' in July 2012. This plan sought to provide a framework for the implementation of the LLRC. However, a recent analysis of the plan concluded that it omitted a substantial portion (28%) of the LLRC's recommendations. See Gehan Gunatilleke & Nishan de Mel, *Sri Lanka: LLRC Implementation Monitor - Statistical and Analytical Review No. 1* (November 2012).

⁴⁵ UNHRC Resolution, preambular clause 6.

⁴⁶ *Ibid.* Operative clause 1.

The resolution set a two-pronged agenda: first, rapid improvement of the current human rights situation through the implementation of the LLRC's constructive recommendations; and second a longer term initiative to bring to justice those who committed international crimes during the war. Given the fairly strong mandate handed to the UN High Commissioner for Human Rights to report on progress,⁴⁷ the resolution ultimately ensured that the Council was seized of the situation in Sri Lanka. The resolution was thus seen as a step in the right direction, and an opportunity to finally break the cycle of impunity in Sri Lanka.⁴⁸

The next section of this chapter reviews the human rights situation in Sri Lanka during 2011 and 2012 and examines the extent to which wartime impunity influenced the country's post-war human rights record.

3. The Post-War Human Rights Record

Many of the LLRC's 'constructive recommendations' specifically related to key human rights issues at the time. These issues were also the subjects of discussion during Sri Lanka's Universal Periodic Review in November 2012.⁴⁹ The

⁴⁷ *Ibid.* Operative clause 3.

⁴⁸ See Amnesty International, *Sri Lanka: Human Rights Council vote a step in the right direction*, 22 March 2012 at <http://www.amnesty.org/fr/node/30429>. The statement described the resolution as 'a positive step forward for Sri Lankans, and an opportunity to end the longstanding impunity for human rights violations that have marked the country for decades.

⁴⁹ Report of the Working Group on the Universal Periodic Review: Sri Lanka, 18 December 2012, A/HRC/22/16. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its 14th Session from 22 October to 5 November 2012. The review of Sri Lanka was held at the 16th meeting, on 1 November 2012.

issues of extra-judicial killings and enforced disappearances, militarisation, the rule of law, detention policy and media freedom are discussed below.⁵⁰

3.1 Extra-judicial killings and enforced disappearances

The LLRC clearly recommended the investigation of extra-judicial killings and enforced disappearances, and the prosecution of perpetrators.⁵¹ These recommendations continued to be relevant during 2011 and 2012.

Over a dozen extra-judicial killings took place during this period.⁵² Moreover, previous cases of extra-judicial killings including the assassination of the editor of the Sunday Leader, Lasantha Wickramatunge remained unsolved.⁵³

⁵⁰ Issues of resettlement and reconciliation are discussed in subsequent chapters of this volume. During the period of review, the government also released a National Action Plan for the Protection and Promotion of Human Rights. This plan is also discussed in a subsequent chapter of this volume.

⁵¹ See recommendations contained in paras.9.9, 9.23, 9.37, 9.39, 9.41, 9.46, 9.48, 9.50, 9.51, 9.59, and 9.120 of the LLRC Report.

⁵² See International Movement against All Forms of Discrimination and Racism (IMADR), *Enforced and involuntary disappearance in Sri Lanka*, Written statement submitted at the 19th Session of the UN Human Rights Council, 28 February 2012, A/HRC/19/NGO/123. IMADR documents several cases of persons being abducted and later found dead, including: Dinesh Buddhika Charitananda found dead on 3 January 2012; Mohamed Niyas, a Muslim astrologer, abducted in a white van on 27 October 2011 and found dead three weeks later; Hewage Chandana Rohan Lilantha Dabare who disappeared and was found dead on 1 January 2012; Mohamed Nisthar who disappeared and was found dead on 2 January 2012; and Rajgopal of Trincomalee, abducted and found dead on 3 January 2012.

⁵³ Joint-Civil Society Submission to the Universal Periodic Review (Sri Lanka), Submission to UN Universal Periodic Review of Sri Lanka 14th Session, October-November 2012, at footnote 118.

Several disappearances (which were possibly enforced disappearances⁵⁴) were also reported during the period. Some accounts estimated the total number of disappearances between October 2011 and August 2012 to be 57.⁵⁵ These included the disappearance of Janatha Vimukthi Peramuna activists, Lalith Kumara Weeraraj and Kugan Murugananthan in December 2011 and the abduction of Tamil businessman, Ramasamy Prabakaran. Persons in a white van abducted Ramasamy Prabakaran on 11 February 2012, two days before the Supreme Court was to hear a fundamental rights application filed by him.⁵⁶ The application cited Senior Police Officers attached to the Colombo Crime Division as respondents.⁵⁷

⁵⁴ 'Enforced disappearance' is defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance as: 'the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'

⁵⁵ 'A disappearance every five days in post-war Sri Lanka', *Groundviews*, 30 August 2012, at: http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/#_ftn1.

⁵⁶ See IMADR, *Enforced and involuntary disappearance in Sri Lanka*, Written statement submitted at the 19th Session of the UN Human Rights Council, 28 February 2012, A/HRC/19/NGO/123. IMADR observed that 'According to the most recent report of the UN Working Group on Enforced or Involuntary Disappearances (A/HRC/19/58), 5,671 cases of disappearance in Sri Lanka still remain outstanding.' It also observed that 59 cases were transmitted to the government between 13 November 2010 and 11 November 2011 and no replies were given.

⁵⁷ *Ibid.*

Meanwhile, the disappearance of cartoonist and journalist, Prageeth Eknaligoda remained unresolved. Eknaligoda disappeared on 24 January 2010 while on work for *Lanka e-News*.⁵⁸ The news website was particularly critical of the government and Eknaligoda himself was a strong supporter of presidential candidate, Sarath Fonseka.⁵⁹ His wife, Sandya Eknaligoda thereafter filed a *habeas corpus* application in the Court of Appeal.⁶⁰ On 9 November 2011, Mohan Peiris, former Attorney-General and present *de facto* Chief Justice, announced to the UN Committee against Torture during its 47th Session that Eknaligoda was alive and was seeking asylum in a foreign country.⁶¹ Meanwhile, the Court of Appeal had ordered an inquiry in the Magistrate's Court of Homagama, which subsequently summoned Mohan Peiris on 5 June 2012 to provide evidence on the whereabouts of the missing journalist. However, Mr. Peiris testified that this statement was merely hearsay and that he did not remember who or what the source of his information was.⁶² The episode was typical of the absolute impunity in which high-ranking officials operated in downplaying egregious violations of human rights at the time. At the end of 2012, no further progress had been made in locating the missing journalist or identifying his abductors.

⁵⁸ 'Concern over missing journalist', *BBC Sinhala*, 25 January 2010, available at: http://www.bbc.co.uk/sinhala/news/story/2010/01/100125_prageeth_missing.shtml.

⁵⁹ 'As election nears, pro opposition journalist disappears', *ifex.org*, 25 January 2010, available at: http://preview.ifex.org.nmsrv.com/sri_lanka/2010/01/25/ekneligoda_missing.

⁶⁰ H.C.A. 01/2010 (Court of Appeal), filed on 19 February 2010.

⁶¹ A transcript of the statement was later produced in the Magistrate Court of Homagama. See Proceedings in A.R. 3170/11 (Magistrate's Court of Homagama), dated 16 June 2012.

⁶² See Proceedings in A.R. 3170/11 (Magistrate's Court of Homagama), dated 16 June 2012.

The continuation of these human rights abuses largely contributed to the notion that Sri Lanka was amidst a 'crisis of impunity'.⁶³ Over three thousand persons were reported missing during the war and over a thousand of these disappearances were said to have occurred after the persons surrendered to or were arrested by the security forces.⁶⁴ These wartime abuses had set the precedent for what was to take place in the post-war period. Hence it became increasingly clear that the absence of a credible structure for investigating abuses during the war had now given perpetrators a free licence to continue similar abuses in the post-war period.

3.2 Demilitarisation and the Rule of Law

The LLRC recommended that the North and East be demilitarised and that security forces be disengaged from civilian administration.⁶⁵ Moreover, the LLRC emphasised on the need to restore and maintain the rule of law, describing it as a '*sine qua non* for peace and stability reforms'.⁶⁶

The thrust of these recommendations and sentiments appears to be the return of the country to normalcy, where the rule of law is maintained under a strictly civilian administration.

⁶³ The expression was repeatedly used by the International Commission of Jurists in its report *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (October 2012).

⁶⁴ Annex 5.1 of the Annexes to the LLRC Report lists 3,596 complaints with respect to the disappearance of individuals. 1,018 of these disappearances are alleged to have taken place after surrender to or arrest by the security forces.

⁶⁵ See recommendations contained in paras.9.117, 9.134, 9.142, 9.171 and 9.227 of the LLRC Report.

⁶⁶ *Ibid.* at para.8.185.

Yet, two years after the end of the war, the rule of law was being routinely flouted throughout the country, particularly in the suppression of peaceful protests against the government.

The security forces and the Police were invariably at the helm of these violations. In May 2011, the police attacked Free Trade Zone workers protesting against the government's proposed mandatory pension scheme for private sector employees. Several workers were injured in the attack and 21-year-old Roshen Chanaka Ratnasekera was shot dead.⁶⁷ On 22 August 2011, civilians in Navanthurai, Jaffna protested outside an army camp over the possible involvement of the security forces in a 'grease devil' incident.⁶⁸ The next day, approximately one hundred Tamil civilians were dragged from their homes by security personnel and brutally assaulted and arrested.⁶⁹ In February 2012, Antony Fernando Warnakulasuriya, a 35-year-old fisherman was shot dead by the Special Task Force of the

⁶⁷ Joint-Civil Society Submission to the Universal Periodic Review (Sri Lanka), Submission to UN Universal Periodic Review of Sri Lanka 14th Session, October-November 2012, at footnote 97.

⁶⁸ Subash Somachandran, 'Sri Lankan military attacks Tamil villagers', *World Socialist Web Site*, 26 September 2011, at <http://www.wsws.org/en/articles/2011/09/sljf-s26.html?view=print>. The grease devil phenomenon involved the harassment of civilians—particularly women—throughout the country, including the North and East, by individuals who allegedly applied grease all over their bodies, possibly to evade capture. In the Navanthurai incident, the civilians had witnessed five such perpetrators fleeing into an army camp.

⁶⁹ See 'Jaffna: Brutal Assault of Civilians in Navanthurai', *Groundviews*, 25 August 2011, at <http://groundviews.org/2011/08/25/jaffna-brutal-assault-of-civilians-in-navanthurai>.

Police while protesting against a fuel price hike.⁷⁰ Moreover, on 27 November 2012, the military entered and searched the dorms of university students in Jaffna.⁷¹ The military was also instrumental in quelling subsequent student protests against the incident.⁷² Four students were eventually arrested and detained under the Prevention of Terrorism Act (PTA).⁷³

These incidents reflected the government's harsh policy towards any form of dissent regardless of the ethnicity or political interests of the protestors. The military and the Police had enjoyed decades of impunity in brutally suppressing violent movements. And now, in the post-war context, these institutions sought to function with similar levels of impunity in suppressing non-violent movements. Responses thought fit for 'insurgents' and 'separatists' were now being habitually used against students, workers, fishermen and ordinary villagers. Wartime impunity, it seemed, had crossed into the post-war period and had shaped the government's response to peaceful demonstrations.

⁷⁰ Chris Kamalendran, 'Fishermen's ire, police fire and a widow's tears', *The Sunday Times*, 19 February 2012, at http://www.sundaytimes.lk/120219/News/nws_17.html.

⁷¹ See Asian Human Rights Commission, 'Sri Lanka: The clergy and civil society condemn the arrest and unlawful detention of four students from the University of Jaffna and call for their immediate release', 7 December 2012, at <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-056-2012>. Also see Amnesty International, *Impunity persists for crimes under international law as Sri Lanka escalates attacks on critics*, Written statement at the 22nd Session of the UN Human Rights Council, 22 February 2013, A/HRC/22/NGO/166.

⁷² *Ibid.*

⁷³ Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

3.3 Detention policies

The LLRC also made several constructive recommendations on the need to re-evaluate detention policies with a strong focus on due process.⁷⁴ These recommendations remained pertinent to the period of review, as a number of detainees—certain estimates indicate as many as 810⁷⁵—remained in state custody on political grounds. Some of these detainees remained in custody without trial or indictment.⁷⁶

Emergency Regulations largely governed detention during and immediately after the war. However, President Mahinda Rajapaksa, in a speech to Parliament on 25 August 2011, announced that Emergency Regulations would be repealed. Accordingly, the state of emergency ended on 30 August 2011. Soon after, the President, acting in his capacity as Minister of Defence, promulgated five new regulations under Section 27 of the PTA.⁷⁷ The new regulations specifically deal with remand orders, detention and restriction orders and detention during trial. Regulation No. 4 of 2011, for instance, automatically converts the detention of persons under the previous Emergency Regulations into detention

⁷⁴ See recommendations contained in paras.9.47, 9.53, 9.54, 9.55, 9.57, 9.62, 9.63, 9.64, 9.65, 9.66, 9.67, 9.68, 9.69, 9.70, 9.82 and 9.91. of the LLRC Report.

⁷⁵ See International Movement Against All Forms of Discrimination and Racism (IMADR), *Arbitrary detention in Sri Lanka*, Written statement submitted at the 22nd Session of the UN Human Rights Council, 19 February 2013, A/HRC/22/NGO/117.

⁷⁶ *Ibid.* The statement observes that ‘documentation by Sri Lankan activists indicates that up to 810 detainees are currently in detention for their political beliefs, many of whom have been awaiting charge for at least five years.

⁷⁷ See Extraordinary Gazette Notifications 1721/2, 1721/3, 1721/4 and 1721/5 of 29 August 2011.

under the Criminal Procedure Code.⁷⁸ Moreover, Regulations No. 5 of 2011 deal with persons who come forward 'in connection with' specified offences or 'through fear of terrorist activities' and mandatorily require that they be placed in custody and subjected to rehabilitation.

The *de facto* state of emergency that persisted even after August 2011 had serious implications on the human rights of detainees. For instance, in July 2012, Ganesan Nimalaruban and Mariyadas Pevis Delrukshan two Tamil political prisoners died in State custody.⁷⁹ The two prisoners were assaulted by the Special Task Force of the Police following their involvement in a hostage taking incident at the Vavuniya Prison. Both detainees eventually succumbed to the injuries they sustained as a result of the assault.⁸⁰ No state officer was subsequently prosecuted for the attack, marking the continuing problem of impunity in the prisons system.

⁷⁸ Regulation 2(1) of Regulations No. 4 of 2011 provides: 'Any person who has been detained in terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation, shall forthwith on the coming into operation of these regulations, be produced before the relevant Magistrate, who shall take steps to detain such person in terms of the provisions of the Criminal Procedure Code Act, No. 15 of 1979.

⁷⁹ 'Ganesan Nimalaruban: A damning murder, funeral and silence', *Groundviews*, 31 July 2012, at <http://groundviews.org/2012/07/31/ganesan-nimalaruban-a-damning-murder-funeral-and-silence>; Asian Human Rights Commission, *Sri Lanka: Truth and myth*, 10 August 2012, at <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-071-2012/?searchterm=None>

⁸⁰ See Charles Haviland, 'Parents of dead Sri Lankan Tamil prisoner 'denied last rites'', *BBC News*, 9 July 2012, at <http://www.bbc.co.uk/news/world-asia-18770072>. The incident involved 32 detainees at the Vavuniya prison, including the two victims, who protested the arbitrary transfer of prisoners from Vavuniya to Anuradhapura.

Detention policies in Sri Lanka have been described 'as part of a pattern of human rights violations that has persisted after the end of the armed conflict'.⁸¹ The lack of accountability for the abuse of emergency laws during an actual state of emergency had fundamentally shaped the manner in which those laws were applied (and abused) during the post-war period. Once again, impunity proved to be a systemic problem, incapable of being solved until it was replaced by a counter-culture premised on accountability.

3.4 Media freedom

The LLRC acknowledged the crisis in Sri Lanka concerning media freedom and made several recommendations aimed at alleviating the problem.⁸² The situation with respect to media freedom, however, did not see substantial improvement during the period of review. The incidents discussed below reflect a distinct agenda aimed at suppressing dissenting voices in the media.

Two types of violations took place during the period of review. First, media institutions were targeted through both violent and non-violent means. On 31 January 2011, unidentified attackers set fire to the office of the *Lanka-eNews* news website.⁸³ Prior to the attack, the website had been critical of the government and had faced threats from unidentified persons.⁸⁴ Its editor, Sandaruwan Senadeera was

⁸¹ Amnesty International, *Locked away: Sri Lanka's security detainees* (1st ed. 2012), at 5.

⁸² See recommendations contained in para.9.115 of the LLRC Report.

⁸³ Charles Haviland, 'Offices of anti-government Lankaenews.com set on fire', *BBC News*, 31 January 2011, at <http://www.bbc.co.uk/news/world-south-asia-12322916>.

⁸⁴ *Ibid.*

compelled to flee the country and seek political asylum in the United Kingdom.⁸⁵ In November 2011, the government blocked six news and media websites for 'allegedly portraying the President and top government officials disreputably'.⁸⁶ Moreover, on 29 June 2012, the Police raided the offices of two news websites, *Sri Lanka-XNews* and *Sri Lanka Mirror*, detained the staff for questioning and confiscated equipment.⁸⁷

Second, individual journalists were attacked and intimidated. On 29 July 2011, Gnanasundaram Kuhanathan, the news editor of Jaffna-based newspaper *Uthayan* was attacked and critically injured by armed men.⁸⁸ The editor of the same newspaper was once again attacked on 28 November 2012 during the crackdown of a protest in Jaffna.⁸⁹ Moreover, a group of unidentified individuals attempted to abduct Shantha Wijesooriya, a journalist attached *Sri Lanka-X-News*

⁸⁵ Reporters without Borders, *Sri Lanka*, 11 March 2011, at <http://en.rsf.org/sri-lanka-sri-lanka-11-03-2011,39720.html>.

⁸⁶ International Movement Against All Forms of Discrimination and Racism (IMADR), *Freedom of expression in Sri Lanka*, Written statement submitted at the 22nd Session of the UN Human Rights Council, 19 February 2013, A/HRC/22/NGO/118. [IMADR Statement at the 22nd Session of the UN Human Rights Council].

⁸⁷ *Ibid.*

⁸⁸ Chris Kamalendran, 'Uthayan news editor brutally attacked', *The Sunday Times*, 31 July 2011, at http://sundaytimes.lk/110731/News/nws_06.html.

⁸⁹ 'Sri Lanka's Jaffna sees clashes over Tamil rebel remembrance', *BBC News*, 28 November 2012, at <http://www.bbc.co.uk/news/world-asia-20531233>.

on the same day the police raided the premises of the news website.⁹⁰ The journalist thereafter fled the country.⁹¹

These attacks—both on institutions and individuals—have resulted in increased self-censorship, ‘leading to the preclusion of critical reportage on post-civil war cases of corruption, governance issues, and human rights violations.’⁹²

Self-censorship seriously weakens the media’s role in checking impunity. Hence the specific targeting of the media must be seen as part of a wider cyclical phenomenon. In essence, the prevalence of impunity has permitted perpetrators of these attacks against the media to avoid accountability. Moreover, the suppression of the media and the specific targeting of journalists have prevented reportage on human rights violations, which in turn has enhanced the culture of impunity. The disappearance of Prageeth Eknaligoda discussed above and the assassination of Lasantha Wickramatunge are cases in point. In this context, one could argue that only a credible independent accountability process could break the cycle of impunity.

4. Conclusion

Two major types of concerns emerged during the period of review, largely owing to watershed events such as the UNSG’s Panel report, the LLRC’s report and the UNHRC resolution. On the one hand, *immediate* concerns were raised over the current human rights situation. On the other, *longer-term*

⁹⁰ IMADR Statement at the 22nd Session of the UN Human Rights Council, at 3.

⁹¹ *Ibid.*

⁹² *Ibid.* at 4.

concerns were raised over accountability for past violations of international law. However, the interdependent relationship between these two types of concerns was not quite appreciated. This lacuna perhaps explains why the energies of Sri Lankan civil society actors were almost exclusively channelled towards restoring post-war human rights standards, rather than advocating for an independent mechanism for investigating crimes committed during the war. As discussed above, the term 'accountability' became associated with the longer-term agenda and remained largely outside civil society vocabulary.

A careful examination of the human rights situation during 2011 and 2012, however, reveals a somewhat dispiriting trend. The lack of accountability for past crimes had established a deeply pervasive culture of impunity. This culture is unmistakably reflected in Sri Lanka's human rights record in 2011 and 2012.

This chapter critically examined the issues of extra-judicial killings, enforced disappearances, militarisation, the rule of law, detention policy and media freedom. In each case, an intrinsic link emerges between the continuing violations of those rights and a pre-existing culture of impunity shaped by wartime abuses. The link ultimately gives fresh credence to the demand for an accountability mechanism, which if properly introduced, would reinforce the rule of law and the notion that democratic societies hold perpetrators to account for their actions. In this context, the language of accountability should no longer be seen as solely relevant to events during the war. It must be mainstreamed and accepted as having perennial importance. The culture of impunity must ultimately be replaced with a culture of accountability.

II.

JUDICIAL PROTECTION OF HUMAN RIGHTS

Madhushika Jayachandra¹

1. Introduction

At a time where independence of the judiciary is violated it is an overwhelming task to analyse how the apex court of Sri Lanka has fared in the protection of human rights during the period of 2011-2012.² Human rights are a necessary concomitant of a democracy. The judicial arm of the government, more specifically the Supreme Court of Sri Lanka, has the significant role of protecting human rights against unwarranted violations by the executive and administrative branches of the government³.

This chapter examines the key fundamental rights cases determined by the Supreme Court of Sri Lanka during the

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² See further in this regard, *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (April 2013) a report of the International Bar Association's Human Rights Initiative.

³ Article 126(1) of the 1978 Constitution of Sri Lanka.

period of 2011-2012. The overall trends drawn in this chapter are not conclusive and are indicated only as far as the records of cases decided during this period could be obtained. A total of twenty-five cases⁴ decided during the period of 2011-

⁴ *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012, *Warabenage Pavithra Dananjani De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011, *Weerawarna Kurukulasooriya v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 577/2009, S.C. Minutes of 01.11.2011, *Dusanayake Gayani Geethika and Others v. D.M.D. Dissanayake, Principal, D.S. Senanayake College and Others*, S.C. (FR) Application No. 35/2011, S.C. Minutes of 12.07.2011, *Madadunuge Susil de Silva and Another v. M.G.O.P. Panditharathne, Principal, Ambalangoda Dharmashoka Vidyalaya and Others*, S.C. (FR) Application No. 31/2011, S.C. Minutes of 28.03.2012, *Sergeant N.W.A. Nihal and Another v. M.G.O.P. Panditharathne, Principal, Dharmashoka College and Others*, S.C. (FR) Application No. 32/2011, S.C. Minutes of 28.03.2012, *Wijerathne Mudiyanselage Mithila Sreyumani Kumariharay and Another v. The Principal, Mahamaya Balika Vidyalaya and Others*, S.C. (FR) Application No. 661/2010, S.C. Minutes of 28.03.2012, *Mohamed Uzman Nazem v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 30/2012, S.C. Minutes of 30.08.2012, *T.G. Samadi Subarshana Ferdinandis and Another v. Mrs. S.J.K. Aviruppola, Principal, Visakha Vidyalaya and Others*, S.C. (FR) Application No. 117/2011, S.C. Minutes of 25.06.2012, *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, *Walawe Durage Dulani v. Nimal Bandara, Secretary, Ministry of Education and Others*, S.C. (FR) Application No. 391/2009, S.C. Minutes of 31.01.2011, *Sri Lanka Principals' Service Grade 1 Officers' Association and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 572/2008, S.C. Minutes of 24.02.2011, *Abdul Razak Mohamed Hussain v. M.M.N.D. Bandara, Secretary, Ministry of Education and Others*, S.C. (FR) Application No. 464/2007, S.C. Minutes of 15.03.2011, *Poddinela Hewage Thelma Kumari Hemachandra v. Elpitiya Pradeshiya Sabha and Others*, S.C. (FR) Application No. 457/2008, S.C. Minutes of 31.03.2011, *Rajaratnampillai Seyon v. Airport and Aviation Service (Sri Lanka) Limited and Others*, S.C. (FR) Application No. 276/2009, S.C. Minutes of 10.05.2011, *Dr. C.L. Illesinghe and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 469/2008, S.C. Minutes of 29.09.2011, *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011, *Harsani S. Sirinwardena v. Secretary, Ministry of Health and Indigenous Medicine*, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011, *Damayanthi Numalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012, *Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Others*, S.C. (FR) Application No. 455/2005, S.C. Minutes of 21.07.2011, *Eberard Anthony Pajoe and Others v. Sub Inspector W.M. Anandasiri, Police Station, Hatton and Others*, S.C. (FR) Application No. 456/2005, S.C. Minutes of 21.07.2011, *Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others*, S.C. (FR) Application No. 297/2008 and *Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*, S.C. (FR) Application No. 578/2008, S.C. Minutes of 18.03.2011, *H. Dilanka Wijesekera and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, *Mr. N.N. De Silva, Superintendent of Police v. Mr. Jayantha Wickremaratne*, S.C. (FR) Application No. 341/2009, S.C. Minutes of 19.07.2011 and *Prof. Hapugabange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 73/2007, *Ms. S.M.S.D. Ramayanyake v. Institute of Fundamental Studies and Nineteen Others*, S.C. (FR) Application No. 371/2009, *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012.

2012 were referred in the task of writing this chapter. However, this chapter proceeds to discuss only a number of selected and pivotal cases in-depth. First, several trends observed in respect of judicial protection of human rights during the period of 2011-2012 will be noted. Thereafter the discussion will turn to the analysis of selected cases. The cases are divided into several non-conventional categories depending on the crux of each case for the convenience of the reader.

2. Notable Trends during the Period of 2011-2012

The majority of judicial decisions from the records gathered involved alleged violations of the right to equality guaranteed under Article 12(1) of the 1978 Constitution of Sri Lanka. Markedly, there were no fundamental rights cases decided during this period where an arrest or detention made under the Emergency Regulations and/or the Prevention of Terrorism Act No. 48 of 1979 was challenged, unlike the vast number of such cases decided during the war and the period immediately following the ending of war. Hence there is a significant decrease in the number of cases decided during this period involving alleged violations of freedom from torture and freedom from arbitrary arrest and detention guaranteed respectively under Articles 11, 13(1) and 13(2) of the 1978 Constitution of Sri Lanka. Despite reported incidents of interference with religious harmony and unlawful abductions, none of the fundamental rights cases were found to be decided during this period where an alleged violation of freedom of religion or freedom of speech and expression was complained. Reasons for the decline in the number of cases decided under those other fundamental right guarantees (except under the guarantee of right to equality) are beyond the scope of this paper.

Interpretation of the Constitution by the Supreme Court in fundamental rights cases during this period was rather neutral, neither progressive nor regressive. However, the Court's efforts during this period in significantly liberalising the procedural rules applicable to fundamental rights cases are commendable⁵. One economic, social and cultural right which attracted considerable scrutiny was the right to education⁶. This is a positive trend since protection was extended to the right to education (consistent with the previous cases which have upheld protection for right to education⁷) despite it not being guaranteed as a fundamental right in the Constitution

A shift in the character of judicial protection of the right to equality was detected during this period. In hearing and determining applications brought under Article 12 of the Constitution the Supreme Court was seen to be focused on

⁵ See *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011.

⁶ See *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012.

⁷ See *Deva Susila Premalatha Karunathilaka and Another v. D.M.G.A. Jayalath de Silva, The Principal, G/Dharmashoka Maha Vidyalaya and Others*, S.C. (FR) Application No. 334/2002, S.C. Minutes of 25.11.2002, LST Review, Volume 14, Issue 194 (December 2003), p. 26.

reviewing the questioned administrative decisions similar to a writ court⁸ in order to ascertain whether those decisions were *intra vires* or *ultra vires*. As a result, the doctrine of legitimate expectation was seen to be emerging as an alternative ground on which a fundamental rights application alleging a violation of right to equality could be based in an appropriate case⁹. This trend is welcome as it seeks to enhance the protection accorded to the right to equality in Sri Lanka.

3. Fundamental Rights Cases Concerning Discrimination in Admission to Universities

*Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*¹⁰

It is perhaps not an exaggeration to say that this case has crystallized the implied guarantee of right to education in the human rights jurisprudence of Sri Lanka.

⁸ See *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012, *Warahenage Pavithra Dananjani De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011, *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.

⁹ *Ibid.*

¹⁰ *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012.

In this salient case, which attracted much public attention, the Supreme Court was invited to look into a fundamental right application brought by 16 students who sat for the General Certificate of Education (Advanced Level) Examination (hereinafter referred to as “G.C.E. A/L Examination”) held in August 2011 together with the Ceylon Teachers’ Union.

Two groups of students sat for the G.C.E. A/L Examination in the year 2011 based on two sets of syllabi (hereinafter referred to as “the old syllabus” and “the new syllabus”). Due to the existence of these two groups of students the 2nd Respondent, the University Grants Commission¹¹, appointed a Panel of Experts to recommend the most suitable method of applying the Z-Score method¹² for the purpose of ranking candidates for university admission. They recommended a common statistical formula to calculate Z-Scores of the candidates of both old and new syllabi. The Petitioners claimed that the application of this common formula, which resulted in the failure to rank the most suitable candidates for university admission, is in violation of their right to equality guaranteed under Article 12 (1) of the Constitution¹³.

¹¹ The 2nd Respondent, the University Grants Commission is the body overseeing the selection of students for admission to higher educational institutions, including universities, in Sri Lanka.

¹² Z-Score method is a statistical method used to rank candidates for university admission since the year 2000. This method was recommended by a Committee consisting of experts appointed by the then Secretary to the Ministry of Education.

¹³ Article 12 (1) of the 1978 Constitution of Sri Lanka provides that “All persons are equal before the law and are entitled to the equal protection of the law”.

3.1 Right to education

The reaffirmation in this case of the expansion of right to equality to include the right to education is noteworthy:

By way of application of Article 12 (1) of the Constitution this Court from time to time has upheld the right to Education... Therefore although there is no specific provision dealing with the right to Education in our Constitution as such in the Universal Declaration of Human Rights, the said right has been accepted and acknowledged by our Courts through the provisions embodied in Article 12 (1) of the Constitution¹⁴.

It is pertinent to note that the earlier significant judicial pronouncement in Sri Lanka regarding the right to education was also delivered by Dr. Shirani A. Bandaranayake, J. as she was then.¹⁵

The reference to the exposition of the right to education under the Universal Declaration of Human Rights can be identified as a progressive step¹⁶. However, Dr. Shirani A. Bandaranayake, CJ.'s reference to Article 27(2)(h) under Directive Principles of State Policy indicates a retreat from

¹⁴ Ibid, pp. 35-6.

¹⁵ *Deva Susila Premalatha Karunathilaka and Another v. D.M.G.A. Jayalath de Silva, The Principal, G/Dharmashoka Maha Vidyalaya and Others*, S.C. (FR) Application No. 334/2002, S.C. Minutes of 25.11.2002, LST Review, Volume 14, Issue 194 (December 2003), p. 26.

¹⁶ *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012, p. 35.

the broad view adopted in respect of the Directive Principles of State Policy in some of the previous judicial precedents¹⁷. The manner in which the reference has been made to the Directive Principles of State Policy leaves no possibility of using any of them as an alternative ground upon which a fundamental rights application could be based in a future case.

3.2 Right to equality and permissible classifications

Bandaranayake, CJ. was right in holding that right to equality permits the drawing of reasonable classifications in appropriate cases. A number of Indian cases¹⁸ were referred by her in setting out the test applicable in determining whether a particular classification is permissible. Hence for a classification to be held permissible it must be founded upon an intelligible differentia having a rational relation to the objective sought to be achieved. However, it was observed that none of the previous judicial precedents¹⁹ of

¹⁷ See *Wijebanda v. Conservator General of Forests and Others*, S.C. (FR) Application No. 118/2004, S.C. Minutes of 05.04.2007 referred in Dr. J. de Almeida Guneratne, "Judicial Protection of Human Rights", Sri Lanka: State of Human Rights, 2008, Law & Society Trust, 2009, p. 87, pp. 111-13.

¹⁸ See *Charanjit Lal Chowdhury v. The Union of India and Others* AIR 1951 SC 41 and *Budhan Chaudhry v. State of Bihar* AIR 1955 SC 191 referred in *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, decided on 25.06.2012, pp. 17-9.

¹⁹ See *Rienzie Perera and Another v. University Grants Commission and Another* [1978-79-80] 1 SLR 128, pp. 139-40, *Seneviratne and Another v. University Grants Commission and Another* [1978-79-80] 1 SLR 182, pp. 139-40 and p. 220, *Samarasinghe v. The Bank of Ceylon Ltd.* [1978-79-80] 1 SLR 221, pp. 228-29, *Dayawathie and Others v. Dr. M. Fernando and Others* [1988] 1 SLR 371, p. 374, *Ramuppillai v. Festus Perera* [1991] 1 SLR 11, 20-21, *Gunaratne and Others v. Sri Lanka Telecom and Others* [1993] 1 SLR 109, p. 114.

the Supreme Court of Sri Lanka under which this test has been discussed were referred by Bandaranayake, CJ. in identifying the criteria of the test.

3.3 No evidence rule

The Respondents contended that although there were two different groups of students who sat for the G.C.E. A/L Examination in 2011 they were equals who could be clubbed together similar to the outcome of the case of *Rienzie Perera and Another v. University Grants Commission and Another*²⁰.

Bandaranayake, CJ. found that although the Respondents claimed to have maintained a similar level of difficulty in both the new and old syllabi question papers that there is no evidence to show that the same standards have been maintained in respect of all the subjects²¹.

The rule of no evidence was cited with approval by Bandaranayake, CJ in this case by resorting to several United Kingdom (hereinafter referred to as "UK") and Sri Lankan cases²². Bandaranayake, CJ. found the claim by the Respondents that the same standards have been maintained

²⁰ *Rienzie Perera and Another v. University Grants Commission and Another* [1978-79-80] 1 SLR 128.

²¹ *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012, p. 28.

²² See *Ashbridge Investments Ltd. v. Minister of Housing and Local Government* [1965] 1 WLR 1320, *Coleen Properties Ltd. v. Minister of Housing and Local Government* [1971] 1 WLR 433 and *Chandrasena v. Kulatunga and Others* [1996] 2 SLR 327 referred in *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, decided on 25.06.2012, pp. 28-9.

in respect of all the subjects was not buttressed by documentary evidence. The no evidence rule appears to set a relatively novel foundation for challenging executive and administrative decisions in the future.

The Supreme Court found that in the absence of evidence to show that the two categories of students were similarly circumstanced, they belong to two distinct populations and ordered the recalculation of Z-Scores. Consequently the right to equality of the Petitioners was found to have been violated by the decision of the Respondents to apply a common formula to calculate the Z-Scores of both groups of students.

The Supreme Court emphasized the requirement that a decision maker should be in a position to produce the relevant material on which the decision was made. This can be taken to have increased the significance of the right to reasons, at least to the extent that a decision maker needs to possess reasons even if not disclosed to the parties affected by his/her decision, in order to substantiate his/her decision before a court when it is challenged.

3.4 No prior announcement or intimation re an alteration in the method of calculating Z-Score

The Supreme Court also reflected upon the need to notify the students in advance of any change in the method of calculating the Z-Score.

The observation made by the Supreme Court on the right to reasonable notice of the students of any change in the calculation method is worth noting.

The students had a right to know if the 2nd respondent has wanted to change the criteria they had adopted in selecting students to Universities, which had been used for a period of well over 10 years.²³

3.5 Legitimate expectation

Despite a finding of discrimination based on the above reasons, the Supreme Court went further to discuss the legitimate expectation of the Petitioners. The Court held that the Petitioners reasonably expected the same Z-Score method that was used since the year 2000 would be applied to calculate the Z-Scores of the candidates in year 2011.

The Court referred with approval to the following observation made by the Supreme Court in the case of *Harshani S. Siriwardena v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs and Others*²⁴:

...whether an expectation is legitimate or not is a question of fact. It was also stated that in order to decide on the said question it would be necessary to consider whether there had been any arbitrary exercise of power by an administrative authority.

This is indicative of the on-going transformation of judicial attitudes towards the protection of right to equality. Reviewing administrative decisions for compliance with the

²³ *Ibid.*, p. 32.

²⁴ *Harshani S. Siriwardena v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs and Others*, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011.

established principles of Administrative Law seems to be an emerging concern of the Supreme Court in fundamental rights cases involving alleged violations of right to equality. A careful analysis of the past precedents of the Supreme Court show that this trend did not originate during the period under consideration²⁵. However, this transformation is demonstrated in many of the judicial decisions decided during the period of 2011-2012 as further discussed below. An increase in the use of the doctrine of legitimate expectation to expand the protection accorded to right to equality is also evident in the cases discussed below. The moot point is whether a violation of right to equality could be based *per se* on an allegation of arbitrary exercise of power in breach of a legitimate expectation. The following discussion is indicative of the attitude of the Supreme Court towards this point.

*Warabenage Pavithra Dananjanie De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*²⁶

This case also revolved around the subject of higher education. The Petitioner was a student who sat for the G.C.E. A/L Examination for the second time in August 2008. The provisional results of the G.C.E. A/L

²⁵ See *Dayarathna And Others v. Minister of Health And Indigenous Medicine And Others*, [1999] 1 SLR 393, *Fernando And Others v. Associated Newspapers Of Ceylon Ltd. And Others*, [2006] 3 SLR 141, *Samaraweera v. The People's Bank and Others*, [2007] 2 SLR 362, *Choolanie v. The People's Bank and Others*, [2008] 2 SLR 93 and *Lanka Rajya Sanstha Ha Podu Sevaka Samlthya, Mendis And Irangani De Silva v. Building Materials Corporation Ltd.*, [2008] 2 SLR 186.

²⁶ *Warabenage Pavithra Dananjanie De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011.

Examination held in August 2008 were released on 03.01.2009. According to the provisional results the Petitioner had received a Z-Score of 1.8887 which she verily believed to be sufficient to gain admission to a course of study in Medicine. After the process of re-scrutiny the final results were released to the candidates on 29.06.2009 and she had only received a Z-Score of 1.8860, which was below the cut-off point of 1.8864 that was necessary to be admitted to follow a course of study in Medicine. The Petitioner filed a fundamental rights application complaining, *inter alia*, that the arbitrary reduction of her Z-Score, without giving any reasons for such reduction, has violated her right to equality.

3.6 The Petitioner's legitimate expectation

The Petitioner argued that since she had obtained a Z-Score well over the cut-off marks prior to the re-scrutiny of results, she had a legitimate expectation that she could enter the Medical stream.

In determining this case, Dr. Shirani A. Bandaranayake, CJ revisited the origins and the scope of the concept of legitimate expectation at length.

Legitimate expectation is a concept which has been developed over the years since its introduction by Lord Denning in *Schmidt v. Secretary of State for Human Affairs* ([1969] 1 All ER 904) mostly on the basis of procedural fairness and the removal of arbitrary decisions... Legitimate expectation has been described as a concept which derives from an undertaking given by someone in authority. There is no compulsion for such an undertaking to be in written formula, but would be

sufficient if that could be known through the surrounding circumstances²⁷.

As the Supreme Court pointed out, a person who relies on a legitimate expectation has to show that he/she had been deprived of a past practice that had been withdrawn or changed suddenly without any notice or reason for such withdrawal or change.²⁸

In the case under consideration, the Supreme Court held that there was no material to indicate that the prior practice has been changed at the time the Petitioner sat for the examination. This conclusion was reached based on the finding that since the inception of the Z-Score method, it was known that the Z-Scores of candidates change after the re-scrutiny of marks.

It is worth noting that a similar opinion was delivered by Bandaranayake, CJ on the same day in determining the case of *Weerawarna Kurukulasooriya v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*²⁹, which involved identical facts.

²⁷ *Warahenage Pavithra Dananjanie De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011., p. 10.

²⁸ *Ibid.*, p. 13.

²⁹ *Weerawarna Kurukulasooriya v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 577/2009, S.C. Minutes of 01.11.2011.

3.7 Right to equality and legitimate expectation

Even though the finding of the Supreme Court in this case was that there was no violation of the right to equality of the Petitioner, the following exposition of the doctrine of legitimate expectation has the effect of potentially enabling any person to hold administrators responsible for their undertakings by way of a fundamental rights application.

The Petitioner's complaint that her fundamental rights guaranteed in terms of Article 12(1) had been violated is based on the concept of legitimate expectation as she had such an expectation that she would be selected to follow a course in Medicine³⁰.

Considering the basis on which the Constitutional provision in Article 12(1) deals with the right to equality and the applicability of legitimate expectation on that basis, it is apparent that the expectation in question should have been founded upon a statement or an undertaking given by the authority in question, which would make it inconsistent or irrational with the general administration to deny such an opportunity... Otherwise the petitioner must show that... there is the existence of a regular practice, on which the petitioner can reasonably rely upon to continue in his favour³¹.

³⁰ *Weerawarna Kurukulasooriya v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 577/2009, S.C. Minutes of 01.11.2011., p. 14.

³¹ *Ibid.*, pp. 15-6.

Consequently, a withdrawal or change in an administrative undertaking (i.e. a promise, procedure or past practice) without prior notification can amount a violation of right to equality. This progressive opinion has clearly spelt out legitimate expectation as an alternative foundation to base violations of right to equality.

4. Fundamental Rights Cases Concerning Discrimination in Admission to Schools

Out of the total of twenty-five judicial decisions referred in the task of writing this chapter, seven cases involved alleged violations of the right to equality arising out of the selection of students for admission to Grade 1 of State funded schools. When taking into account the principles enunciated in those cases only two cases warrant in-depth analysis. The other five cases, namely, *Dasanayake Gayani Geethika and Others v. D.M.D. Dissanayake, Principal, D.S. Senanayake College and Others*³², *Madaduwage Susil de Silva and Another v. M.G.O.P. Panditharathne, Principal, Ambalangoda Dharmashoka Vidyalaya and Others*³³, *Sergeant N.W.A. Nihal and Another v. M.G.O.P. Panditharathne, Principal, Dharmashoka College and Others*³⁴, *Wijerathne Mudiyanseelage Mithila Sheyamani Kumarihamy and Another v. The Principal, Mahamaya Balika Vidyalaya and*

³² *Dasanayake Gayani Geethika and Others v. D.M.D. Dissanayake, Principal, D.S. Senanayake College and Others*, S.C. (FR) Application No. 35/2011, S.C. Minutes of 12.07.2011.

³³ *Madaduwage Susil de Silva and Another v. M.G.O.P. Panditharathne, Principal, Ambalangoda Dharmashoka Vidyalaya and Others*, S.C. (FR) Application No. 31/2011, S.C. Minutes of 28.03.2012.

³⁴ *Sergeant N.W.A. Nihal and Another v. M.G.O.P. Panditharathne, Principal, Dharmashoka College and Others*, S.C. (FR) Application No. 32/2011, S.C. Minutes of 28.03.2012.

*Others*³⁵, *Mohamed Uzman Nazeem v. Upali Gunasekera, Principal, Royal College and Others*³⁶ have not made any significant contribution to the human rights jurisprudence of Sri Lanka in terms of the principles of law discussed and articulated.

*T.G. Samadi Subarshana Ferdinandis and Another v. Mrs. S.S.K. Aviruppola, Principal, Visakha Vidyalaya and Others*³⁷

Once again this involved a decision by Dr Shirani A. Bandaranayake, CJ. The minor child and her father were the Petitioners in this case. They alleged that the Respondents had violated her right to equality by failing to admit the 1st Petitioner into Grade 1 of Visakha Vidyalaya. The 1st Petitioner's application was made under the category of Chief Occupant's Children, whose parents were residing in close proximity to the school. Upon attending an interview the 1st Petitioner's name appeared in the provisional list of students selected to be admitted to the school. Due to an objection raised against the 1st Petitioner's admission, the Petitioners were called before the Board of Appeal. Consequently, the 1st Petitioner's name was not included in the final list of students who had been selected for admittance to the school.

³⁵ *Wijerathne Mudiyansele Mithila Sheyamani Kumarihamy and Another v. The Principal, Mahamaya Balika Vidyalaya and Others*, S.C. (FR) Application No. 661/2010, S.C. Minutes of 28.03.2012.

³⁶ *Mohamed Uzman Nazeem v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 30/2012, S.C. Minutes of 30.08.2012.

³⁷ *T.G. Samadi Subarshana Ferdinandis and Another v. Mrs. S.S.K. Aviruppola, Principal, Visakha Vidyalaya and Others*, S.C. (FR) Application No. 117/2011, S.C. Minutes of 25.06.2012.

Bandaranayake, CJ found that the Respondents had endeavoured to strictly adhere to the conditions laid down in the Circular 2010/21 dated 31.05.2010 issued by the Ministry of Education, which was required to be followed in selecting students for admission to Grade 1 of government schools in the year 2011.

4.1 Right to equality

The core of the right to equality guaranteed under Article 12 (1) of the 1978 Constitution was subject to scrutiny by Banadaranayake CJ as follows:

The Constitutional provision guarantees the concept of equality before the law, which has been recognized as a dynamic concept with many facets within the concept itself. However, this concept does not mean that all persons in a society are always equal, as such a mechanical concept may create unnecessary injustices in a society. The true meaning of the concept therefore is that equals should not be treated as unequals and similarly unequals should not be treated as equals. In these circumstances, reasonable classification cannot be rejected as a violation of Article 12 (1) of the Constitution, if it is a valid classification that is not arbitrary³⁸.

4.2 Burden of proof

The Supreme Court also pointed out that the burden is on the person who complained about the alleged violation of right to equality to demonstrate that there were others who were similarly circumstanced and that he was treated

³⁸ *Ibid.* at p.13.

differently without having any grounds justifying such differential treatment. The following statement held in the Indian case of *Deena v. Union of India*³⁹ was quoted with approval by Bandaranayake, CJ in this regard:

To cast the burden of proof... on the State is really to ask it to prove the negative that no other persons are situated similarly as the petitioner and that the treatment meted out to the petitioner is not hostile.

Consequently, the Supreme Court reached the conclusion that there was no violation of right to equality of the Petitioners due to the failure of the Petitioners to satisfy the burden cast on them to show that different treatment was meted out to them without a legal basis amongst others who were similarly circumstanced. This decision indicates a departure from the developments that have taken place with regard to burden of proof applicable in fundamental rights applications involving alleged violations of right to equality. In determining whether a Petitioner has satisfied the burden of proving an alleged violation of right to equality the criterion applied by the Supreme Court in the past was “the equally circumstanced” criterion⁴⁰. However, as seen in later cases the Supreme Court employed the “non-arbitrariness” criterion⁴¹ as a criterion more conducive to upholding the Rule of Law. Hence, the judgment in *T.G. Samadi* is certainly

³⁹ *Deena v. Union of India*, AIR 1983 SC 1154 referred in *T.G. Samadi Subharshana Ferdinandis and Another v. Mrs. S.S.K. Aviruppola, Principal, Visakha Vidyalaya and Others*, S.C. (FR) Application No. 117/2011, S.C. Minutes of 25.06.2012, p. 16.

⁴⁰ See *Palihawadana v. Attorney General and Two Others*, [1978-79-80] 1 SLR 65, *Elmore Perera v. Major Montague Jayavickrema, Minister of Public Administration and Plantation Industries and Others*, [1985] 1 SLR 285.

⁴¹ See *Premachandra v. Major Montague Jayavickrema and Another*, [1994] 2 SLR 90.

not a precedent, which the Supreme Court should be encouraged to follow in future cases. By contrast the Supreme Court manifested a willingness to apply the “non-arbitrariness” criterion in the following case.

*Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*⁴²

Denial of admission to the Petitioner to Grade 1 of Royal College under Circular 2010/21 dated 31.05.2010 issued by the Ministry of Education formed the basis of this fundamental right application. The facts were identical to the previous case where the Petitioner’s name was listed in the provisional list having got through the initial interview but was later removed from the final list consequent to an interview held before the Appeals and Protest Board.

4.3 Reasonableness of the application of the Circular

S.I. Imam, J. examined the reasonableness of the manner in which the Circular was applied. The Respondents had deducted 45 marks from the total marks allocated to the Petitioner under the Circular due to there being nine other intervenient schools within the proximity circle of the Petitioner. The Petitioners satisfactorily showed the Court, *inter alia*, that the said deduction of marks is not reasonable since out of the nine schools, the primary section of one school was situated outside the proximity circle of the Petitioner, two schools do not provide for Advanced Level education and two schools do not offer certain subjects for the Advanced Level education.

⁴² *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012.

S.I. Imam, J. noted that in order to consider any interpretation of the provisions of the Circular to be reasonable such interpretation should be least disruptive of a child's education⁴³.

Consequently, S.I. Imam, J. found that the Petitioner's right to equality has been violated by the Respondents failure to apply the aforesaid Circular fairly and reasonably.

S.I. Imam, J. seemed to impliedly express caution about reviewing administrative decisions in fundamental rights cases in order to ascertain whether they are *intra vires*. It appears he was of the view that questioned administrative decisions should be reviewed within the scope of right to equality.

The following two statements referred to with approval by S.I. Imam, J. are illustrative of his judicial mind-set⁴⁴.

*Haputhanthrige and Others v. Attorney General*⁴⁵ -

The allegations have related to Unequal, Arbitrary and Capricious Application of the relevant Circulars resulting in less suited children securing Admission to the detriment of the children who have been thereby compelled to invoke the Jurisdiction of Courts.

⁴³ *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, p. 10.

⁴⁴ *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, at pp. 11-2.

⁴⁵ *Haputhanthrige and Others v. Attorney General*, [2007] 1 SLR 101 referred in *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, pp. 11-12.

*Ceylon Paper Sacks Ltd. v. Janatha Estate Development Board and Others*⁴⁶

A determination as to whether the decision to reject a Tender is violative of the Tenderer's Rights under Article 12 (1) of the Constitution cannot be made by the mere application of the principles of Administrative law relating to the *Vires* of Administrative action. The question is whether between persons who are similarly circumstanced there was unlawful discrimination...

Despite the aforesaid implied expression of caution what appears more prominent is his willingness to review the questioned administrative decision. Hence by applying the "non-arbitrariness" criterion S.I. Imam, J. has reaffirmed the judicial developments that have taken place with regard to burden of proof applicable in fundamental rights cases involving alleged violations of right to equality.

4.4 One month time period

Article 126(2) requires a fundamental rights application to be filed within one month from the infringement or imminent infringement of a person's fundamental right. In the present case the issue was from which point of time should the one month period be calculated (i.e. is it from the date of publication of notice calling for applications under the Circular or is it from the date on which the Petitioner got to know that his application for admission to Royal College has been refused?).

⁴⁶ *Ceylon Paper Sacks Ltd. v. Janatha Estate Development Board and Others*, 1993 BLR Vol. 5 Part 1, p. 6 referred in *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, p. 12.

The Petitioner was successful in making the Supreme Court realize that the Petitioner could challenge the Circular only when he was denied admission to Royal College since that is the point in time the infringement of his fundamental right took place.

Having referred to Article 126(2) S.I. Imam, J. observed as follows;

In school admission cases Publication of the Notice calling for Admission does not violate the Petitioner's Fundamental Rights. **It is only after he applies for Admission and his Admission is Refused that infringement takes place.** It is only then that the time period in **Article 126** would apply to the Petitioner⁴⁷.

This interpretation of the one month time rule is consistent with the broad interpretations accorded to one month time rule in several previous judicial precedents⁴⁸.

5. Fundamental Rights Cases Concerning Discrimination in Workplace

Nine cases alleging employment-related discrimination were determined by the Supreme Court during the period of 2011-

⁴⁷ *Ceylon Paper Sacks Ltd. v. Janatha Estate Development Board and Others*, 1993 BLR Vol. 5 Part 1, p. 6 referred in *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, p. 12.

⁴⁸ See *Siriwardene v. Rodrigo*, [1986] 1 SLR 384, *Gamaethige v. Siriwardena and Others*, [1988] 1 SLR 384.

2012⁴⁹. Out of the nine cases the three discussed below stand out in terms of the principles of law pronounced. Both the first two cases have elaborated on permissible classifications that can be drawn under right to equality and therefore only the first case is discussed in detail. It is worth noting that all three of the below judgments have been delivered by a single judge, namely Dr. Shirani A. Bandaranayake, CJ.

*Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*⁵⁰

This case involved a Petitioner who while serving the Government obtained study leave to go overseas to follow

⁴⁹ *Walawe Durage Dulani v. Nimal Bandara, Secretary, Ministry of Education and Others*, S.C. (FR) Application No. 391/2009, S.C. Minutes of 31.01.2011; *Sri Lanka Principals' Service Grade 1 Officers' Association and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 572/2008, S.C. Minutes of 24.02.2011; *Abdul Razak Mohamed Hussain v. M.M.N.D. Bandara, Secretary, Ministry of Education and Others*, S.C. (FR) Application No. 464/2007, S.C. Minutes of 15.03.2011; *Poddinvela Hewage Thelma Kumari Hemachandra v. Elpitiya Pradeshiya Sabha and Others*, S.C. (FR) Application No. 457/2008, S.C. Minutes of 31.03.2011; *Rajaratnampillai Seyon v. Airport and Aviation Service (Sri Lanka) Limited. and Others*, S.C. (FR) Application No. 276/2009, S.C. Minutes of 10.05.2011; *Dr. C.L. Illesinghe and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 469/2008, S.C. Minutes of 29.09.2011; *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011; *Harshani S. Sirimwardena v. Secretary, Ministry of Health and Indigenous Medicine*, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011; and *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.

⁵⁰ *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011.

a doctoral degree subject to the condition that upon his return he will serve the government for an agreed period of time. Upon his return without having completed the stipulated period he sought a release from the said condition. He was informed by the Public Service Commission that he should pay the amount agreed to be paid by him to the Government under the agreement in lieu of the agreed period of service. He was also informed that if he does not make the said payment he will be considered as having vacated the post in government service.

5.1 Permissible classifications

The Petitioner alleged that he was differently treated although two others who were similarly circumstanced were released from their obligation to serve the government. Banadaranayake, C.J. referred to the following statement made in the United States case of *Snowden v. Hughes*⁵¹ to show that unequal treatment is tolerated under the guarantee of right to equality in certain circumstances.

The unlawful administration... of a state statute fair on its face, resulting in unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discretion.

⁵¹ *Snowden v. Hughes*, [1943] 321 US 1 referred in *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011, p. 21.

Her Ladyship referred to the Indian case of *Ram Krishna Dalmia v. Justice Tendolkar*⁵² to set out the elements of the test of permissible classifications. Accordingly a classification is consistent with the guarantee of right to equality where:

- a) the classification is founded on an intelligible differentia; and
- b) that differentia bears a reasonable or rational relation to the objects and effects sought to be achieved.

Bandaranayake, CJ. found that the Petitioner's case can be distinguished from the other cases, *inter alia*, since those persons had served a substantial portion of the obligatory period when they sought the release⁵³. Therefore, the differential treatment of the Petitioner was found to be justified and it was held that the Petitioner's right to equality was not violated.

A similar view with regard to permissible classifications was adopted in the following case.

*Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*⁵⁴

The Petitioner challenged a decision taken by the Respondents to place her in a different salary scale to be

⁵² *Ram Krishna Dalmia v. Justice Tendolkar*, AIR 1958 SC 538 referred in *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011, p. 22.

⁵³ *Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others*, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011, p. 19-20.

⁵⁴ *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.

arbitrary, unreasonable, illegal and in violation of her fundamental right to equality.

Bandaranayake, C.J. made the following observation regarding differential treatment of differently circumstanced persons permitted under right to equality.

Equality does not mean that identical rules of law should be applicable to all persons. What it postulates is that equals should be treated equally and that equality of treatment be given in equal circumstances. This means that the Legislature is entitled to make reasonable classification for purposes of legislation and thereafter treat all those who belong to one group equally on the basis that the said group falls into one separate class⁵⁵.

Bandaranayake, C.J. emphasized the need to grant equal treatment to persons similarly circumstanced (i.e. persons falling under a particular classified group). Though reasonable classifications are permitted within the parameters of the guarantee of right to equality, the essence of equality is preserved by making sure that equal treatment is meted out within each classified group. Thus a person who succeeds in demonstrating that he was differently treated within a reasonably classified group amongst persons who were similarly circumstanced has a strong foundation in a fundamental rights case alleging a violation of right to equality.

⁵⁵ *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.. at p. 15.

*Harshani S. Siriwardena v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs and Others*⁵⁶

In contrast to the above two cases this case revolved around the doctrine of legitimate expectation. This is also a case illustrative of the overall trend noted in this chapter i.e. the transformation of judicial protection of right to equality in Sri Lanka.

This case involved a Petitioner who sat for the examination pertaining to the recruitment of Social Welfare Superintendents. The Gazette Notification dated 08.12.2006 (A) calling for applications, *inter alia*, stated that although only two vacancies were available the number of vacancies may vary depending on exigencies of the service at the time of recruitment. The Petitioner was ranked third based on her performance at the examination. Only two vacancies were available at the time of recruitment and those two were filled by persons who were ranked first in the list. Later there was another vacancy. When the Petitioner was not appointed to the vacant position the Petitioner filed a fundamental rights application on the basis that her right to equality has been violated since she entertained legitimate expectation that she would be appointed to the said post as per the aforesaid provision of the Gazette Notification.

Bandaranayake, CJ. found that the Gazette notification referred only to any variance of the number of vacancies at the time of recruitment but not to the vacancies which

⁵⁶ *Harshani S. Siriwardena v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs and Others*, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011.

become available later in time. Hence the Petitioner's expectation is not legitimate in the circumstances and her right to equality had not been violated in any way. The following principles uttered in the judgment reflect the strength of the doctrine of legitimate expectation in establishing a violation of the right to equality.

5.2 Legitimate expectation

Bandaranayake, CJ. reaffirmed the trend emanating from a significant number of cases decided during the period under consideration, namely the protection against arbitrary administrative decisions contained in the guarantee of the right to equality.

The concept of equal protection referred to in Article 12 (1) of the Constitution embodies a guarantee against arbitrariness and unreasonableness. The doctrine of legitimate expectation had developed in the context of reasonableness and in the light of the decision in *Attorney General of Hong Kong v. Ng Tuen Shiu* ([1983] 2 All ER 346) the concept of legitimate expectation would embrace the principle that in the interest of good administration it is necessary for the relevant authority to act fairly.⁵⁷

It does not emanate from the case whether right to equality protects a person against any arbitrary or unreasonable administrative decision or only in cases where that person has been discriminated as a result of an arbitrary or

⁵⁷ *Harshani S. Sirivardena v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs and Others*, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011. at p. 10.

unreasonable administrative decision. While the former view is desirable as it opens up a new avenue for striking down arbitrary administrative decisions, the latter is more in line with the core of the right to equality.

This case also involved a lengthy discussion of the evolution of the doctrine of legitimate expectation. Bandaranayake, CJ. also pointed out the need to draw a distinction between promises and regular practices giving rise to a legitimate expectation rather than mere hopes or expectations that do not create a legitimate expectation⁵⁸.

6. Fundamental Rights Cases Concerning Arbitrary Arrests and Detentions

Only a single case invoking the guarantees against arbitrary arrest and arbitrary detention decided during the period of 2011-2012 could be found. That too was coupled with alleged violations of other fundamental guarantees such as the right to equality and the right to engage in any lawful occupation, profession, trade or business or enterprise. The reasons for the decrease in fundamental rights cases invoking the guarantees against arbitrary arrest and arbitrary detention are beyond the scope of this paper.

*Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Others*⁵⁹

The decision in this case has not made a significant contribution to the human rights jurisprudence of Sri Lanka.

⁵⁸ *Ibid.* at p. 7.

⁵⁹ *Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Others*, S.C. (FR) Application No. 455/2005, S.C. Minutes of 21.07.2011.

This case involved the arrest of a salesperson (employed at a liquor shop) by two police officers, for selling arrack to a customer in violation of the liquor licence which prohibited the sale of liquor for consumption on the premises. He was also detained for several hours at the police station. The first two Petitioners as the owners of the liquor shop alleged violations of their right to equality guaranteed under Article 12 (1) of the Constitution and their freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise guaranteed under Article 14 (1)(g) of the Constitution. The third Petitioner, who was the salesperson, alleged the violation of his freedom from arbitrary arrest and detention guaranteed respectively under Articles 13 (1) and 13 (2) of the Constitution along with violations of Article 12 (1) and 14 (1)(g) of the Constitution.

6.1 Vires of police officers' actions

The Petitioner's main contention was that the police officers do not have authority under the Excise Ordinance to detect violations of conditions of liquor licences. The Supreme Court found that Excise Notification No. 509 dated 09.02.1963 proclaimed by the Minister under Section 8 (b) of the Excise Ordinance had appointed all officers of the police force to give effect to the provisions of the Excise Ordinance. Consequently, it was found that the police officers had powers to detect sales of excisable articles in contravention of the licence and to arrest any person without a warrant who was found committing an offence punishable under the Ordinance. Therefore it was held that there was no violation of the fundamental rights of the Petitioners.

However, the Supreme Court did not delve into the scope and/or application of the guarantees of freedom from

arbitrary arrest and detention. No attempt was made by the Court to discuss the circumstances in which an arrest or a detention becomes arbitrary. Arbitrary arrests take place even in instances where the arresting authority has the powers to arrest but such powers have not been exercised according to the procedure established by law. For instance even if there was power to arrest and a reason for arrest, a violation of fundamental right can be found where force has been used disproportionately during arrest or the person arrested has not been informed of the reasons for arrest.

A case⁶⁰ with identical facts was decided on the same day. However, the Petitioners only alleged violations of Article 12 (1) and 14 (1)(g) in that case and for the same reasons as discussed above the Supreme Court found that there was no violation of the fundamental rights of the Petitioners.

7. Fundamental Rights Cases Concerning Presidential Immunity under the Constitution

*Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others and Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*⁶¹

These fundamental rights applications were two of the most controversial cases decided during the period under

⁶⁰ *Everard Anthony Payoe and Others v. Sub Inspector W.M. Anandasiri, Police Station, Hatton and Others*, S.C. (FR) Application No. 456/2005, S.C. Minutes of 21.07.2011.

⁶¹ *Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others*, S.C. (FR) Application No. 297/2008 and *Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*, S.C. (FR) Application No. 578/2008, S.C. Minutes of 18.03.2011.

consideration. These applications were heard together and both involved the interpretation of the Constitution of Sri Lanka. The interesting aspect of both applications was that the President of Sri Lanka was named as a Respondent. The facts of the applications are briefly as follows.

The Petitioners alleged that the acts and omissions on the part of the President of Sri Lanka with regard to the non-appointment of the Constitutional Council in terms of the Seventeenth Amendment to the Constitution and the unlawful appointment of the Attorney General violated their fundamental right to equality. The Attorney General was also made a Respondent in both applications. It is pertinent to note that by the time these applications were heard the provisions of the Seventeenth Amendment providing for the appointment of the Constitutional Council were repealed and replaced by the Eighteenth Amendment. The Respondents, *inter alia*, took the following preliminary objections;

- a) The Petitioners cannot maintain these applications in view of Article 35(1) of the Constitution, which confers immunity from suit on the President in respect of anything done or omitted to be done by him in his official or private capacity while he holds office as the President;
- b) The Petitioners cannot maintain these applications in view of Article 35(3), which provides the instances in which proceedings may be instituted against the Attorney General.

7.1 Interpretation of presidential immunity

The Petitioners argued, *inter alia*, that the immunity conferred by Article 35 (1) was not intended to be absolute even during the tenure of the President. For instance, in cases of intentional violation of the Constitution by the President, Article 38 (2) provides for the invocation of the jurisdiction of the Supreme Court. Also, the limited immunity granted under Article 35 (1) extends immunity to the actor (i.e. the President) not to the acts or omissions. Hence proceedings may be instituted against his acts or omissions. It was their contention that any other interpretation would do violence to the principles of interpretation. The Petitioners cited the cases of *Senansinghe v. Karunatilleke, Senior Superintendent of Police, Nugegoda and Others*⁶² and *Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Other*⁶³ in support of their contention that immunity is a shield only against the doer and not for the act.

J.A.N. De Silva, CJ rejected the Petitioner's contention. He considered Article 42 of the Constitution under which the President is made answerable to the Parliament in respect of the discharge of his official functions. According to him

⁶² *Senansinghe v. Karunatilleke, Senior Superintendent of Police, Nugegoda and Others*, [2003] 1 SLR 172 referred in *Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others*, S.C. (FR) Application No. 297/2008 and *Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*, S.C. (FR) Application No. 578/2008, S.C. Minutes of 18.03.2011, p. 12

⁶³ *Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Other*, [2003] 1 SLR 177 referred in *Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others*, S.C. (FR) Application No. 297/2008 and *Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*, S.C. (FR) Application No. 578/2008, S.C. Minutes of 18.03.2011, p. 12.

Article 38 (2) provides for a separate mechanism under which a Member of Parliament can take action against the President in stipulated circumstances, including instances where the President has been guilty of intentional violation of the Constitution. The Supreme Court was of the view that when the Constitution provides for a mechanism to deal with intentional violations of the Constitution by the President, it is inappropriate for the Court to invent an alternative mechanism. He distinguished the present case from *Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Others* stating that what was challenged in *Karunathilaka case* was not an act of the President but an act of the Commissioner of Elections.

Commenting on the nature of immunity granted under Article 35 (1) of the Constitution on the President J.A.N. De Silva, CJ held that:

Article 35 of the Constitution confers immunity on the President from having proceedings instituted or continued against him in any Court in respect of anything done or omitted to be done in his official or private capacity except in respect of matters specified in Article 35 (3) of the Constitution. The language used in the Article is plain and unambiguous⁶⁴.

His Lordship was of the view that when the language of the Constitution is plain and unambiguous the Supreme Court should not go on a voyage of its own even when such a

⁶⁴ *Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others*, S.C. (FR) Application No. 297/2008 and *Centre for Policy Alternatives Ltd. and Another v. Hon. Attorney General and Others*, S.C. (FR) Application No. 578/2008, S.C. Minutes of 18.03.2011, p. 13.

broad interpretation is required by the norms underlying the Constitution. Therefore, it was held that Article 35 does not permit the President to be cited as a Respondent and that the Attorney General cannot also be cited as a Respondent since the two applications did not involve the instances stipulated under Article 35(3) of the Constitution⁶⁵. Whether the plain and unambiguous meaning of a Constitutional provision can be preferred over the meaning that is in line with the Constitutional norms is a moot point. The Supreme Court also overlooked the issue as to whether the mechanism available for reviewing intentional violations of the Constitution under Article 38 (2) is effective or not. If the Supreme Court had looked at it in the light of the principle of Rule of Law to the effect that nobody is above the law, an important check on the President's powers could have been laid down in this case.

8. Fundamental Rights Cases Concerning Procedural Rules Applicable In Fundamental Rights Applications

The following fundamental rights cases decided during the period under consideration indicate that the Supreme Court in general has adopted a broad view in respect of the procedural rules applicable in fundamental rights applications.

*H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*⁶⁶

⁶⁵ *Ibid.* at p. 14

⁶⁶ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011.

The Petitioners claimed that the order made by the 1st Respondent dissolving the Sri Lanka Rugby Federal Union and the failure to appoint the 1st Petitioner to the post of Captain of the Sri Lankan team that toured Dubai for Asian Five Nations Rugby Tournament amounted to an infringement of the 1st Petitioner's fundamental rights guaranteed under Articles 12 (1), 12 (2) and 14 (1)(g) of the Constitution. The Respondents, *inter alia*, took several preliminary objections;

- a) The application is out of time; and
- b) The Petitioners have no *locus standi*.

8.1 One-month time rule

Article 126 (2) of the Constitution provides that a fundamental rights application should be brought within one month from the infringement or imminent infringement of a person's fundamental right. The Respondents argued that the Petitioner's application was filed on 29.04.2009 after nearly three months had passed from the date of the publication of the impugned order in the Gazette notification dated 30.01.2009.

Although the Respondents relied heavily on the case of *Gamaethige v. Siriwardena and Others*⁶⁷ where it was held that the one month time rule is mandatory Tilakawardane, J. in a notable judgment observed as follows.

...we do not agree with the Respondents that the dates of these two documents... are alone appropriate in

⁶⁷ *Gamaethige v. Siriwardena and Others*, [1988] 1 SLR 384.

determining compliance with the timing requirement in Article 126 (2). Though the Petitioner has indeed filed an Application more than one month after the issuance of the Order, to reject the Application on this basis alone would be to ignore the continuing nature of the violation of the Petitioner's fundamental rights at issue in this case⁶⁸.

Referring to the unreported case of *Sugathapala Mendis and Others v. Chandrika Bandaranaike Kumarathunga and Others*⁶⁹ Tilakawardane, J. stated that

Indeed, in a matter where the violation is of a serious nature, affecting material rights which are pertinent and critical to the Petitioner, where mala fides, bias or caprice can be established and if it is a continuing violation, this Court will not dismiss the case *in limine*, without at least considering the grievance of the Petitioners especially in a matter that affects youth and young persons⁷⁰.

This opinion is welcome given the significant liberalization of the one month time rule contained in Article 126 (2) of

⁶⁸ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, p. 11.

⁶⁹ *Sugathapala Mendis and Others v. Chandrika Bandaranaike Kumarathunga and Others*, S.C. (FR) Application No. 352/2007 referred in *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, p. 11.

⁷⁰ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, p. 12.

the Constitution. This sets a valuable precedent for future cases at least in those which concern youth.

It is pertinent to note that a similar progressive approach was followed by Tilakawardane, J. in another case decided during the period under consideration, namely, *Mr. N.N. De Silva, Superintendent of Police v. Mr. Jayantha Wickremaratne*⁷¹. In that case Tilakawardane, J. reaffirmed the established principle that the one month time under Article 126(2) of the Constitution begins to run only when the Petitioner acquires knowledge of the infringement or imminent infringement of his/her fundamental right. These two cases have made a notable contribution to the relaxation of procedural rule of the one month time limit applicable in fundamental rights cases.

8.2 Locus standi

The Respondents claimed that the Petitioner was not a member of the Sri Lanka Football Rugby Union, had not even pleaded to be a member and that the order dissolving the Sri Lanka Rugby Football Union cannot be considered as in violation of the 1st Petitioner's fundamental rights.

Rejecting the Respondents' contention Tilakawardane, J. referred to several previous judicial precedents that have

⁷¹ *Mr. N.N. De Silva, Superintendent of Police v. Mr. Jayantha Wickremaratne*, S.C. (FR) Application No. 341/2009, S.C. Minutes of 19.07.2011.

broadened the scope of standing in Sri Lanka⁷² and made the following remarkable observation.

Accordingly, the opinion of this Court is that, in light of the aforesaid developments as regards to standing or *locus standi* in fundamental rights Applications, the interest of justice mandates this Court's focus on the potential injustice canvassed by the applicant, and not on the interest of the applicant and, therefore, in light of the foregoing case law this Court finds that so long as the applicant of a fundamental rights Application comes before this Court in good faith, on a matter or matters affecting a broad spectrum of people, and where the special and or exceptional circumstances exist, such as where the matter impacts, as is alleged in this case-that it is a matter of paramount importance to the youth who are involved in sports in this country (especially where the Court is the upper guardian of the children and young persons)- standing is to be allowed⁷³.

The above statement demonstrates a significant relaxation of the standing rule by the Supreme Court and is a

⁷² *Bulankulama v. Secretary, Ministry of Industrial Development*, [2000] 3 SLR 243, *Jayantha Adikari Egodawele v. Dayananda Dissanayake, Commissioner of Elections*, FRD (2) 292, *Kottabadu Durage Sriyani Silva v. Chanaka Iddamal goda*, S.C. (FR) Application No. 471/2000 referred in . *Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, pp. 13-5.

⁷³ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, p. 15.

continuation of the progressive approach followed in the previous judicial precedents such as *Sriyani Silva v. Iddamalgoda*⁷⁴. It is noteworthy that the Court has pursued this relaxation in the interests of justice.

The following observation indicating the Supreme Court's attitude towards preliminary objections raised in fundamental rights cases in general is also commendable.

Fundamental Rights Applications must be seriously considered before they are brushed off *in limine* without affording the Petitioners the opportunity to unfold the narrative of events... The common aspirations of all beings to be enshrouded in the cloak of their guaranteed right to self-dignity and respect cannot be shorn off by capricious or arbitrary and subjective decision making... The rule of law is and must after all be characterized with the principles of supremacy of the law, the quality of the law, accountability to the law, legal certainty, procedure and legal transparency, equal and open access justice to all, irrespective of gender, race, religion, class, creed or other status⁷⁵.

It is hoped that this positive trend will be followed in future cases without being constrained to this single case.

Prof. Hapugahange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others and Ms.

⁷⁴ *Sriyani Silva v. Chanaka Iddamalgoda*, [2003] 1 SLR 14.

⁷⁵ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokege, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011, p. 16.

*S.M.S.D. Ramayanayeke v. Institute of Fundamental Studies and Nineteen Others and Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*⁷⁶

These three applications were heard together. The Petitioners were employed at the Institute of Fundamental Studies on a contractual basis and they sought to challenge the decisions taken by the Institute of Fundamental Studies pertaining to the continuity of their contracts of service. A preliminary objection was taken on behalf of the Institute of Fundamental Studies that the impugned actions of the Institute of Fundamental Studies do not constitute executive and administrative actions within the meaning of Article 126 (1) of the Constitution.

8.3 Executive and administrative actions

Article 126 (1) of the Constitution vests sole and exclusive jurisdiction on the Supreme Court to hear and determine alleged violations of fundamental rights or language rights by executive and administrative actions. Hence for a fundamental rights application to be entertained by the Supreme Court there is a prerequisite that the infringement or the imminent infringement alleged therein should be caused by an executive or administrative action.

⁷⁶ *Prof. Hapugabange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 73/2007, *Ms. S.M.S.D. Ramayanayeke v. Institute of Fundamental Studies and Nineteen Others*, S.C. (FR) Application No. 371/2009, *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012.

Saleem Marsoof, J. having referred to the absence of a definition of the phrase 'executive and administrative action' within the Constitution proceeded to hold that

...in deciding whether in a given case, the action that is sought to be challenged under the said article constitutes 'executive or administrative action', our courts have focused attention on the particular person, institution or body whose action is sought to be impugned⁷⁷.

Referring to the fact that the previous judicial precedents have equated 'executive and administrative actions' to the actions of the State (i.e. government) and that the state power is exercised through its organs and instrumentalities Saleem Marsoof, J. held that the 'State' includes every repository of State Power⁷⁸. The discussion then proceeded to identify the various tests enunciated in previous judicial precedents applicable in determining whether a particular person, institution or other body whose action is challenged is an agency of the State exercising executive and administrative power. The following is a brief discussion of the tests pronounced.

⁷⁷ *Ibid.* at p. 3.

⁷⁸ *Ibid.* at p. 4.

8.4 Performance of functions of a public nature

In *Wijeratne and Another v. People's Bank and Another*⁷⁹ the Supreme Court considered the functions performed by the People's Bank and held that the actions of the People's Bank did not constitute executive and administrative actions since the Bank performed actions of a commercial nature. Applying this test to the facts of the present case Saleem Marsoof, J. proceeded to analyse the objectives, powers and functions of the Institute of Fundamental Studies as set out in the Institute of Fundamental Studies Act⁸⁰. However, the powers and functions of the Institute of Fundamental Studies as set out in the Act were found to be insufficient to conclude whether the Institute of Fundamental Studies is a body performing functions of a public nature or not. Hence this test was found not to be conclusive.

8.5 Degree of control exercised by the State

Analysing several judicial precedents⁸¹ at great length Saleem Marsoof, J. considered the degree of control exercised by

⁷⁹ *Wijeratne and Another v. People's Bank and Another*, [1995] 2 SLR 352 referred in *Prof. Hapugabange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 73/2007, *Ms. S.M.S..D. Ramayanayake v. Institute of Fundamental Studies and Nineteen Others*, S.C. (FR) Application No. 371/2009, *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012, p. 4.

⁸⁰ *Ibid.* at p. 4-7.

⁸¹ *Rajaratne v. Air Lanka Ltd.* [1987] 2 SLR 128 and *Jayakody v. Sri Lanka Insurance and Robinson Hotel Co. Ltd. and Others* [2001] 1 SLR 365 referred in *Prof. Hapugabange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 73/2007, *Ms. S.M.S..D. Ramayanayake v. Institute of Fundamental Studies and Nineteen Others*, S.C. (FR) Application No. 371/2009, *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012, p. 7.

the State over the Institute of Fundamental Studies⁸². The appointment of the Board of Governors, the Research Council and the other staff of the Institute and financial control exercised by the State over the Institute are some of the points taken into account by Saleem Marsoof, J. He also pointed out that mere analysis of the provisions of the incorporating statute may be misleading of the nature of the body whose actions are questioned. As it appears from the case the correct test to determine whether a particular body is an instrumentality or agency of the State is to see whether the State exercises deep and pervasive control over it. Upon weighing the overall evidence Saleem Marsoof, J. held that the Institute of Fundamental Studies is an instrumentality or agency of the State. This judgment is praiseworthy given the efforts taken by Saleem Marsoof, J. to identify the tests applicable in determining whether a particular body is an instrumentality or agency of the State and given the continuation of the progressive approach followed in previous judicial precedents.

9. Conclusion

The period of 2011-2012 was marked by a combination of outstanding judicial decisions and decisions that did not make any notable contribution to the fundamental rights jurisprudence of Sri Lanka. A significant contribution has been made in the case of *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*⁸³ to extend the guarantee of right to

⁸² *Ibid.* at pp. 7-17.

⁸³ *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012.

equality to protect the right to education. While the case of *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*⁸⁴ warrant praise for considerably relaxing the procedural rules pertaining to one month time and standing, the cases of *Prof. Hapugahange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, *Ms. S.M.S..D. Ramayanayeke v. Institute of Fundamental Studies and Nineteen Others* and *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*⁸⁵ heard together attract attention for their extensive analysis of the meaning of the phrase 'executive and administrative action'.

A gradual shift in the character of judicial protection of the right to equality is detected during this period. The Supreme Court seemed to acknowledge the ability to effectively use the guarantee of right to equality to strike down arbitrary and unreasonable administrative decisions⁸⁶ where administrators have transcended the limits of their powers. The wide use of the doctrine of legitimate expectation as a separate ground upon which an allegation of violation of

⁸⁴ *H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others*, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011.

⁸⁵ *Prof. Hapugahange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 73/2007, *Ms. S.M.S..D. Ramayanayeke v. Institute of Fundamental Studies and Nineteen Others*, S.C. (FR) Application No. 371/2009, *Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others*, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012.

⁸⁶ See *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.

the right to equality could be based is another noteworthy trend emerging during the period under consideration⁸⁷. Whatever be the factors accounting for the transformation of judicial protection of right to equality the trend of reviewing administrative decisions in fundamental rights cases is welcome as a positive trend. Given the internal and external pressure the Supreme Court is forced to deal with, it is hoped that this trend will last. In any event it is too early to comment on the effect this profound change would have on the practice of judicial protection of right to equality in Sri Lanka.

⁸⁷ See *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012, *Varabenage Pavithra Dananjanie De Alvis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others*, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011, *Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others*, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012, *Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others*, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012.

III.

IMPLEMENTATION OF LLRC RECOMMENDATIONS: RESTITUTION AND RECONCILIATION

Ambika Sathkunanathan¹

1. Introduction

In response to calls from the international community to investigate violations allegedly committed by both the government of Sri Lanka (GoSL) and the Liberation Tigers for Tamil Eelam (LTTE), President Mahinda Rajapaksa appointed the 7 member Lessons Learnt and Reconciliation Commission (LLRC) in May 2010 to “ascertain circumstances that led to failure of the ceasefire agreement of 22 February 2002 and the sequence of events that followed thereafter until 19 May 2009” through a process of ‘restorative’ justice. International and national human rights organisations have pointed out several shortcomings in the Commission which have failed to meet basic international standards.² Following months of hearings and

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² “Sri Lanka: Government proposal won’t address war crimes”, *Human Rights Watch* 7 May 2010 at <http://www.hrw.org/news/2010/05/07/sri-lanka-government-proposal-won-t-address-war-crimes>; ‘Sri Lanka: Inquiry into armed conflict fundamentally flawed’, *Amnesty International* 7 Sept 2011 at <https://www.amnesty.org/en/news-and-updates/report/sri-lanka-inquiry-armed-conflict-fundamentally-flawed-2011-09-07>

testimony collected in Colombo and the North and East, the LLRC issued a series of interim recommendations and in October 2010 an Inter-Agency Advisory Committee was appointed by the President to implement these recommendations. This 2 page undated 'report' (which was not made public officially but was leaked and appeared in the public domain), contains recommendations on 5 issues, namely, detention, land, law and order, administration and language issues, and socio-economic/livelihood issues.

The 388 page final report³ tabled in Parliament in December 2011 is best viewed as consisting of two components - the chapters on the last stages of the war and the rest of the report. While the chapters on the last stages of the war do not put forward an effective accountability process or address concerns that have prompted calls for an international investigation, the second part of the report contains recommendations and proposals which, if implemented fully, would address a number of concerns related to human rights, democracy and good governance. It should be noted that the second part of the report makes several broad policy statements that challenge and contradict government policy on many issues including militarization.

The aim of this chapter is to discuss the implementation of the recommendations of the LLRC report on reconciliation and restitution during the years 2011 and 2012, the period under review.

³ http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

2. Definitions

Given the mandate of the LLRC, the entire report itself could be said to be concerned with issues of transitional justice. The UN Secretary-General defines transitional justice as the 'processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'⁴. Hence, transitional justice seeks to bring about long-term structural change that redresses root causes of the conflict as well as address the violations that took place during it. While the Secretary-General's Guidance Note, which sets out the 'United Nations Approach to Transitional Justice'⁵ makes it evident that reconciliation is only one component of an effective transitional justice mechanism it does not provide a definition of reconciliation. International IDEA's Handbook on Reconciliation after Violent Conflict is useful in this regard as it explains reconciliation thus:

'Ideally reconciliation prevents, once and for all, the use of the past as the seed of renewed conflict. It consolidates peace, breaks the cycle of violence and strengthens newly established or reintroduced democratic institutions. As a backward-looking operation, reconciliation brings about the personal healing of survivors, the reparation of past injustices, the building or rebuilding of non-violent relationships between individuals and communities, and the acceptance by the former parties to a conflict of a

⁴ 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report to the Secretary-General,' UN Doc. S/2004/616 (2004).

⁵ Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice 201 at <http://www.unrol.org/doc.aspx?d=2957>

common vision and understanding of the past. In its forward-looking dimension, reconciliation means enabling victims and perpetrators to get on with life and, at the level of society, the establishment of a civilized political dialogue and an adequate sharing of power.⁶

Where restitution is concerned, the right to a remedy for human rights violations is guaranteed by international instruments although none of the permanent UN bodies have the authority to order payment of compensation. Article 8 of the Universal Declaration on Human Rights (UDHR) states that 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or laws'. The ICCPR also contains some guarantees in article 2(3) - right to effective remedy, article 9 (5) – right to compensation of a person who has been a victim of unlawful arrest or detention and article 14 (6) – right to compensation for wrongful conviction.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide specific guidance on this subject. These principles require states to respect, ensure respect for, and implement international human rights law and international humanitarian law and are concerned with the provision of immediate and effective remedies to victims of

⁶ David Bloomfield, Teresa Barnes and Lucy Huyse (eds.) *Reconciliation after Violent Conflict: A Handbook*, International IDEA, Stockholm. 2003, p.19.

rights violations. Article 8 defines victims as any persons who suffered harm, 'including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law'. The principle goes one step further and includes 'immediate family members or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization' in the definition of victim. The victim's right to 'equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms' is protected by article 11. Article 12 (b) requires states to take measures to minimize inconvenience to victims and their representatives, protect against 'unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses before, during and after judicial, administrative, or other proceedings that affect the interests of victims'

Articles 15 to 23 deal with remedies for victims. Article 15 stipulates that 'reparation should be proportional to the gravity of the violations and the harm suffered... a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law'. In the case of judgments by international bodies against States, Article 17 requires states to 'endeavour to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations'. Effective reparation according to Article 18 includes restitution, compensation,

rehabilitation, satisfaction and guarantees of non-repetition. The aim of restitution according to Article 19 is to 'whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations...occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'. Article 20 states that compensation should be provided for economically assessable damage 'as appropriate and proportional to the gravity of the violation and the circumstances of each case...such as: physical or mental harm; lost opportunities, including employment, education and social benefits' material damages and loss of earnings, including loss of earning potential' moral damage'; costs required for legal or expert assistance, medicine and medical services and psychological and social services'. Hence, international standards adopt a broad and progressive approach to defining victims and reparations, and also set out principles to which states should adhere to ensure affected persons and their families are not subject to further violations or inconveniences in their attempts to seek redress.

This chapter will begin with a discussion, situated within the framework of transitional justice, of the elements of the report and the National Plan of Action (NPoA), which was formulated to enable effective implementation of the recommendations, that are related to reconciliation and restitution. Thereafter, the focus will shift to the implementation of the recommendations on reconciliation and restitution. In its review, the chapter will pay attention to both recommendations from the chapters on reconciliation and restitution, and those from the rest of

the report that are related to the two aforementioned elements of transitional justice.

3. Analysis of the LLRC Report

3.1 Reconciliation

The positive aspects of the LLRC report include its willingness to address both the structural issues and root causes of conflict as well as violations that took place during the armed conflict. Most importantly, the Commission recognizes the existence of the ethnic conflict and its historical causes, and states that political issues related to the ethnic conflict need to be addressed since 'it is a political problem' and therefore it 'is necessary to address the root causes of the conflict'⁷. To this end, it calls upon the state to reach out to minorities and address grievances, both real and perceived, that remain unaddressed. The report states that reconciliation 'requires a full acknowledgment of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society of both Sinhala and Tamil communities'⁸. In recognition of the suffering of those affected by the armed conflict it recommends that a separate event be held on National Day to 'express solidarity and empathy with all victims' of the armed conflict.⁹ Most importantly, it places the onus on the government to be the 'prime mover' of the reconciliation process.¹⁰

Further, the report acknowledges that Sri Lanka has international obligations it has to honour and implement,

⁷ LLRC Report, para 8.141.

⁸ *ibid*, para 8.303

⁹ *ibid*, para 8.304

¹⁰ *ibid*, para 9.183

and re-affirms that the concept of human rights is not an ideal that is alien to the socio-cultural ethos of Sri Lanka, but instead is 'deeply embedded in the core values and ethics' of local religions.¹¹ It moreover calls upon the government to cooperate with, and obtain the assistance of international organisations, particularly the ICRC and the UN, and civil society and community groups in implementing its recommendations. Critiquing increasing military involvement in civilian and economic affairs, the report calls for the phasing out of the involvement of the security forces in civilian activities¹² and the establishment of independent Police and Public Service Commissions.¹³

In addressing impunity and lack of respect for the rule of law, the Commission calls upon the government to investigate Deputy Minister V. Muralitharan (Karuna), Minister Douglas Devananda of the politico-armed group EPDP, and Inayabharathy, an associate of Karuna.¹⁴ While reiterating the need to disarm all armed groups, the LLRC expresses disappointment that its interim recommendations in this regard were not implemented.¹⁵ It also calls for an investigation into the massacre of around 600 policemen in the Eastern Province in 1990, allegedly by Deputy Minister V. Muralitharan (Karuna).¹⁶

The report makes considerable effort to address the needs and concerns of certain groups of affected persons, such as

¹¹ *ibid*, para 5.4.

¹² *ibid*, para 9.171.

¹³ *ibid*, para 8.194 & 9.226.

¹⁴ *ibid*, para 9.207 & 9.208.

¹⁵ *ibid*, para 8.190

¹⁶ *ibid*, para 8.187 (d).

the disappeared and their families and the Commission's recommendations on this issue are relatively detailed. For instance, while reiterating the right of families of the missing and disappeared to know the plight and whereabouts of their loved ones¹⁷, the LLRC's recommendations include investigating complaints and bringing perpetrators to justice,¹⁸ enacting national legislation to criminalize involuntary and enforced disappearances,¹⁹ appointing a Special Commissioner to investigate alleged disappearances and provide material to the Attorney-General to initiate criminal proceedings²⁰, and the establishment of a Special Mechanism to address the issue of missing persons²¹. The Commission also sets out 47 cases of disappearances which reportedly took place during the last stages of the war when persons surrendered to the armed forces, and calls for them to be investigated.

With regard to the rights of detainees, the Commission recommends the appointment of an Independent Advisory Committee to monitor the arrest and detention of persons taken into custody under any regulations made under the Public Security Ordinance (PSO) or the Prevention of Terrorism Act (PTA)²²; reaffirms the right of access of families members to detainees;²³ and the establishment of a centralized comprehensive database containing names of detainees, place of detention as well as record of transfers to enable families to have access to such information²⁴.

¹⁷ *ibid*, para 9.50

¹⁸ *ibid*, para 9.48

¹⁹ *ibid*, para 9.59

²⁰ *ibid*, para 9.51

²¹ *ibid*, para 9.48

²² LLRC Report, para 5.44

²³ *ibid*, para 9.65

²⁴ *ibid*, para 9.63

Where state acquisition of private land is concerned, the LLRC acknowledges the trauma experienced by people who have lost lands in the High Security Zones (HSZs) and recommends the formalization and reduction of all HSZs and payment of compensation to those whose properties are within the HSZs.²⁵

The Report recognizes the existence of vulnerable groups and urges initiatives to support women, children and the elderly, in cooperation with civil society and development partners. In contradiction to government policy and action which denies the needs for psycho-social programmes, particularly in conflict affected areas, the Commission recommends the government institute such programmes in collaboration with civil society.²⁶ This is an important recommendation as it seeks to address the trauma of affected populations, which would contribute considerably towards repairing inter and intra-community relations and thereby strengthen reconciliation efforts. On the issue of displacement and the rights of IDPs, the Commission reiterates that all IDPs 'enjoy equal rights notwithstanding administrative definitions coined to restrict benefits due to financial limitations, political concerns or international pressure'.²⁷ Recognizing that 'the mere physical return and resettlement of the displaced persons in the Wanni would not resolve the totality of the problems faced by the displaced', the Report states there is a need to pay attention to their needs during the resettlement stage.²⁸ Importantly, the Commission acknowledges multiple displacements

²⁵ *ibid*, para 6.12 & 6.13.

²⁶ *ibid*, para 9.58, 9.84 & 9.88.

²⁷ *ibid*, para 6.104.11.

²⁸ *ibid*, para 6.32

experienced by people²⁹ and calls for an end to the artificial distinction often made between new and old IDPs.³⁰

The Report expresses grave concern about attacks on journalists and media institutions, reiterates the need for conclusive investigations and prosecutions³¹, and calls for the protection of freedom of association and movement, particularly in the case of those living in conflict affected areas.³²

There are, however, a number of shortcomings in the Report, particularly related to accountability, one of the more contentious elements of transitional justice. When reviewed within the framework of the recommendations of the Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka (POE)³³, the LLRC Report does not recommend 'an effective domestic accountability process', because when examining the last stages of the war the Commission has based its analysis on the preconceived premise that the military strategy employed by the government was carefully conceived and gave the highest priority to the protection of the civilian population and minimizing/avoiding civilian casualties. It concludes that "feasible precautions" that were practicable in the circumstances had been taken³⁴ and there was no excessive use of force in violation of the principle of proportionality by the armed forces when returning fire into the No Fire

²⁹ *ibid*, para 8.28

³⁰ *ibid*, para 8.175.

³¹ *ibid*, para 9.115.

³² *ibid*, para 9.117- 9.119.

³³ http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

³⁴ LLRC Report, para 4.273, 4.283 & 9.7.

Zone (NFZ).³⁵ However, the Commission provides no evidence to illustrate that 'all feasible precautions' were taken to prevent or minimize civilian casualties nor does it convincingly assert that disproportionate force was not used by government forces.

The Commission calls for investigations of only 3 incidents: 1) Navy attack on civilians at Chundikulam on 10 May 2009; 2) Army preventing people from moving and coming into Army lines on 20 April at Mathalan Pokkanai and 3) shelling by the Army of a nutrition centre in the NFZ in April 2009, and states that even in these cases there may not have been an intent to cause harm to civilians.³⁶ Although it acknowledges that shelling took place, the Commission states it is unable to construct a clear chronology of events and determine responsibility for the attacks. The Commission concludes that civilian casualties were mainly due to cross-fire, killing by the LTTE of civilians who attempted to flee the LTTE controlled areas, landmines and the 'perils inherent in crossing the Nanthi Kadal Lagoon'.³⁷ Although there is no specific reference to the White Flag incident involving allegations of extra-judicial execution of LTTE members who surrendered to the military, the Report finds that in general white flags were respected by the armed forces.³⁸ Even though the Report acknowledges the 'truly gruesome and shocking' nature of the footage in the Channel 4 video it expresses scepticism about its authenticity and recommends an independent investigation.³⁹ It should be

³⁵ *ibid*, para 4.282 & 4.283.

³⁶ *ibid*, para 4.286 & 9.9.

³⁷ *ibid*, para 4.282.

³⁸ *ibid*, para 4.107, 4.234 & 4.317.

³⁹ *ibid*, para 4.374.

noted that at no point in the Report, does the Commission make reference to command responsibility.

The Commission finds that the government took all possible steps to transport supplies to entrapped civilians despite the logistical difficulties and states there is no room to make an inference that 'there was a deliberate intention to downplay the number of civilians in the NFZs for the purpose of starving the civilian population as a method of combat'.⁴⁰ It therefore disregards the fact that the report of the Panel of Experts found that the government, both in private meetings and public statements, underestimated the number of civilians in the NFZ when determining the amount of food and medical supplies to be sent, and also denied permission to humanitarian agencies to send several required provisions.⁴¹ Hence, the Report does not provide an adequate response to concerns that have prompted calls for an international investigation. Nor does it suggest other means to carry out investigations on the issues concerning the last stages of the war.

Since the Commission dealt mainly with issues that were brought to their attention by those who made representations, it has not focused sufficiently on broader policy issues that impact on the rule of law, protection of human rights and democracy. Instead of using international standards as the framework/basis to review or assess state policies and actions, in many instances the Commission *prima*

⁴⁰ *ibid*, para 4.303 & 4.304

⁴¹ Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, March 2011, para 224 at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf. Accessed on 12 April 2014.

facie accepts government rhetoric, policy and action without assessing them within an objective framework of international laws and principles. For instance, it makes no effort to inquire further into the legal basis, working methods and rules of the Presidential Task Force (PTF), which has far-reaching powers with regard to development activities in the North, nor ascertain whether it functions in a transparent manner in accordance with global principles of good governance. Given the numerous government commissions, policies and drafts that have been established and formulated, for instance on the rights of IDPs and the issue of disappearances, during the period of the armed conflict, the failure of the LLRC to reference and use those in their analysis of the issues and the formulation of recommendations has meant that the LLRC has not benefitted from lessons learnt and progressive suggestions made by those structures and processes.⁴²

Although the Commission acknowledges that rehabilitees/surrendees spent long periods in detention, it does not view the rehabilitation process as arbitrary detention that violates both international and national laws. It also makes no mention of post-release monitoring of rehabilitees by

⁴² For instance, although the LLRC's restitution chapter states that 'Recommendations concerning similar issues in previous Commissions such as the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in Certain Provinces, 2001, provided useful background material to the Commission's consideration of the matter', many progressive recommendations made by those Commissions, such as calls for national acknowledgment of wrongs done (All Island Commission on Disappearances 1998) and recognition of rape and sexual assault in custody as torture (Commission on Disappearances in the Southern Province 1994) have not been reiterated by the LLRC.

security agencies, including the army, that prevent effective reintegration of former combatants or the lack of adequate re-integration programmes. Considering that the reintegration of former combatants constitutes an integral part of any reconciliation process, this is a serious oversight.

Further, the Commission does not recognize that closed camps at which IDPs were held after the end of the armed conflict constituted collective punishment/arbitrary detention, nor does it critique the return and resettlement process. There is also no acknowledgment that cumbersome and unclear processes were put in place at the said camps, which restricted the ability of organisations, both international and local, to provide assistance. The Report claims that measures have been taken to 'facilitate the return and resettlement and strengthen the capacity of the now settled IDPs to grapple with the practical necessities and problems of starting a new life', even though the majority of returnees still face considerable challenges rebuilding their lives.⁴³ Although the Commission calls for durable solutions it does so only in relation to Muslim IDPs. Moreover, there is no mention of IDPs living with host families and their needs and concerns. Hence, many groups of affected persons are not acknowledged, or even if acknowledged their needs and concerns which impact post-war reconciliation processes have not been taken into account.

The Report does not recommend the repeal of the Prevention of Terrorism Act (PTA). Nor does it focus on strengthening national institutions established to protect and promote human rights, such as the National Human Rights

⁴³ LLRC Report, para 6.84

Commission which would be an important aspect of ensuring that affected persons are able to seek redress for rights violations, which would bolster the population's confidence in public institutions, which is imperative to renew the social contract between the citizen and the state in the post-war context.

Where addressing the root causes of the conflict is concerned, although the Report states the root causes of the conflict have to be addressed, reiterates that 'a political solution is imperative to address the causes of the conflict'⁴⁴, calls upon the State 'to reach out to the minorities' and says 'the minorities, in turn must, re-position themselves in their role *vis a vis* the State and the country'⁴⁵, it does not call upon the government to publicly release the report of the All Party Representative Committee (APRC) appointed by the President in 2006 and headed by Minister Tissa Vitharana, which formulated proposals to resolve the ethnic conflict. The release of the Vitharana report which was handed over to the President but was never officially made public by the government, is particularly important in light of attempts to initiate and sustain meaningful dialogue between the government and Tamil political parties and moves by the government to establish a Parliamentary Select Committee to formulate proposals for a political solution. The failure to acknowledge the efforts of, and proposals by previous governments, for instance the draft constitution formulated during President Chandrika Kumaratunge's regime, has meant that the LLRC has made no effort to further the historical advances made towards resolving the ethnic conflict.

⁴⁴ LLRC Report, para 8.151

⁴⁵ *ibid*, para 8.141.

3.2 Restitution

The chapter on restitution/compensation in the LLRC Final Report is short, lacks depth and focuses only on the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), thereby disregarding other forms of compensation/restitution that may be required and desirable. The international standards and guidelines the Commission uses are those mainly related to displacement, such as the Deng Principles on Internal Displacement and Principles of Housing and Property Restitution for Refugees and Displaced Persons 2005, and Principles of the Responsibility of States for Internationally Wrongful Acts, which provides little guidance on the provision of remedies to individual victims. International standards such as the UN Basic Principles on and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law which set out a comprehensive framework to provide remedies for rights violations have not been referenced or used. Most importantly, it does not recognize the right to remedies for human rights violations that is guaranteed by several international instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In relation to national standards, the report refers only to the legislation that established REPPIA, the Rehabilitation of Persons, Properties and Industries Authority Act No 29 of 1987, which even though contains a provision that states that one of the functions of REPPIA is to 'assist in the rehabilitation of affected persons by way of an outright grant or any such other means as REPPIA may deem necessary', focuses mainly on the reconstruction of damaged properties. Despite the lack of comprehensive

and cohesive national standards on restitution, the Commission did not use this opportunity to formulate such a definition. Further, as the Commission itself acknowledges 'REPPIA's statutory function clearly establishes that assistance/relief is to be provided in financial terms', which means that other forms of reparation, such as the right to know the truth about their missing loved ones and redress for systemic discrimination are not within the mandate of this institution. Although the LLRC report refers to restitution in other sections of the report, for instance in relation to IDPs, the chapter on restitution is framed extremely narrowly and thereby excludes the different types of restitution that would constitute a comprehensive and holistic reparation process. Further, where certain issues such as IDPs and durable solutions are concerned, the Commission could have benefitted by looking to the National Involuntary Resettlement Policy.

It would have been useful if the LLRC had focused on specific rights violations, such as disappearances, and made concrete suggestions to the state to address the suffering of the affected communities. For instance, it could have called upon the government to ratify the 2009 Convention for the Protection of All Persons from Enforced Disappearance, which contains provisions on reparations, such as Article 24 (4) of the Convention which calls upon the state to ensure that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. According to 24 (5) 'the right to obtain reparation includes material and moral damages and, where appropriate, other forms of reparation such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation and guarantees of non-repetition'. In this

regard the 1998 Report of the Working Group on Involuntary or Enforced Disappearances which in its General Comment on Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearances Declaration, states that compensation should be proportionate to the gravity of the violation taking into account factors such as the condition of detention, physical and mental harm, suffering of the victim and family, could have also provided guidance to the LLRC.

The LLRC does however acknowledge that the most critical aspect of 'payments is the extreme lack of funds available to REPPA' and states that 'as at May 2011, Rs. 2.3 billion (34,111 cases) is needed to make payments to the backlog of approved cases'.⁴⁶ While the Commission's remark that the 2012 budget estimates of REPPA are inadequate to meet the estimated cost of payments raises questions about the efficiency of the institution and its ability to effectively perform its functions, its further comment that this was due to REPPA abiding by recommended budgetary ceilings illustrates the lack of political will on the part of the state to put in place a genuine reparation scheme. This is further highlighted by the LLRC pointing out that 'despite payments in 2009 and 2010 being almost exclusively for residents of the Northern and Eastern Provinces, the coverage of actual payments to entitled persons in these Provinces remains extremely low'.⁴⁷ The lack of a coherent, cohesive and comprehensive reparation policy has also resulted in a number of affected persons being unable to claim compensation, such as those whose properties are damaged for a second time who are deemed ineligible for

⁴⁶ LLRC Report, para 7.8.

⁴⁷ *ibid*, para 7.11.

compensatory relief if previous payments have been made. Given the 30 year life span of the armed conflict and multiple displacements, there are a large number of people in the North and East whose properties were damaged more than once during the war, who are therefore prevented from accessing assistance to rebuild their homes and lives. Despite the Commission stating the Government 'needs to take responsibility for prioritizing payments in full, and in time'⁴⁸ and calling for funding allocation to be made 'to clear the backlog of cases as well as to prevent lack of funds being the reason for delays and non-payment in the future'⁴⁹ as at the end of 2012 there has been no visible change in the situation. In the interests of reconciliation, the Report recommends that 'in principle, ex-combatants and next of kin should also be considered eligible for compensatory relief', although priority should be given to affected civilians.⁵⁰

The Report observes that provision of compensation should be viewed 'within the context of the extensive State welfare services, largely provided free of charge (such as education, health, infrastructure, and livelihood development), which operated despite the difficult conditions even in areas held by the LTTE'.⁵¹ It further states that the overall resettlement and development programmes that are being implemented in the conflict-affected areas should be taken into account when determining compensation.⁵² These statements appear to downplay the duty of the state to formulate a holistic

⁴⁸ *ibid*, para 9.157.

⁴⁹ *ibid*, para 7.15.3

⁵⁰ *ibid*, para 7.15.10

⁵¹ LLRC Report, para 7.6

⁵² *ibid*, para 7.15.12.

reparation programme and instead seem to justify the state position that post-war reconstruction and re-initiation of basic services in conflict affected areas constitute reparations, which detract from the specific losses suffered for which restitution has to be provided separately.

4. Analysis of the National Plan of Action to Implement the Recommendations of the LLRC

On 26 July 2012, the government released the National Plan of Action to Implement the Recommendations of the LLRC (NPoA). Where accountability issues related to the last stages of the war are concerned, the Plan refers to 'on-going disciplinary processes' that are being conducted in terms of the Armed Forces statutes, and states that prosecutions will be initiated where relevant. As there is little transparency or information in the public domain about the processes being carried out by the armed forces, concerns about accountability issues not being addressed remain. Since the activity proposed in response to the LLRC recommendation to investigate instances of disappearances after arrest/detention is supposed to be based on the outcome of the on-going disciplinary process being conducted in terms of the Armed Forces statutes, it gives the impression that such disappearances took place only during the last stages of the war and could have been carried out only by the armed forces. It should be noted that such disappearances also took place prior to the last stages of the war and also when persons were arrested by the police. This creates confusion as to whether the on-going disciplinary inquiry is related only to the last stages of the war or to prior periods too, and if so which period(s).

Positive activities set out in the Plan include the appointment of a Special Commissioner of Investigation

to investigate alleged disappearances, and the creation of a special mechanism to examine cases of persons being held in detention for long periods without charges. It should be noted that these recommendations have to be viewed within the historical framework of several commissions and special mechanisms in Sri Lanka that have either been unable to function effectively because they have been stymied by the state, or have put forward recommendations that have been ignored by the state. As of December 2012, a Special Commissioner has not been appointed and the progress report on the implementation of the National Plan of Action merely states that a request has been made to the Presidential Secretariat to make the relevant appointments. With regard to the special mechanism to examine cases of persons held in detention for long periods, the progress report states 'Observation of Attorney General on proposed Protection Victims and Witness Bill will be presented to the Cabinet of Ministers'; the action clearly is not related to the recommendation.

Although law enforcement agencies are directed to investigate allegations of abductions, enforced or involuntary disappearances and arbitrary detention, the stipulated activities contain only broad, general statements, such as 'strengthen access to justice', and no specific activity is listed. Further, the Plan proposes the creation of structures that are supposed to enable 'more effective surveillance' of the locality- this proposal should be viewed in the context of monitoring and surveillance presently carried out by the armed forces and the police, particularly in the North, and the resultant repressive effect on freedom of expression and assembly.

The Plan also refers two LLRC recommendations, one which calls for the de-linking of the Police Department

from institutions dealing with the armed forces⁵³, and the other that calls for maintaining and supporting the existing practice of signing the National Anthem in both Tamil and Sinhala⁵⁴ to the Parliamentary Select Committee, although neither issue relates to formulating a settlement of the ethnic conflict, the main activity with which the Committee is tasked. This can be deduced as a strategy to avoid implementing the said recommendations without rejecting them outright.

The recommendation to de-link the Police Dept. from the institutions dealing with the armed forces⁵⁵ has been referred to the Parliamentary Select Committee (PSC). Firstly, it is not stated to which PSC reference is made. Secondly, if the reference is to the PSC which is yet-to- be-established to discuss and formulate a solution to the ethnic conflict, this issue is clearly not within the PSC's core mandate. The Plan states that an independent Police Commission as recommended in 9.215 has already been established, which is inaccurate since, despite the 18th Amendment, the Commissioners have been appointed by the President, thereby placing their independence in question.

The Presidential Secretariat has been listed as the responsible agency to implement the recommendation to establish a constitutional provision for judicial review of legislation⁵⁶, even though the Ministry of Justice would be the more appropriate agency. Further, confusingly, it also states the

⁵³ LLRC Report, para 9.214.

⁵⁴ *ibid*, para 9.277.

⁵⁵ Recommendation 9.214.

⁵⁶ Recommendation 9.228.

issue will be referred to the PSC, without specifying which PSC is to review this issue. Instead of making provisions to establish inter-faith groups to function as early warning mechanisms within communities⁵⁷, the Plan proposes the continued functioning of Civil Defence Committees, which in some localities appear to function more as a means for the army/police to conduct surveillance and monitoring of the general population.

The recommendation that calls for a national day to be set aside to 'express solidarity and empathy with all victims'⁵⁸ of the armed conflict has been ignored. Instead, the Plan merely states that current practice of 'expressing solidarity as one nation and one people and of pledging a collective commitment to non-violence and peace so as to ensure a non-recurrence of the past events that led to the internecine conflict'. It should be noted the current event organized by the government is called 'Victory Day', and contains elements of triumphalism and celebration, and thereby ignores the pain, suffering and loss endured by the population, particularly those in the North and East, which is in no way conducive to achieving reconciliation.⁵⁹

The recommendation to 'maintain and support the current practice of the National anthem being sung simultaneously in two languages'⁶⁰ (Tamil & Sinhala), has been referred to the PSC, once again without specifying which PSC.

⁵⁷ Recommendation 9.270.

⁵⁸ Recommendation 9.285.

⁵⁹ Ambika Satkunanathan, 'Sri Lanka Remembers to Forget', *Open Democracy*, 21 May 2013 at <http://www.opendemocracy.net/opensecurity/ambika-satkunanathan/sri-lanka-remembers-to-forget>. Accessed on 12 April 2014.

⁶⁰ LLRC Report, para 8.277.

Considering that historically the national anthem has been sung in both Sinhala and Tamil, it is unclear why there is a need to review continuing to do so. This is cause for concern, particularly in the post-war period when numerical minorities, particularly Tamils, feel alienated from the State and its processes. Moreover, a one-year time period has been stipulated for the review by the PSC and implementation of its recommendations.

A number of important recommendations on reconciliation have not been included in the NPoA, such as recommendation 9.116 which states the Government must ensure that it protects the people's right to freely engage in observing their religion and other freedoms such as freedom of association and movement' and 'the government must not arbitrarily restrict or violate such rights through any state institution, security force or the Police'. Similarly, recommendation 9.241 which states 'the official bodies for executing the language policies and monitoring performance should have adequate representation of the Tamil speaking people and Tamil speaking regions' and recommendation 9.242 which calls for the formulation of policies to achieve this have not been included. Despite the serious economic disadvantages and rights violations experienced by persons of recent Indian origin, no specific plans are stipulated for the improvement of their needs. Instead, only general statements about assessing the impact of current programmes and revising them to make more effective interventions have been made. Further, recommendation 9.200 which calls for necessary action to be 'taken to improve the health and educational facilities and also provide better living conditions in the estate areas' has not been included in the NPoA.

Where recommendation 9.118 which states that ‘people, community leaders and religious leaders should be free to organize peaceful events and meetings without restrictions’ is concerned, the only activity listed is ascertaining whether any complaints are made in this regard at the Government Agent’s (GA) conference. This action is based on the assumption that all complaints will be freely aired at the GA’s conference and fails to ignore the heavy military presence in the North and East and the role they play in monitoring the population and placing restrictions upon freedom of expression association and assembly. Interestingly, recommendation 9.196 in which the Commission states it ‘is inclined to agree with the perceptions of the ‘old IDPs’ regarding inequality have some merit. It is incumbent upon the Government of Sri Lanka with the cooperation of its development partners to take into account the equity and non-discriminatory principles in dealing with the situation of the old IDPs’ has also been omitted from the NPoA.

Where restitution is concerned, the Plan makes no provision for the implementation of the LLRC recommendation that calls for a government position on providing ‘compensatory relief for death and injury for those involved with the LTTE’⁶¹. Instead, it mentions only the government’s rehabilitation and re-integration programme for ex-combatants and reconciliation programme for next of kin. No details of said reconciliation programme are provided.

⁶¹ Recommendation 9.164.

5. Implementation of Key Recommendations on Restitution & Reconciliation

5.1 Restitution

The Commission's recommendations related to restitution were largely unimplemented as at December 2012. For instance, the government had not undertaken a review of the role and capacity of REPPIA 'with a view to streamlining and augmenting its role and resources in undertaking post-conflict requirements'. Although the report identified housing as a fundamental issue for returning IDPs as at December 2012 the housing needs in the North outstripped the needs with donors and the government pledging to build or repair a total of around 78,000 homes although war returnees require 170,000 homes.⁶² There has also been little effort to institute awareness campaigns to provide information to the public about the processes through which they could apply for and obtain compensation. Despite the report stating that 'the responsibility of ensuring payments needs to be taken by REPPIA. It should not be the responsibility of the individuals to obtain their entitlements'⁶³ REPPIA is yet to undertake effective public campaigns to make affected persons aware of their entitlements and the process through which to access them.

⁶² 'Needs outstrip housing construction in North', *IRIN*, 14 November 2012 at <http://www.irinnews.org/report/96771/sri-lanka-needs-outstrip-housing-construction-in-north>. Accessed on 12 April 2014.

⁶³ LLRC Report, para 7.15.4.

5.2 Reconciliation

Despite a few positive developments such as the release of private lands within the High Security Zones (HSZs) in the North by the military⁶⁴, many of the recommendations to bring about post-war reconciliation remained unimplemented at the end of 2012. Recommendation 8.193 which calls for the de-linking of the Police Department from the Ministry of Defence remains unimplemented. As stated in the above section, due to the 18th Amendment to the Constitution, the independence of the Police and Public Services Commissions are compromised. Similarly, recommendation 8.304, which calls for a National Day to express solidarity and empathy with all victims of the tragic conflict...to ensure that there should never be such blood-letting in the country again' has not been implemented despite the fact that public acknowledgment of loss and the provision of space to persons to mourn and grieve constitute an integral component of a genuine reconciliation programme.

5.3 Militarisation

In 2012, militarisation in the conflict affected areas continued to be one of the major obstacles to reconciliation and impacted adversely on freedom of expression, association, movement and the ability of communities to re-build intra and inter-community relations and trust. The NPoA states that a plan will be formulated for 'further reducing involvement of Security Forces in civilian work' and 'use of private lands by the Security Forces'. It should be noted that it says there will be a reduction within six months, rather

⁶⁴ <http://cpalanka.org/wp-content/uploads/2009/11/rincomalee%20High%20Security%20Zone%20and%20Special%20Economic%20Zone.pdf>

than complete withdrawal of security forces engaged in civilian work which is an indication of the actual intent of the state, and runs counter to the government claim that 95% have already been withdrawn from civilian duties. Moreover, the continued presence of the military and their involvement in civilian affairs, commercial activities and surveillance and monitoring of the population, particularly civil society and non-governmental organisations also illustrates the extent of militarisation.

Recommendation 8.211 stresses the importance of the Northern Province reverting 'to civilian administration in matters relating to the day-to-day life of the people, and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries land etc' and states that 'the military presence must progressively recede to the background to enable the people to return to normal civilian life and enjoy the benefits of peace'. Yet, as the reproduction in the LLRC report of the representation made by an army officer to the LLRC illustrates, the military's involvement in civilian affairs has not reduced.⁶⁵ The re-registration of civilians by the military in various parts of the North, which was reported to have begun in early 2011 continued after a temporary halt despite the Attorney-General giving an undertaking to the Supreme Court on 3 March 2011 that the registration of persons in Jaffna and Killinochchi districts would be stopped forthwith.

⁶⁵ LLRC Report, para 8.43- an army officer explained to the Commission that the Army had initiated the setting up of 12 fishing Societies. All members of these societies are registered and all details are documented to ensure that only fishermen affiliated to the societies are allowed to fish in the area. He said that the Army was protecting the local fishermen of the Societies in order to prevent fish mudalalis from encroaching, thereby depriving the fishermen of their livelihood

Several instances of the army disrupting meetings and workshops were also reported during the period under review. For instance, on 29 May 2011, the army barged into a meeting being held at the University of Jaffna on a project that collected and digitalized rare books and manuscripts. According to a professor who was present at the meeting, the army arrived and a person identifying himself as Colonel Jayawardene entered the hall shouting, "Who is in charge?". When the person in charge, an emeritus professor, identified himself, the colonel shouted at him for all to hear: "No LTTE commemorations. Ministry of Defence orders. Do you understand?". The meeting was allowed to proceed after a Tamil speaking person from the army in civil attire was allowed to sit among the attendees and under the condition that copies of the presentations should be given to him. At the conclusion of the meeting the names, identity card numbers and addresses and telephone numbers of those present were recorded.⁶⁶ The professor also reported that a few days earlier a similar interruption by the army had taken place at an official event at St. Charles' School in Jaffna. Likewise, on 3 June 2011, in a village in Vadamaratchi in the Jaffna peninsula, a meeting with widows organized by the organization Sewalanka was cancelled by the army who asked the employees of the organization to return without conducting the meeting after instructing them that the prior authorization of the army was required to hold meetings in the area.

On 16 June 2011 a meeting of the Tamil National Alliance (TNA) held at Alaveddy in Jaffna, at which 5 TNA MPs

⁶⁶ 'Army barges into Noolaham Foundation meeting in Jaffna', Press release 29 May 2011, at <http://transcurrents.com/news-views/archives/889>

were present, was attacked by a group of SLA officers. While Northern Army commander Maj-Gen Hathurusinghe denied the incident and refuted the charges, Maj- Gen Janaka Walgama GOC 51 Division and Director General of Defence Intelligence met the TNA MP's at Thellippazhai and tendered an apology.⁶⁷ In response to reports of the attack, Secretary to the MOD, Gotabaya Rajapakse stated that he had received a letter from the leader of the TNA T. Sampanthan seeking assistance for his party to engage in political activity in the Northern and Eastern Provinces, which Rajapakse had discussed with Sampanthan when he met with him in the presence of Indian High Commissioner, Ashok Kantha on 8 June. At the meeting MP Sampanthan had sought to work out a mutually convenient date to launch his party's programme in Jaffna. Rajapakse said that while he was in the process of making the necessary arrangements to meet MP Sampanthan's request, a group of TNA MPs who sought to undermine the TNA leader's agreement with the government held an unauthorised meeting in Jaffna with the aim of derailing the national reconciliation process. According to Rajapakse, a group of soldiers under the command of an officer had visited the community hall, where the TNA was hosting the meeting, which he referred to as a 'public' meeting, and an argument had ensued between the army and a section of the gathering, including MPs and some Ministerial Security Division personnel. Although Rajapakse acknowledged that the argument led to one of the MSD personnel being slapped, he denied the troops attacked the MPs and other participants.⁶⁸ President Mahinda Rajapakse dismissed as false, the complaints made by the TNA about the attack and

⁶⁷ D.B.S. Jeyraj, 'Vicious attack by Army in Alaveddy on TNA meeting with MPs present', 16 June 2011 at <http://dbsjeyraj.com/dbsj/archives/2320>

⁶⁸ Shamindra Ferdinando, 'GR alleges TNA split over Sampanthan's reconciliation move', *The Island*, 20 June 2011.

said that it had been an altercation between the army and the Ministerial Security Division protecting the TNA MPs. While he blamed the TNA for blowing the issue out of proportion with the intention of gaining political mileage from it, the President also said that investigations were being conducted and those responsible would be held accountable.⁶⁹

5.4 Language

Recognising the need to ensure that citizens are able to exercise their language rights and with the aim of furthering inter-community understanding and reconciliation the government launched a trilingual policy in 2012, and declared the 'Year for a Trilingual Sri Lanka'. However, as at December 2012, Tamil-speakers continued to experience discrimination in accessing public services and institutions. Particularly outside of the north and east, government officers with whom Tamil-speakers interact are largely monolingual Sinhala-speakers. Common difficulties include the lack of Tamil-speaking public officers or official interpreters in state institutions, so that communication can only take place in Sinhala or with the assistance of a bi-lingual third party. Furthermore, signboards are often in Sinhala only; particularly in the Tamil-speaking North, following the end of the war, signboards have been posted only in Sinhala.

5.5 Rights of numerical minorities

In recommendation 8.302, the Commission observed that 'during the last four to five decades there have been instances where 'hate speech' had contributed to major communal

⁶⁹ 'No attack on TNA, only a clash between MSD and army', *The Island*, 28 June 2011.

disharmony. Since 'hate speech' relating to ethnicity, religion and literature exacerbate ethnic and religious tension, creating disunity and conflict, deterrent laws must be enacted to deal with such practices, and these laws should be strictly enforced'. Yet, during the years under review minority communities were subject to harassment, intimidation and even violence. On 20 March 2012, it was reported that a 2000 person strong mob backed by the Jathika Hela Urumaya (JHU), a political party that is a constituent party of the ruling coalition, and led by Buddhist monks, stormed into a mosque in the sacred city of Dambulla. They caused disturbances resulting in the cancellation of Friday prayers and chased away people who were in the building. Reports suggest that petrol bombs were hurled into the mosque the previous night causing minor damage. The mob claimed that the mosque was built illegally on a sacred area allocated for Buddhists and demanded its demolition. They also demanded the removal of all unauthorised structures, including non-Buddhist places of worship, from the sacred area.⁷⁰ On the same day, the Prime Minister made a statement that the structure was not a mosque but a small room for worship which has existed for only 10 years. He further said that the government would help re-locate such places of worship of other religions that currently exist within the sacred areas, to alternate locations.⁷¹ A video of the protests reveal that hateful remarks and religious slurs were made by members

⁷⁰ 'Bigoted monks and militant mobs: Is this Buddhism in Sri Lanka today?', *Groundviews* 23 April 2012 at <http://groundviews.org/2012/04/23/bigoted-monks-and-militant-mobs-is-this-buddhism-in-sri-lanka-today/>. Accessed on 12 April 2014.

⁷¹ 'Sri Lanka government orders removal of mosque', *BBC News Asia*, 22 April 2012 at <http://www.bbc.com/news/world-asia-17805202>. Accessed on 12 April 2014.

of the mob directed at the Muslims who had gathered for prayer. No action has been taken against those who initiated and carried out the attack. As at the end of 2012 there was no government denunciation of these attacks nor has the state taken action against perpetrators.

Even following the recommendation of the LLRC that the national anthem should be sung in Tamil and Sinhala⁷² in April 2012, the Secretary, Ministry of the Defence, is reported to have stated that singing the national anthem in Tamil is 'a ridiculous and impractical idea'⁷³. At the Independence Day celebrations in February 2012, the national anthem was sung only in Sinhala. Furthermore, there have been reports that at several events in the North, the military had prevented the national anthem from being sung in Tamil.⁷⁴

5.6 IDPs

Since the end of the armed conflict, large-scale return of IDPs to their areas of origin has taken place. However, there are still tens of thousands of persons displaced within Sri Lanka. Most of these persons have been living in situations of multiple and protracted displacement and have specific needs as a result of this – particularly related to land rights.

⁷² In December 2010, it was reported the President made a decision at a cabinet that the national anthem would henceforth be sung only in Sinhala, thereby effectively banning singing the anthem in Tamil. Following protests and criticism it was reported that the decision was revoked.

⁷³ Tisarane Gunasekera, 'Sinhala- Only National Anthem, Buddha Statues, Beheaded Images and Other Omens', *Asian Tribune* 8 April 2012 at <http://www.asiantribune.com/news/2012/04/07/sinhala-only-national-anthem-buddha-statues-beheaded-images-and-other-omens>. Accessed on 12 April 2014.

⁷⁴ 'Sinhala only national anthem', *Sunday Leader*, 2 January 2011.

Despite large scale infrastructure development in conflict affected areas, many of those that have returned still require assistance and protection and thus still need support to achieve a durable solution to their displacement.⁷⁵ Issues related to long-term safety and security concerns include restrictions on civil liberties related to the high military presence along with concerns over violence against women and children and the need for improved civil policing. There also continues to be concern over the lack of access to adequate information on the situation of those displaced and the challenges and assistance needs of those seeking a durable solution in places of return, local integration and relocation. In December 2012 UNHCR reported that 93,447 persons are still living in displacement.

6. Conclusion

In the period under review, the LLRC submitted its final report and the government put forth an action plan to implement the recommendations of the LLRC. However, as at 31 December 2012, a year after the release of the LLRC's report, even recommendations such as the one that calls for the national anthem to be continued to be sung in Tamil and Sinhala, which do not require any overt or special action on the part of the government have not been implemented at all while others have been implemented in a piecemeal manner. Instead, government action has veered towards disregarding the recommendations and the state has instead engaged in and supported activities that have deepened existing inter and intra-communal divisions and

⁷⁵ IDMC, Sri Lanka: A hidden displacement crisis, October 2012 <http://www.internal-displacement.org>.

created considerable obstacles to achieving meaningful reconciliation, which illustrates lack of political will. The report of the LLRC did create space to place many important issues that the state has not even been willing to acknowledge or engage on, such as militarization and disappearances, on the agenda, and enable broader discussion. However, due to the lack of political will to fully implement the recommendations, the report has functioned mainly as a smokescreen used by the government to fend off accusations related to rights violations and calls to make substantive and meaningful structural changes that will contribute to long-term reconciliation.

IV.

IMPLEMENTATION OF LLRC RECOMMENDATIONS ON RESETTLEMENT

Juanita Arulanantham¹

01. Introduction

The right to freedom of movement and choosing a residence of one's choice in Sri Lanka is recognized as a fundamental right under the Constitution of Sri Lanka. Sri Lanka is also governed by international legal standards and guidelines under the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, the Guiding Principles on Internal Displacement, the Maastricht Guidelines and the International Covenant on Economic, Social and Cultural Rights.

The LLRC recommendations discussed in this Chapter include the granting of legal ownership of land to resettled IDPs, the recommendation that the Land policy of the Government cannot be used as an instrument to effect unnatural demographic changes in a given Province, and extending livelihood assistance to 'new IDPs'. Due to constraints of space the Chapter does not discuss all of the

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LLRC recommendations relating to resettlement, but only those relating to which there have been significant developments in the years 2011-2012. The Chapter examines progress relating to these recommendations with reference to the National Plan of Action to Implement the Recommendations of the LLRC² (the National Plan of Action), government monitoring of progress relating to the implementation of the recommendations as at the year 2013³, and other relevant reports.

2. Legal Framework

2.1 Domestic framework

Article 14(1)(h) of the Constitution of Sri Lanka recognizes 'the freedom of movement-and of choosing...(one's) residence within Sri Lanka' as a fundamental right of Sri Lankan citizens.

Thus the long term displacement of citizens is in violation of their fundamental rights (provided that such displacement is a direct or indirect result of executive or administrative action or inaction on the part of the state). This is legally

² National Plan of Action to Implement the Recommendations of the LLRC at http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm

³ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf and National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

justifiable only if it comes within the limited exceptions recognized under the Constitution⁴.

The government proposes to use the 'National Involuntary Resettlement Policy (NIRP)' to fulfill the objectives of some of the recommendations of the LLRC. This has been indicated in government monitoring of the National Plan of Action as at January 2013⁵. The rationale for the NIRP was to ensure that those affected by development projects are treated in a fair and equitable manner. The principles and objectives of the NIRP primarily concern people who have been forced to relocate due to development activities by the state⁶.

2.2 International framework

In addition to the domestic legal obligations discussed, there are also several relevant international legal standards and guidelines relating to displacement. The Guiding Principles on Internal Displacement⁷ include principles relating to protection from displacement, protection during displacement, and principles relating to humanitarian

⁴ See Article 15 of the Democratic Socialist Republic of Sri Lanka

⁵ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

⁶ National Involuntary Resettlement Policy as set out in GUIDELINES FOR THE PREPARATION OF A Resettlement Action Plan, MINISTRY OF LANDS, June 2003, APPENDIX 1. at <http://www.idpsrilanka.lk/Doc/Related%20Articles/Guidelines%20for%20the%20preparation%20of%20a%20Resettlement%20Action%20Plan,%20ADB,%20June%202003.pdf>

⁷ The Guiding Principles on Internal Displacement 1998 at <http://www.unhcr.org/43ce1cff2.html>

assistance. In addition to this, Article 20 of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights recognizes internally displaced persons as a group vulnerable to disproportionate harm in respect of violations of economic, social and cultural rights⁸. Thus Sri Lanka's obligations under the International Covenant on Economic, Social and Cultural Rights are not only also applicable to IDPs, but the state is in fact under an obligation to act with consideration of the fact that they are recognized by international law as a vulnerable group in terms of violations of these rights.

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (known as the 'Pinheiro Principles') are also among the relevant international standards applicable to IDPs. These principles are designed to address both individual states and the international community, including United Nations (UN) agencies on issues relating to housing, land and property restitution. Among other things, the Pinheiro Principles recognize the Right to Housing and Property Restitution, the Right to Non Discrimination, the Right to be Protected from Displacement, the Right to Adequate Housing, the Right to Freedom of Movement and the Right to Voluntary Return in Safety and Dignity⁹.

⁸Maastricht guidelines on violations of economic, social and cultural rights 1997 at http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html

⁹ Waiting to Return: Applying the Pinheiro Principles in Sri Lanka (The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons), The Centre on Housing Rights and Evictions (Sri Lanka)

3. LLRC Recommendations with Significant Developments in the Years 2011-2012

The following sections of this Chapter discuss progress made relating to the LLRC recommendations regarding resettlement in the years 2011-2012.

3.1 Granting legal ownership of land to resettled IDPs¹⁰

Circular No. 2011/4

According to the National Plan of Action the objectives of the recommendation to grant legal ownership of land to resettled IDPs was to be achieved by Land Commissioner General's Circular No. 2011/4. This circular attempted to address a serious need to establish a process to investigate and resolve disputes relating to land claims in a post-war context in the North and East. However several serious concerns were raised regarding this circular¹¹.

Circular No. 2011/4 prioritized claims of those who owned land in the North and East prior to the war over subsequent claims. This raised concerns as to whether the rights of those who secured land during the course of the war would be given adequate recognition.

Further, Circular No. 2011/4 appeared to direct officials to return land to the original claimant with regard to land distributed unlawfully under the 'influence of a terrorist

¹⁰ Recommendation 9.104 of the recommendations of the LLRC

¹¹ Bhavani Fonseka & Mirak Raheem, 'A Short Guide to 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' Circular: Issues & Implications, Centre for Policy Alternatives (CPA), September 2011 at http://www.scribd.com/fullscreen/65756001?access_key=key-2n9juixwucpeaun7qe09

group'. Such distribution of lands by terrorist groups was undoubtedly unlawful, as such groups distributed land with no legal authority to do so. However, it must be recognized that such unlawful distributions might also have taken place by other militant groups, not recognized as a 'terrorist' group, as, for example, the Liberation Tigers of Tamil Eelam (LTTE) were. Distribution of lands by such militant groups was also undoubtedly done so with no legal authority. This issue was not addressed by Circular No. 2011/4.

Another serious concern raised in relation to Circular No. 2011/4 was that it attempted to establish processes and mechanisms that were in violation of and outside the scope of the law and the Constitution. One example is the establishment of dispute resolution bodies for the resolution of disputes concerning land related matters in the North and East. Concerns were raised relating to these being in direct violation of the law and Constitutional provisions establishing the judicial systems for adjudication of disputes. It is notable that the LLRC too, in its recommendations while noting in recommendation 9.125 that Circular No. 2011/4 is 'innovative, and seeks to utilize where appropriate, mechanisms that are less bureaucratic mainly informal and designed to release the vast majority of the displaced persons from having to use the formal court system which would be complex, time-consuming and expensive for litigants' also states in recommendation 9.126 that it 'would however like to strongly recommend to the authorities concerned to make it quite clear and assure the people, through an appropriate publicity effort, that this programme and associated mechanisms **are not a substitute for recourse to the Courts of Law** where people are in possession of valid legal proof of their claim to the land/s in question...' (emphasis

added). In addition to the above concerns the presence of military personnel in such bodies heightens increasing concerns of militarization in the North and East.

This circular was challenged in the Court of Appeal in CA writ 620/2011. This writ application challenged the circular as being of no force or effect in law *inter alia*, on the grounds that it attempted to introduce a mechanism and process wholly outside the scope of the law in terms of both the Constitution and relevant statutes such as the Land Grants (Special Provisions) Act No. 43 of 1979, the State Lands Ordinance No. 8 of 1947, and the Land Development Ordinance No. 19 of 1935. Following the institution of this case, the Land Commissioner General's Circular No 2011/4 was withdrawn.

Circular (No. 01/2013)

Government monitoring of the National Plan of Action as at January 2013¹² indicated that a new Circular will be issued and circulated to all District and Divisional Secretaries in North and East provinces. This circular has now been issued (No. 01/2013). As the current report focuses on the years 2011-2012 it will not include detailed analysis of Land circular 2013/01¹³, but will only briefly consider some of the most important aspects of it.

¹² National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

¹³ For a critical analysis of this circular see Brief Commentary: Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces - Land Circular: 2013/01, Centre for Policy Alternatives, March 2013 at <http://www.cpalanka.org/commentary-on-accelerated-programme-on-solving-post-conflict-state-lands-issues-in-the-northern-and-eastern-provinces/>

For the purpose of identifying land problems in these areas the circular states that:

An opportunity should be given to the people who are residing in the Northern and Eastern provinces, people who have abandoned the area who have resettled after being displaced and for those people who are expecting to settle again and who have problems related to state lands, to present their problems. Wider publicity should be given in order to raise public awareness on this matter. This department will give publicity at the national level and the divisional secretaries should give publicity at the divisional level¹⁴.

Provision for public participation of this nature is indeed commendable. It is hoped that implementation of this is done in a transparent and effective manner.

The circular further states that ‘the cabinet has taken a policy decision not to alienate new lands to landless people until the land problems of the affected people in the conflict affected Divisional Secretariats are solved.’ It also states however, that there is ‘no barrier to alienate lands for government approved development projects’.

It is notable that the circular seemingly places higher priority on development projects over providing people with basic rights of shelter and housing. This is despite that fact that the circular specifically identifies that one of the reasons people have lost land as a result of the conflict is that such land is now being used for ‘development activities under government institutions and armed forces’. The Tamil National Alliance, the principal Tamil political party, has

¹⁴ See Circular (No. 01/2013)

raised as a serious concern the negative impact of such policies on reconciliation¹⁵. A report of the International Crisis group titled 'Sri Lanka's North II: Rebuilding Under The Military' dated 16th March 2012 quotes Tamil National Alliance Member of Parliament M.A. Sumanthiran, stating:

*A more central defect of the government's focus on large-scale infrastructure projects is that it has come at the expense of meeting the urgent needs of those most affected by the war. "There is no development that benefits the people," argues Tamil National Alliance (TNA) parliamentarian M.A. Sumanthiran. "There are roads, bridges and culverts being built but they do not benefit the people. That is worse when the people do not have the roof over their heads and they have to watch all these mega projects going around them without priorities such as housing and their own livelihood opportunities are not met"*¹⁶.

Further, it must be noted that alienation of such land must be done in accordance with the relevant law, including the Land Acquisition Act No. 9 of 1950 (as amended), which requires that adequate notice be given to owners of land, and an opportunity given to them to make representations concerning their objections to the takeover of such land. At the time of writing, significant numbers of IDPs unable to access their land being used for development projects (Eg: IDPs of Sampoor), have not received such notices, much

¹⁵ "Development v. Resettlement", M. A. Sumanthiran, Ceylon Today , 31 March 2013

¹⁶ 'Sri Lanka's North II: Rebuilding Under The Military', International Crisis Group, 16 March 2012, at <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf>, citing from "TNA visited on USA invitation: Sumanthiran", The Nation, 13 November 2011.

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¹⁵ "Development v. Resettlement", M. A. Sumanthiran, Ceylon Today , 31 March 2013

¹⁶ 'Sri Lanka's North II: Rebuilding Under The Military', International Crisis Group, 16 March 2012, at <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf>, citing from "TNA visited on USA invitation: Sumanthiran", The Nation, 13 November 2011.

less the opportunity to make representations concerning their objections.

Government monitoring of the National Action Plan as at January 2013¹⁷ also indicates that the ministry will give wide publicity to the new Circular through media and awareness workshops from January 2013 and will take suitable action to facilitate persons to lodge complaints regarding their lands in offices in the North and East provinces as well as the Ministry in Western province. Such action is commendable in light of facilitating transparent and effective implementation of Circular (No. 01/2013).

Government monitoring of the National Action Plan indicates that the implementation of several other LLRC recommendations relating to resettlement are also provided for by Circular (No. 01/2013)¹⁸.

¹⁷ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

¹⁸ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf and National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

3.2 Land policy of the Government cannot be used as an instrument to effect unnatural demographic changes in a given Province¹⁹

The National Action Plan indicates that this recommendation is to be implemented through statutes such as the State Lands Ordinance No. 8 of 1947 (as amended), the Land Development Ordinance No. 19 of 1935 (as amended), etc. Notably, government monitoring of the National Action Plan does not indicate any progress on this recommendation, except for the position that ‘these rights are safeguarded’ under Circular (No. 01/2013)²⁰.

This recommendation is especially important in terms of reconciliation in light of concerns consistently raised relating to land occupation/allocation being deliberately used to change the demographic patterns in the North and East by the Tamil National Alliance²¹ the principal Tamil political party. In situation reports of the North and East released in

¹⁹ Recommendation 9.124 of the recommendations of the LLRC

²⁰ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

²¹ “GTF puts forth demands: Calls for international Investigations”, Ceylon Today, 2 April 2013; “TNA leader R. Sampanthan interviewed by Namini Wijedasa” (26 February 2012) at <http://dbsjeyaraj.com/dbsj/archives/4522>; “Govt Not Committed To Resolve Conflict – Sampanthan”, The Sunday Leader, 17 March 2013 at <http://www.thesundayleader.lk/2013/03/17/govt-not-committed-to-resolve-conflict-sampanthan/>; “Solution lies entirely in the hands of Sri Lanka”, Ceylon Today, 24 March 2013 at <http://www.ceylontoday.lk/59-27919-news-detail-solution-lies-entirely-in-the-hands-of-sri-lanka.html>

July 2011²² and October 2011²³ the Tamil National Alliance has raised concerns in this regard referring the incidents including the systematic removal of Tamils from the civil service; the destruction of Hindu Kovils and building of Buddhist temples, sometimes in the vicinity in which destroyed Hindu Kovils once stood; bringing in a labour force from the South to the North; houses and schools in the North and East in areas traditionally belonging to the people of the Tamil community being given to members of the Sinhala community and changing names of roads and villages from Tamil names to Sinhala names.

Government monitoring of the National Action Plan has failed to specifically address these concerns. Given the serious nature of the allegations raised by Sri Lanka's principal Tamil political party, it is important that the Government directly and specifically address these allegations in order to ensure that the process of achieving reconciliation is not endangered.

3.3 Land in 'High Security Zones'

One of the recommendations of the LLRC was *'Reviewing the 'High Security Zones' in Palaly and Trincomalee-Sampur, as well as small extents of private land currently utilized for security purposes, with a view to release more land while keeping national*

²²"Issues and problems facing people of Northern and Eastern provinces – by M.A. Sumanthiran MP" at <http://dbsjeyaraj.com/dbsj/archives/2529>

²³"Situation Report: North and East Sri Lanka (21 October 2011) at https://docs.google.com/file/d/0B0vgVMXCVudFNzE4_YmJlM2MtZWZhOC00Nzc4LWJmNjUtM2NjMDRjNDU3ZDZj/edit?hl=en_US&pli=1

*security needs in perspective, and providing alternate lands and/or payment of compensation within a specific time frame*²⁴.

This recommendation is in accordance with the principle enumerated Principle 21 of the Guiding Principles on Internal Displacement (UNECOSOC)²⁵ which states that:

- 1. No one shall be arbitrarily deprived of property and possessions.*
- 2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:*
 - (a) Pillage;*
 - (b) Direct or indiscriminate attacks or other acts of violence;*
 - (c) Being used to shield military operations or objectives;*
 - (d) Being made the object of reprisal; and*
 - (e) Being destroyed or appropriated as a form of collective punishment.*
- 3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.*

At the 20th Session of the Human Rights Council²⁶ in Geneva in 2012 Minister Mahinda Samaringhe informed the Council that:

²⁴ Recommendation 9.142 of the recommendations of the LLRC

²⁵ Guiding Principles on Internal Displacement (UNECOSOC) 1998 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>

²⁶ "Sri Lanka Delegation briefs 20th Session of HRC in Geneva" at <http://www.mea.gov.lk/index.php/en/media/news-archive/3497-sri-lanka-delegation-briefs-20th-session-of-hrc-in-geneva>

“...Considered efforts have been taken as part of the post-war re-deployment strategy in line with the national reconciliation process which has therefore resulted in the reduction of the High Security Zones by 40%”.

The National plan of action released in July 2012²⁷ by the government indicates that the process of releasing lands was ongoing at the time. Government monitoring of the implementation of the National Action plan in January 2013²⁸ however indicates that the land in Sampoor is being earmarked for projects of the Board of Investment of Sri Lanka. Further it indicated that acquisition of private lands has been proposed for various development activities and that these activities would be completed from 2013 – 2015. Thus, government monitoring of this LLRC recommendation itself indicates that the abovementioned areas are not being utilized for the purposes stipulated in the recommendation, which indicates nothing about ‘development activities’.

This is a serious concern, especially in light of the fact that a significant number of people in both Sampoor²⁹ and Palaly remain displaced. Fundamental Rights applications have been filed in this regard by IDPs seeking, *inter alia*, that they

²⁷ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

²⁸ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

be resettled in their land and are currently before the Supreme Court³⁰. Government monitoring of the implementation of the National Action Plan as at 26th February 2013 indicates that³¹ all HSZs have now been dismantled and troops have been relocated to military cantonments and bases and that locations for such cantonments have been selected in such a manner so as to cause minimum inconvenience to the public. However, the government also concedes that the Palaly Cantonment contains some 'security restrictions'³². The government also states that the former HSZ in the Eastern Province located in the Sampoor area since 2007 has been reduced significantly and declared a Development Zone under the Board of Investment³³.

Meanwhile, the people of Sampoor have remained displaced since April 2006, when the conflict forced their evacuation from their land³⁴. Regulations issued under Section 5 of the Public Security Ordinance in 2007 effectively declared the

²⁹ Vimarsanam, "Sampur population remains displaced" at <http://vimarsanam-vimansa.org/report/sampur-population-remains-displaced/>

³⁰ Nadarasa and Others v. Basil Rajapaksa, Minister of Economic Development and Others (SCFR 309/2012); Mavai S Senadhirajah v. Chandrika Bandaranaike Kumaratunge and others (SCFR 646/2003); Subramaniam and Others vs. Gotabhaya Rajapakse and others (SCFR 609/2012); and Rasiah Rasapoopathy and Others v. Gotabaya Rajapakse and Others (SCFR 719/2013)

³¹ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

³² National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

area of land owned by the villagers as a High Security Zone³⁵. With the lifting of Emergency Regulations in 2011³⁶, the High Security Zone became inoperative. The people of Sampoor were thus no longer legally prevented from accessing their property on the basis that it came within the High Security Zone.

The Gazette declaring the area as a High Security Zone was previously challenged in the Supreme Court in applications SCFR 218/2007 and SCFR 219/2007. Further, the issue is one that has also been raised in Parliament³⁷

The Government now proposes to build a coal power plant in the area.³⁸ However, Basil Rajapakse, Minister for

³³National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

³⁴ Vimarsanam, “Sampur population remains displaced” at <http://vimarsanam-vimansa.org/report/sampur-population-remains-displaced/>

³⁵ Gazette Extraordinary No. 1499/05 of 30th May 2007

³⁶“Emergency Regulations lifted in Sri Lanka”, Asian Tribune, 25 August 2011 at <http://www.asiantribune.com/news/2011/08/25/emergency-regulations-lifted-sri-lanka>

³⁷ See Hon. Sampanthan’s speech on 5th September 2007 in Parliamentary Debates (Hansard) dated 5th September 2007.

³⁸ “Work on Sampur Coal power plant to be expedited”, News.lk, 4 May 2013, at <http://www.news.lk/news/sri-lanka/5014-work-on-sampur-coal-power-plant-to-be-expedited>

Economic Development stated in Parliament on 21st October 2011 that people whose land was not used for the coal power plant could return to their land and the land that was required was to be acquired in accordance with the law relating to land acquisition in Sri Lanka (Land Acquisition Act No 9 of 1950):

'Any land which is not necessary and which will not be acquired for the construction of the power plant will be given back to these people and they will be resettled.....In the Eastern Province up to now we have resettled 325,000 people and according to your information, Sir, only 1,700 people have not been resettled - you just calculate the percentage and see. This is a special area. Now the final agreement with the Indian Government has been finalized. So they will decide on the extent of land that is required for the power plant. That will be done according to the Sri Lankan law - the acquisition procedure has to be followed.....All compensations have to be given..... So, any land which will not be required for the Indian-Sri Lanka power plant will be handed over to the people. Last time also we have allowed the farmers to cultivate. This time also we have decided to allow them to cultivate all the paddy lands and allow them to go to the Kovil and this time also we will allow them to do all the religious activities. So, we will never unnecessarily keep anybody out of their own lands. We will guarantee that.'³⁹

The people of Sampoor however, remain displaced from their land to date. Notably however, parties in SC FR 309/12, a fundamental rights application by certain displaced persons in Sampoor have arrived at a settlement by which parties

³⁹ Speech by Basil Rajapakse, Minister for Economic Development, Parliamentary Debates (Hansard) dated 21st October 2011

have agreed to take the necessary administrative steps to expedite the process of resettlement in Sampoor⁴⁰.

Government monitoring of the action plan as at January 2013⁴¹ and 26th February 2013 indicates that⁴² that out of a total of 4098.36 hectares of land that were previously covered by High Security Zones 1515.9 hectares have now been released. It is unclear whether this number indicates only the lands released back to their previous owners or also includes the land that are now being utilized for purposes of 'development'. The figures also indicate that at present military cantonments/ bases cover 2582.45 hectares of land previously included under High Security Zones.

Government monitoring of the National Action Plan as at 26th February 2013 indicates that⁴³ the security situation is being evaluated periodically and that based on such assessment, more lands will be released to the public in the future. It also states that the government has taken measures

⁴⁰ Order dated 13th May 2013 in SC FR 309/12

⁴¹ National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (January 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf

⁴² National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

⁴³ *Ibid.*

to pay compensation to owners of properties within such areas or to provide them with alternative land. It is unclear whether this compensation has been paid as yet, or whether the process is ongoing.

A related matter of serious concern is the allegation by Petitioners in SC FR 309/12, members of the displaced community of Sampoor, that those who have refused relocation and seek to be resettled in their original lands are now being denied humanitarian assistance by the State⁴⁴.

Such denial of humanitarian assistance to IDPs is an issue of serious concern. The *Internal Displacement Monitoring Centre* (IDMC) also states that although more than 480,000 people have registered as returned (Government statistics as compiled by UNHCR, 31 December 2012), many have not been able to achieve a durable solution but continue to face difficulties in accessing basic necessities such as shelter, food, water and sanitation, in rebuilding their livelihoods and in exercising their civil rights⁴⁵. In an interview⁴⁶ with Young Asia Television, Shanmugalingam Sajeewan, Vice Chairman of the Valikamam North Pradeshiya Sabha and head of the Valikamam North Displaced People's Association stated that IDPs of Valikamam North who were previously provided with dry rations from the government have not received such

⁴⁴ See petition in *Nadarasa and Others vs. Basil Rajapaksa, Minister of Economic Development and Others* (SC FR 309/12)

⁴⁵ IDMC, "Numbers of IDPs in Sri Lanka" at <http://www.internal-displacement.org/idmc/website/countries.nsf/%28httpEnvelopes%29/D19BC2605A15FBF2C1257816004B8C9D?OpenDocument#45.2.1>

⁴⁶ Vimarsanam, "Non-resettlement in Valikamam – North and impact of 20 years in IDP camps" at <http://vimarsanam-vimansa.org/report/non-resettlement-in-valikamam-north-and-impact-of-20-years-in-idp-camps/>

assistance for over two years. He stated that the IDPs in the area receive some assistance from Non-Governmental Organizations (NGOs) but that even NGOs function under a great amount of restrictions and limitations in the North, and thus are only able to provide limited assistance.

Such treatment of IDPs indeed flies in the face of all norms of Human Rights law and Humanitarian law. It is, for example in direct contravention of the following Principles of the Guiding Principles on Internal Displacement (UNECOSOC)⁴⁷:

Principle 24

1. *All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.*
2. *Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.*

Principle 25

1. *The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.*
2. *International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld,*

⁴⁷ Principles of the Guiding Principles on Internal Displacement 1998 (UNECOSOC) at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>

particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

- 3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.*

Principle 28

- 1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.*
- 2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.*

Such treatment of IDPs is also in direct contravention of Principle 10 of the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles') which states that:

- 10.1 All refugees and displaced persons have to the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.*

3.4 Other areas of importance/concern

Following are other important developments in the years 2011-2012 relating to LLRC recommendations concerning resettlement.

The Government proposes the establishment of a 'Land Commission' for the purposes of implementation of several recommendations⁴⁸. No commission has been introduced to date, however, with government monitoring of the action plan as at February 26 2013⁴⁹ indicating that the Terms of Reference of the Fourth Land Commission were being formulated at the time with a suitable Commissioner yet to be identified.

Another issue of concern is information regarding the status of IDPs in the country. Confirmation of the exact figures of resettled IDPs is difficult as public information on IDPs and returnees is scarce, making this what the Internal Displacement Monitoring Centre (IDMC) refers to as a 'hidden crisis'⁵⁰. The situation is worsened with contradictory reports relating to resettlement figures by government officials themselves.

⁴⁸National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

⁴⁹National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency (February 26, 2013) at http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf

⁵⁰IDMC, "Numbers of IDPs in Sri Lanka" at <http://www.internal-displacement.org/idmc/website/countries.nsf/%28httpEnvelopes%29/D19BC2605A15FBF2C1257816004B8C9D?OpenDocument#45.2.1>

For example, Minister Mahinda Samarasinghe addressing the UNHRC during its recently concluded 22nd session stated that ⁵¹

“The last batch of the IDPs was resettled in their villages in Mullaitivu on 24 September 2012. 1,186 persons from 361 families were thus resettled. With this last batch of IDPs, the Government has resettled a total of 242,449 IDPs. A further 28,398 have chosen to live with host families in various parts of the country. A batch of about 200 families living with host families has been resettled with their consent in their original habitat in Mullaithivu in September 2012. At the conclusion of resettlement, 7,264 IDPs had left the camps on various grounds and did not return while a further 1,380 sought admission to hospitals. **The resettlement of the final batch of IDPs marks a day of historic significance as the resettlement is now complete and there are no more IDPs or IDP camps in the island.** This makes the achievement reached within the short period of three years, remarkable when compared with similar situations in other parts of the world.”

(emphasis added)

⁵¹ dbsjeyaraj.com, “We Strongly Object to any Unfair, Biased, Unprincipled and Unjust Approach by UNHRC with Regard to Human Rights in Sri Lanka” at <http://dbsjeyaraj.com/dbsj/archives/17340>

⁵² Parliament Hansard of 21st March 2013. See also statistics relating to IDPs according to the Ministry of Resettlement at <http://www.resettlementmin.gov.lk/current-events-ministry.html>

Despite this claim, speaking in Parliament on the 21st of March 2013, the Hon. Gunaratne Weerakoon, Minister for Resettlement conceded that resettlement has not been completed⁵². Further, as detailed above, reports indicate that a significant number of IDPs remain in the North and East, in places such as Sampoor and Palaly with cases currently before the Supreme Court relating to this displacement.

4. Conclusion and General Recommendations

Following are general conclusions and recommendations based on the developments discussed. It is to be noted that the recommendations are thus limited to those arising out of the particular developments in the years 2011 and 2012 in relation to LLRC recommendations concerning resettlement.

1. As reflected by Circular (No. 01/2013) priority has been given to large 'development' projects over more urgent needs of the people of the North and East. For both those who have been displaced, and those who have been newly resettled this has meant that needs such as resettlement, adequate housing and livelihood opportunities have been treated with less priority than infrastructure projects such as the building of roads, bridges and culverts. As commendable as such large scale development work is, the importance of addressing the basic needs of people before engaging in such work must be recognized in order for the people of the North and East to be able to effectively benefit from such development initiatives.

Concerns have repeatedly been raised relating to the impact of prioritizing large scale development projects over the basic needs of people on the achievement of

reconciliation⁵³. In light of this it is recommended that special care be taken to ensure that mechanisms by which individual LLRC recommendations are implemented, such as Circular (No. 01/2013), do not militate against the overall objective of reconciliation.

2. Government monitoring of the LLRC recommendation that 'Land policy of the Government cannot be used as an instrument to effect unnatural demographic changes in a given Province⁵⁴' has failed to address repeated concerns that have been raised alleging efforts to effect such demographic changes⁵⁵.

In light of the above, it is recommended government monitoring of the National Action plan address the specific concerns raised alleging efforts to effect such demographic changes and ensure that concerns regarding unnatural demographic changes is addressed in a transparent and effective manner.

3. Steps must be taken for the speedy implementation of recommendations not yet implemented, particularly those relating to the release of land back to those owning such land in former High Security Zones.

⁵³ "Development v. Resettlement?", M.A. Sumanthiran, Member of Parliament, Tamil National Alliance, Ceylon Today, 31 March 2013 p.7 and Sri Lanka's North II: Rebuilding Under The Military', International Crisis Group, 16 March 2012, at <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf>

⁵⁴ Recommendation 9.124 of the recommendations of the LLRC

⁵⁵ Situation Report: North and East Sri Lanka (21 October 2011) at https://docs.google.com/file/d/0B0vgVMXCVudFNzE4YmJlM2MtZWZhOC00Nzc4LWJmNjUtM2NjMDRjNDU3ZDZj/edit?hl=en_US&pli=1 and "Issues and problems facing people of Northern and Eastern provinces – by M.A. Sumanthiran MP" at <http://dbsjeyaraj.com/dbsj/archives/2529>

4. Ensure that all IDPs, including those who have refused relocation and seek to be resettled in their original lands are not discriminated against in any manner, including in the humanitarian assistance they receive.
5. The lack of clear information relating to the state of resettlement is also a serious overall concern. Reports by government officials themselves contain contradictions to each other. In the interests of government transparency and accountability it is imperative that clear, accurate and detailed information is publicly available relating to the progress of the resettlement process.

V.

THE NATIONAL HUMAN RIGHTS ACTION PLAN

Kalana Senaratne¹

1. Introduction

The purpose of this chapter is to critically examine the National Human Rights Action Plan (NHRAP) for 2011-2016², adopted by the Government of Sri Lanka in 2011. This examination will begin with an introductory note on the rationale underlying the adoption of the NHRAP, followed by a basic overview of its contents. Thereafter, this chapter will assess the potential contribution the NHRAP can make towards the protection of human rights, succeeded by a critical assessment of its shortcomings. The

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² "National Action Plan for the Protection and Promotion of Human Rights: 2011-2016", at http://www.hractionplan.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf

chapter will conclude with recommendations, if any, to improve the effectiveness and relevance of the NHRAP.

Three broad reasons seem to have inspired the formulation of the NHRAP. Firstly, it is considered to be a response to the call from the people of Sri Lanka to take stock of the human rights situation in the country. Secondly it is a response to the recommendation made in the 1993 Vienna Declaration and Programme of Action, to the effect that States should consider the desirability of formulating national action plans that would help identify steps needed to be taken for the protection of human rights. Thirdly, it is the outcome of a pledge made by the Government at the Universal Periodic Review (UPR) process in May 2008 at the UN Human Rights Council (UNHRC) in Geneva.³ In short, the NHRAP is considered to be “the result of the Government and people deciding to take concrete action to bring about positive change.”⁴

The process of drafting the NHRAP commenced under the aegis of the then Ministry of Disaster Management and Human Rights. Experts drawn from Government Agencies and civil society organizations were part of the separate drafting committees which were set up for the task. The NHRAP was finalized in May 2011. It was approved by the Cabinet of Ministers in September 2011, with the decision to implement it being taken in December 2011.⁵

³ *Ibid.*, p. 5.

⁴ *Ibid.*

⁵ “Decisions taken by the Cabinet at its Meeting held on 14.12.2011”, at <http://www.news.lk/press-releases/press-releases-cabinet-decisions/976-decisions-taken-by-the-cabinet-at-its-meeting-held-on-14-12-2011> The Cabinet is to be informed of the progress of implementation on a periodic basis; “HR Action Plan will improve Rights of all Sri Lankans”, at <http://www.dailynews.lk/2012/05/25/fea01.asp>

2 NHRAP: An Overview

The NHRAP is a five-year plan. It identifies eight priority areas of human rights, which include two general areas, namely 'Civil and Political Rights' and 'Economic, Social and Cultural Rights'; and six specialized areas, namely 'Prevention of Torture', 'Rights of Women', 'Labour Rights', 'Rights of Migrant Workers', 'Rights of Children', and 'Rights of Internally Displaced Persons (IDPs)'. The NHRAP contains a detailed matrix, which sets out issues concerning human rights protection in the country, specific human rights goals that need to be achieved (and activities to be undertaken to achieve those goals), performance indicators, specific time frames, and the agencies which would be responsible for the implementation and monitoring of the progress of the NHRAP.

2.1 Some key goals: general areas

The NHRAP identifies a number of important human rights goals.

Firstly, it aims to strengthen existing mechanisms for the protection and enforcement of civil and political rights. To this extent, it recognizes goals such as: developing a legislative/policy regime giving effect to the obligations of the Executive, while also providing for the implementation of the Executive's duties and functions; enhanced awareness of Sri Lanka's international human rights obligations; ensuring participatory democracy and the rule of law, and strengthening the Human Rights Commission of Sri Lanka (HRCSL). Reference is also made to the need to review certain provisions of the Prevention of Terrorism Act to ensure that derogations from international human rights obligations in

times of public emergency are non-discriminatory and only where it is strictly required by exigencies of the situation. The NHRAP also identifies as its goals the promotion of such rights and freedoms as the right to privacy, freedom of religion, language rights, the right to information and the freedom of expression.⁶

Secondly, with the aim of further strengthening and guaranteeing economic, social and cultural rights, the NHRAP recognizes the importance of: ensuring equal access to quality education for children (including children with disabilities); reducing vulnerability to ill-health; and providing equal access to healthcare and employment (especially for persons with disabilities). The protection of the rights of patients and persons with disabilities is another important goal. Particular emphasis is placed on the promotion of cultural enrichment through inter-cultural harmony, ensuring socio-cultural rights of indigenous peoples and the implementation of the Official Languages Policy.⁷

2.2 Some key goals: specialized areas

In order to promote and strengthen the Government's 'zero-tolerance' policy on torture, the NHRAP recognizes the importance of ensuring that the rules on evidence do not inadvertently promote torture, the need for effective monitoring of the treatment meted out to detainees by the Police, and the need to train prosecutors (for effective prosecution of torture-perpetrators) with a view to addressing impunity.⁸

⁶ "National Action Plan", p. 9-29.

⁷ *Ibid.*, p. 33-45.

⁸ *Ibid.*, p. 49-59.

In the realm of protecting women's rights, the NHRAP identifies the need to improve the nutrition of pregnant women, the need to decriminalize medical termination of pregnancies (in case of rape, incest and major congenital abnormalities), as well as reducing unemployment and improving the earning capacity of women. It is also recognized that there is a need to reduce violence perpetrated against women given the high prevalence of violence against women today. Ensuring greater representation of women in Parliament, Provincial Councils and local authorities is also a prominent goal.⁹

As regards the protection of labour rights, the NHRAP identifies the expeditious settlement of industrial disputes, ensuring equal pay for work of equal value, and the fair protection of both employers and workers in promoting collective bargaining, as some of the important goals that need to be achieved.¹⁰ As for the protection of the rights of migrant workers, emphasis is placed on goals such as the protection of migrant workers from exploitation (and creating increased awareness on migrant worker-exploitation), ensuring accountability of those guilty of trafficking, ensuring the franchise of migrant workers, and the need to give effect to the UN Convention on the Rights of All Migrant Workers and their Families.¹¹

The rights of children also figures prominently in the NHRAP. On the one hand, the NHRAP identifies some useful goals such as: providing equal access to quality health care services,

⁹ *Ibid.*, p. 63-69.

¹⁰ *Ibid.*, p. 73-75.

¹¹ *Ibid.*, p. 79-92.

safe drinking water and sanitation; the prevention of malnutrition; providing special care for children who have experienced neglect, abuse and exploitation; and the prevention of child trafficking. More significantly, emphasis is placed on children affected by armed conflict, and the need to ensure effective reintegration of former child combatants, as well as to respond to the needs of displaced children (by providing psychosocial support and improving psychological wellbeing). Ensuring quality and accessible education to all children, the elimination of corporal punishment in schools as well as child labour, are some of the other goals recognized in the NHRAP.¹²

Finally, the NHRAP places emphasis on the rights of IDPs with a view to improving their living standards. The goals identified in this area include: the formulation of a comprehensive protective framework for displaced persons; ensuring their right to vote and access to legal documentation; providing access to justice and ensuring their safe return; protection of their right to land and housing, while ensuring non-discriminatory land allocation; and the protection of economic rights (such as access to credit facilities and adequate livelihood options) applicable to IDPs.¹³

3. Potential Contribution of the NHRAP

The NHRAP is a well-structured, lucid document. It has clearly identified a series of important goals which, if met, would enhance the protection and promotion of human rights of citizens. The participatory approach adopted by

¹² *Ibid.*, p. 95-118.

¹³ *Ibid.*, p. 121-130.

the Government during the drafting stages of the document is, in broad terms, to be welcomed.

Already, foreign governments¹⁴ and international human rights bodies have appreciated the adoption of the NHRAP. Amnesty International stated that it “contains important human rights commitments that would lead to valuable reform if implemented.”¹⁵

Furthermore, the Government has set up an Inter-Ministerial Coordinating Committee to monitor progress of the NHRAP, as well as a Task Force meant to expedite the implementation of the NHRAP.¹⁶

Therefore, the NHRAP has the potential of being a useful document which helps identify important human rights goals and targets, both for present and future purposes.

4. Critical Considerations

By the end of 2012, little progress had been made in the implementation of the NHRAP. Particularly worrying is the claim made by representatives of the government itself in

¹⁴ “Japan accepts Sri Lanka’s human rights action plan”, at <http://www.hirunews.lk/55108>

¹⁵ Amnesty International, “Reconciliation at a crossroads: Continuing impunity, arbitrary detentions, torture and enforced disappearances”, p. 5 (footnote omitted), at <http://www.amnesty.org/en/library/asset/ASA37/008/2012/en/5747cec0-7e77-486f-9859-9623ee127b20/asa370082012en.pdf>

¹⁶ As pointed out by the convenor of the Task Force: see Rajiva Wijesinha, “Human Rights means time lines...”, at <http://www.dailynews.lk/2012/12/21/fea01.asp>

December 2012 (Those involved in the drafting of the NHRAP, as well as in Inter-Ministerial deliberations on the NHRAP) that many agencies were not taking the time frame seriously, whilst also ignoring the need for consultations with civil society.¹⁷

Adding to the broader concerns expressed above are several factors to be considered in assessing the usefulness of the NHRAP.

4.1 Omissions and gaps

There are some crucial omissions in the NHRAP.

Firstly, while the NHRAP aims to explore the possibility of the Government signing a number of international instruments¹⁸, there is no mention, for example, of what action needs to be taken to clarify Sri Lanka's status concerning the First Optional Protocol to the ICCPR. There is continuing uncertainty regarding this issue, ever since the Supreme Court decided, in 2006, that Sri Lanka's accession to the First Optional Protocol was *ultra vires*.¹⁹ This is a critical omission, since the accession to the First Optional Protocol – which enables citizens to submit communications concerning alleged violations of civil and political rights to the UN Human Rights Committee – is an important international obligation undertaken by the Sri Lankan State.

¹⁷ *Ibid.* See also, Rajiva Wijesinha, "Kick-starting multi-culturalism", at <http://www.dailynews.lk/2012/12/28/fea04.asp>.

¹⁸ Such as the Optional Protocol of the Convention on the Rights of Persons with Disabilities and the Optional Protocol of the Convention Against Torture; see "National Action Plan", p. 26 and p. 59 respectively.

¹⁹ *Nallaratnam Singarasa vs. The A.G., S.C. Spl(LA) No. 182/99*. Sri Lanka acceded to the First Optional Protocol on 3 October, 1997.

Furthermore, while there is a commitment to ensuring and protecting the right to life and addressing the problem of alleged disappearances²⁰, the NHRAP makes no mention of the need to ratify the 2006 International Convention for the Protection of All Persons from Enforced Disappearances an important international instrument which would enable greater protection of the right to life and prevention of enforced disappearances; .

Secondly, the NHRAP has failed to take adequate note of certain recommendations made by civil society groups. These include: the need to amend Chapter III of the Constitution (Fundamental Rights) in a way that ensures all rights enumerated in the ICCPR are recognized, and the need to amend Article 15 (restrictions on fundamental rights) to conform with international norms, including Articles 12(3), 19(3), 21, 22(2) and 25 of the ICCPR.²¹

Thirdly, ensuring participatory democracy is a goal recognized in the NHRAP.²² However, the document does not refer to the relevance of political power-sharing, especially in the form of implementing relevant constitutional provisions (as set out in the 13th Amendment to the Constitution), to realize this goal. This is yet another troubling omission , given the inter-related character of promoting human rights and participatory democracy within the broader constitutional framework.

²⁰ "National Action Plan", p. 17-18 (see Goal 7 and Issue 7.1.c)

²¹ "Joint Civil Society Submission to the UN Universal Periodic Review (Sri Lanka): Second Cycle, 14th Session 2012", p. 20 (note 40 therein), at <http://www.lawandsocietytrust.org/PDF/JCS%20UPR%20DOC%20SL%20APRIL%202012.pdf>

²² "National Action Plan", p. 12.

Such omissions highlight the fact that the NHRAP needs to be viewed, not simply as a human rights document, but also as a political document. Even so, it is a document which does not clearly express goals, issues and concerns that the Government is unable or unwilling to address. The content of the document is decided on the political choices made by the Government, with such choices being defended on grounds of 'practicality'.²³ This further explains why, contrary to the claims made by the Government, the participation of civil society/non-governmental groups during the drafting stages of the NHRAP has not been entirely fruitful.²⁴

²³ In response to the question whether the NHRAP includes recommendations which are of interest to the international community, Minister Mahinda Samarasinghe M.P., the Special Envoy of the President on Human Rights, stated: "[W]e had to also consider what was practical and what was not. It was a five-year action plan"; see "National HR Action Plan: Stresses commitment to protect human rights of all Lankans", at <http://www.sundayobserver.lk/2012/01/08/fea02.asp>

²⁴ The preoccupation with accommodating governmental sensitivities during the drafting stages of the NHRAP has been critiqued; see, Asanga Welikala, "The farcical 'National Action Plan for the Promotion and Protection of Human Rights' in Sri Lanka", at <http://groundviews.org/2009/03/08/the-farcical-national-action-plan-for-the-promotion-and-protection-of-human-rights-in-sri-lanka/>. Unsurprisingly, the final draft approved by the Cabinet is regarded to be a toned-down one which does not incorporate some of the recommendations made by civil society groups. See Namini Wijedasa, "Watered down version of National Action Plan for Human Rights to be presented in Geneva UN", at <http://transcurrents.com/news-views/archives/6920>

4.2 Problems of implementation and monitoring progress

The NHRAP raises a few questions on the feasibility of implementation and monitoring. In general, very little information about progress was available in the public domain at the end of 2012.²⁵

Firstly, the protection and promotion of human rights is a continuing process. This is reflected in the 'time frame' column of the NHRAP, with a vast number of 'ongoing' projects listed therein. Measuring or monitoring actual progress of such long-term, continuing, projects can be difficult. Under such circumstances, the implementing agency can always respond to criticisms (of non-implementation) by arguing that the project in question is an 'ongoing' one. While this may be understandable, the danger is that such an argument can be a convenient pretext for procrastination or non-implementation. This is why the NHRAP, while being a useful document, has the negative potential of becoming "yet another vehicle to evade international scrutiny and delay necessary reform."²⁶

There is also the issue of the suitability of certain 'key performance indicators' referred to in the NHRAP. There are a number of such indicators which do not help ascertain

²⁵ Writing in February 2013, Prof. Rajiva Wijesinha, MP, notes that "we still have a long way to go in getting information across about progress. The reports that have been received have not been uploaded, which is essential if ownership of the plan is to be extended to the public - which is essential for a National Plan"; see Rajiva Wijesinha, "Tired of being called a nuisance", at <http://www.dailynews.lk/2013/02/04/fea02.asp>.

²⁶ Amnesty International, "Reconciliation at a crossroads", p. 5.

meaningful progress in terms of protecting human rights; for example, key performance indicators such as “review completed”, “number of programmes conducted”, “regional coverage programmes”, “institutions targeted”, etc. are largely administrative in character. This is mainly because the key activities envisaged are of an administrative nature. So, for example, in addressing the lack of protection of persons against discrimination in the private sector, the key activity is recognized as the appointment of a committee to determine the procedure of settling discrimination-related disputes in the work place, with the key performance indicator being “committee appointed” (with a +6 months’ timeframe).²⁷ While such activities and key performance indicators are inadequate to measure meaningful progress, it is also unclear what effective progress would be made in terms of protecting persons from discrimination for the remaining duration of the NHRAP, i.e. until 2016.

Secondly, it is questionable whether the NHRAP is a document that sets realistic timeframes for achieving certain goals. A considerable length of time has already been taken to implement some of its prominent goals. For example, even though the NHRAP considers it important to expedite the enactment of the Witness and Victim Assistance and Protection Bill (setting a timeframe of +6 months for the enactment of the Act)²⁸, no significant development has taken place since the adoption of the NHRAP (in December 2011). Also, the NHRAP set a timeline of +1 year for the adoption of Right to Information legislation.²⁹ And yet, no progress was made in this regard. Whether such short

²⁷ “National Action Plan”, p. 25 (see Goal 16).

²⁸ *Ibid.*, p. 19.

²⁹ *Ibid.*, p. 23

timeframes are practical given the political unwillingness to enact necessary legislation raises questions about the practicality and feasibility of NHRAP-goals. Consequently, such delays raise more questions about the Government's proclaimed commitment to protecting human rights and implementing the NHRAP.

Thirdly, the suitability of certain institutions named for monitoring the implementation of critical goals of the NHRAP is questionable. One particular concern raised by civil society groups relates to the identification of the Ministry of Defence as a lead agency responsible for ensuring the prevention of torture and implementing the Government's zero-tolerance policy on torture.³⁰ Even though this goal is sought to be fulfilled through capacity building and public awareness programmes, identifying the Defence Ministry as the sole agency responsible for carrying out such measures is problematic, given especially the fact that much of the allegations of torture have been directed at bodies that come within the purview of the Defence Ministry.

Fourthly, implementation of certain key goals has been problematic during the period of 2011-2012. For instance, even though there was a commitment made towards the adoption of a zero-tolerance policy on torture³¹, widespread torture practices were reported and documented during this period.³² Also, while the NHRAP promises to ensure compliance with minimum standards of treatment of

³⁰ *Ibid.*, p. 51 (Goal 3.1).

³¹ *Ibid.*

³² Asian Human Rights Commission, "The State of Human Rights in Sri Lanka in 2012 (AHRC-SPR-011-2012)", at <http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-011-2012.pdf/view>, especially p. 39-58.

prisoners³³, there were incidents of serious violence which targeted prisoners, especially at the Welikada prison in 2012.³⁴ Equally disconcerting were the reports of violations of the right to land of people, due to illegal land-grab policies.³⁵ These are some of the grave shortcomings in terms of implementing the goals set out in the NHRAP.

4.3 The broader political context

The NHRAP cannot be examined in a vacuum. Its relevance and usefulness must be assessed within the broader constitutional, political and social context within which it is sought to be implemented. When considering this latter aspect, a number of concerns pertaining to the usefulness of the NHRAP must be identified.

Firstly, the relevance of the NHRAP needs to be viewed in the context of certain constitutional developments such as the adoption of the 18th Amendment to the Constitution. This amendment will continue to have a debilitating impact on the ability to realize certain important goals set out in the NHRAP, such as the strengthening of the National Human Rights Commission (NHRC)³⁶ and the Commission to Investigate Allegations of Bribery and Corruption.³⁷ Such

³³ "National Action Plan", p. 27 (Goal 18.1)

³⁴ Damith Wickremasekara and Skandha Gunasekara, "27 Dead and 59 Wounded in 'Welikada' War", at <http://dbsjeyaraj.com/dbsj/archives/12294>

³⁵ See, Sri Lanka: Land grabbing and development-induced displacement (A/HRC/19/NGO/64, of 22 February 2012)", at <http://www.lawandsocietytrust.org/PDF/Sri%20Lanka%20Land%20Grabbing%20and%20Development%20Induced%20Displacement%2022%20Feb%202012.pdf>

³⁶ "National Action Plan", p. 13.

³⁷ *Ibid.*, p. 45.

goals cannot be easily or effectively realized where the appointment of Commissioners, as per the 18th Amendment, is largely dependent on the political prerogative of the President alone. In such a context, the enormous responsibility falling on a body such as the NHRC for improving the country's human rights protection cannot be easily fulfilled.³⁸

Secondly, the broader political context does not inspire confidence that the commitment shown towards human rights protection through the adoption of the NHRAP is indeed realizable in practice. A number of developments – such as, for example, the controversial decision taken in late 2012 to impeach the then Chief Justice, Dr. Shirani Bandaranayake³⁹ (a move which has now been critiqued by both local and international human rights bodies and jurists), the continuing inability to address concerns raised over missing journalists and attacks on media institutions in the country⁴⁰, and the attacks on places of religious worship

³⁸ See generally, B. Skanthakumar, "Embedded in the State: The Human Rights Commission of Sri Lanka" (especially p. 7-9), at <http://www.lawandsocietytrust.org/PDF/2012%20ANNI%20Report%20on%20Sri%20Lanka%20Embedded%20in%20the%20State%2023%20July%202012.pdf>

³⁹ "Sri Lankan parliament to impeach first woman chief justice: Report", at <http://www.lankaweb.com/news/items/2012/10/31/sri-lankan-parliament-to-impeach-first-woman-chief-justice-report/> (as reported in October, 2012).

⁴⁰ See, for instance, Watchdog, "Attacks on dissent in Sri Lanka – Incidents in 2012", at <http://transcurrents.com/news-views/archives/8602>

(such as mosques)⁴¹ as well as the emergence of religious groups inciting anti-Muslim hatred⁴² – goes to show the significant challenges confronting the realization of more effective democratic institutions, freedom of expression and religious freedom of minority groups in particular, and the protection of human rights in general.

Thirdly, the adoption of resolutions concerning Sri Lanka at the UNHRC in Geneva, firstly in March 2012⁴³ (followed by another in March 2013) helps to place the relevance and effectiveness of the NHRAP in proper perspective. These resolutions, which make no reference to the NHRAP, prove that the mere formulation of the NHRAP has been insufficient to convince fellow Members

⁴¹ There were a number of attacks carried out on religious places of worship during the period of 2011-2012. One such prominent example was the attack on the mosque located in Dambulla, carried out in April 2012. See, “Petrol bomb attack on Dambulla mosque”, at <http://english.srilankamirror.com/2012/04/petrol-bomb-attack-on-dambulla-mosque/>. See more generally, Centre for Policy Alternatives, “Attacks on Places of Religious Worship in Post-War Sri Lanka (March 2013)”, at <http://f.cl.ly/items/3L2T1z0A1G1f3o0m2H3g/Attacks%20on%20Religious%20Places.pdf>

⁴² One such group is the ultra Sinhala-Buddhist nationalist group named Bodu Bala Sena (BBS), which began its operations in May 2012: see, “Genesis of Bodu Bala Sena”, at <http://lankacnews.com/english/main-news/genesis-of-bodu-bala-sena/>. Notably, in its first convention held a month later, the BBS adopted numerous resolutions – on issues pertaining to family planning, the legal system, rights of the majority community, political solution to the ethnic conflict, and school-education – which had implications on the general framework of human rights protection in the country; see, Dasun Edirisinghe, “Buddhist clergy wants birth control operations banned”, at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=58004

⁴³ A/HRC/RES/19/L.2 of 22 March 2012, at <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/115/97/PDF/G1211597.pdf?OpenElement>

of the UN (especially the UNHRC) of Sri Lanka's commitment to human rights protection on the ground. These developments also suggest that there needs to be a more realistic appreciation of the effectiveness of the NHRAP within Sri Lanka's contemporary political and diplomatic context.

5. Conclusion

The NHRAP is a useful document, which helps to identify some of the significant problems confronting the protection of human rights in the country and the broad measures needed to address them. However, given the critical concerns raised above, the following would need to be taken into account if the relevance and usefulness of the NHRAP is to be upheld:

1. The Government must ensure that it addresses the critical gaps and omissions currently existing in the NHRAP. A constant review and update of the NHRAP's contents is therefore necessary. Particular attention needs to be paid to revising certain 'activities' and 'key performance indicators' in a manner that facilitates a greater protection of human rights over the duration of 2011-2016.
2. Better use needs to be made of the participatory process adopted by the Government in drafting the NHRAP. There should be a greater degree of consultation and participation of civil society groups in the process, as such consultation and participation has been a central commitment made by the Government. Such participation will also help government-agencies to make the NHRAP a more comprehensive and useful document.

3. Goals for which a specific timeframe has been set must be distinguished from those which are considered 'ongoing'. Greater and immediate attention needs to be directed towards the former (i.e. the more concrete goals), whereas the latter tend to be long-term goals which need assessment on a more continuous basis.
4. The Government must ensure that information concerning the progress of implementation is made more readily available to the public. Civil society groups, on the other hand, need to continue to raise greater awareness of the NHRAP, through the preparation of frequent progress-reports (e.g. on an annual, or bi-annual basis, given some of the shorter time-frames contained in the NHRAP). This would facilitate greater public scrutiny and transparency which is essential, given the Government's claim that the NHRAP was drafted as a response to a call from the people of Sri Lanka.

SCHEDULE 1

UN Conventions on Human Rights & International Conventions on Terrorism signed, ratified or acceded to by Sri Lanka as at 31st December 2012*

(37 in total, in alphabetical order, with the 1 signed in 2007 denoted by an asterisk)

Additional Protocol to the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons)

Acceded on 24 September 2004

Cartangena Protocol on Bio Diversity

Acceded on 26 July 2004

Convention on Biological Diversity

Acceded on 23 March 1994

Convention against Corruption

Acceded on 11 May 2004

* 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 formation 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Acceded on 3 January 1994

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Acceded on 15 April 1958

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Ratified on 5 October 1981

Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I,II, and III)

Acceded on 24 September 2004

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

Acceded on 27 February 1991

Convention on the Prevention and Punishment of the Crime of Genocide

Acceded on 12 October 1950

* *Convention on the Rights of Persons with Disabilities*

Signed on 30 March 2007.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Acceded on 4th May 1979

Convention on the Rights of the Child (CRC)

Ratified on 12 July 1991

Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Acceded on 6 September 2000

International Convention against the Taking of Hostages

Acceded on 6 September

International Convention for the Suppression of Acts of Nuclear Terrorism

Acceded on 14 September 2005

International Convention for the Suppression of Financing of Terrorism

Ratified on 6 September

International Convention for the Suppression of Terrorist Bombings

Ratified on 23 March 1996

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Acceded on 18 February 1982

International Convention on the Protection of All Migrant Workers and Members of their Families

Acceded on 11 March 1996

International Covenant on Civil and Political Rights (ICCPR)

Acceded on 11 June 1980

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Acceded on 11 June 1980

International Covenant on the Suppression and Punishment of the Crime of Apartheid

Acceded on 18th February 1982

Kyoto Protocol to the Framework Convention on Climate Change

Acceded on 3 September 2002

Optional Protocol 1 to the International Covenant on Civil and Political Rights (ICCPR)

Acceded on 3 October 1997

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Ratified on 15 January 2003

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Ratified on 6 September 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

Ratified on 22 October 2006

Protocol against the Smuggling of Migrants by Land, Sea and Air – Supplementing the United Nations Convention against Transnational Organised Crime

Signed on 15 December 2000

Protocol on Prohibitions and Restrictions on the use of Mines, Booby traps and Other Devices (Protocol 11 as amended on 03 May 1996) annexed to the Convention on Prohibitions or Restrictions on Use of certain Conventional Weapons

Acceded on 24 September 2004

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 December 2000

Protocol on Prohibitions and Restrictions on the use of Mines, Booby-traps and Other Devices (Protocol 11 as amended on 03rd May 1996) annexed to the Convention on Prohibitions or Restrictions on Use of certain Conventional Weapons

Acceded on 24 September 2004

The Ramsar Convention on Wetlands

Acceded on 15 October 1990

United Nations Convention against Transnational Organised Crime
Signed on 15 December 2000

United Nations Convention on the Law of the Sea
Acceded 19 July 1994

Vienna Convention on Consular Relations
Acceded on 4 May 2006

Vienna Convention for the Protection of the Ozone Layer
Acceded 15 December 1989

SCHEDULE 1I

ILO Conventions Ratified by Sri Lanka as at 31 December 2012

No	Convention Name	Ratified Date	Present Status
C4	Night work (Women) Convention, 1919	08.01.1951	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	Rights of Association (Agriculture) Convention, 1921	25.08.1951	
C15	Minimum Age (Trimmers & Stockers) Convention, 1921	25.04.1951	Denounced
C16	Medical Examination of Young Persons (Sea) Convention, 1921	25.04.1950	

No	Convention Name	Ratified Date	Present Status
C18	<i>Workmen's Compensation (Occupational Diseases) Convention, 1925</i>	17.05.1952	
C26	<i>Minimum Wage Fixing Machinery Convention, 1928</i>	09.06.1961	
C29	<i>Forced Labour Convention, 1930</i>	05.04.1950	
C41	<i>Night Work Women) Convention (Revised), 1934</i>	02.09.1950	
C45	<i>Underground Work (Women) Convention, 1935</i>	20.12.1950	
C58	<i>Minimum Age (Sea) Convention (Revised), 1936</i>	18.05.1959	Denounced
C63	<i>Convention concerning Statistics of Wages and Hours of Work, 1938</i>	25.08.1952	
C80	<i>Final Articles Revision Convention, 1946</i>	00.09.1950	
C81	<i>Labour Inspection Convention, 1947</i>	03.04.1950	
C87	<i>Freedom of Association and Protection of the Right to Organise Convention, 1948</i>	15.11.1995	
C89	<i>Night Work (Women) Convention (Revised), 1948</i>	31.03.1966	

No	Convention Name	Ratified Date	Present Status
C90	Night Work of Young Persons (Industry) Convention (Revised), 1948	18.05.1959	
C95	Protection of Wage Convention, 1949	27.10.1983	
C96	Pre-charging Employment Agencies Convention (Revised), 1949	30.04.1958	
C98	Rights 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	
C105	Abolition of Forced Labour Convention, 1957	07.01.2003	
C106	Weekly Rest (Commerce and Offices) Convention, 1957	27.10.1983	
C108	Seafarers' Identity Documents Convention, 1958	24.04.1995	

No	Convention Name	Ratified Date	Present Status
C110	<i>Conditions of Employment of Plantation Workers Convention, 1958</i>	24.04.1995	
C111	<i>Discrimination (Employment and Occupation) Convention, 1958</i>	27.11.1998	
C115	<i>Radiation Protection Convention, 1960</i>	18.06.1986	
C116	<i>Final Articles Revision Convention, 1961</i>	26.04.1974	
C131	<i>Minimum Wage Fixing Convention, 1970</i>	17.03.1975	
C135	<i>Worker's Representatives Convention, 1971</i>	16.11.1976	
C138	<i>Minimum Age for Admission to Employment, 1973</i>	11.02.2000	
C144	<i>Tripartite Consultations to Promote the Implementation of ILO Convention, 1976</i>		
C160	<i>Labour Statistics Convention, 1985</i>	01.04.1993	
C182	<i>Worst Forms of Child Labour Convention, 1999</i>	01.03.2001	

SCHEDULE 111

Humanitarian Law Conventions Ratified by Sri Lanka as at 31st December 2012

*Geneva Convention for the Amelioration of the Conditions of the
Wounded and Sick in the Armed Forces in the Field, 1949*

Ratified on 28 February 1959

*Geneva Convention for the Amelioration of the Conditions of the
Wounded, Sick and Shipwrecked Members of the Armed Forces at
Sea, 1949*

Ratified on 28 February 1959

*Geneva Convention Relating to the Protection of Civilian Persons in
Time of War, 1949*

Ratified on 28 February 1959

*Geneva Convention Relating to the Treatment of Prisoners of War,
1949*

Ratified on 28 February 1959

SCHEDULE IV

Some Human Rights Instruments NOT Ratified by Sri Lanka as at 31st December 2012

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity - 26 November 1968 (date of adoption), 11 November 1970 (entered into force)

Convention on the Political Rights of Women - 20 December 1952 (date of adoption), 7 July 1954 (entered into force)

Convention on the Rights of Persons with Disabilities - 13 December 2006 (date of adoption), 3 May 2008 (entered into force)

Convention Relating to the Status of Refugees - 28 July 1951 (date of adoption), 22 April 1954 (entered into force)

Hours of Work (Industry) Convention – 1919 (date of adoption), 1921 (entered into force)

ILO Convention 168 concerning Employment Promotion and Protection against Unemployment – 1988 (date of adoption), 1991 (entered into force)

ILO Convention No 102 concerning Minimum Standards of Social Security- 28 June, 1952 (date of adoption), 27 April 1955 (entered into force)

ILO Convention No 122 concerning Employment Policy- 1964 (date of adoption), 1966 (entered into force)

ILO Convention No 141 concerning Organisations of Rural Workers and their Role in Economic and Social Development – 1975 (date of adoption), 1977 (entered into force)

ILO Convention No 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service- 1978 (date of adoption), 1981 (entered into force)

ILO Convention No 154 concerning the Promotion of Collective Bargaining – 1981 (date of adoption), 1983 (entered into force)

International Convention for the Protection of All Persons from Enforced Disappearance

New York, 20 December 2006 (date of adoption), 23 December 2010 (entered into force)

Optional Protocol II to the International Covenant on Civil and Political Rights (ICCPR) – 15 December 1989 (date of adoption), 11 July 1991 (entered into force)

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 2002 (date of adoption), 2006 (entered into force)

Optional Protocol to the Convention on the Rights of Persons with Disabilities - 13 December, 2006 (date of adoption), 3 May 2008 (entered into force)

Promotional Framework for Occupational Safety and Health Convention - 2006 (date of adoption), 2009 (entered into force)

Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)- 1977 (date of adoption), 1979 (entered into force)

Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)- 8 June 1977 (date of adoption), 7 December 1978 (entered into force)

Protocol to the Convention relating to the Status of Refugees - 16 December 1966 (date of adoption), 4 October 1967 (entered into force)

Rome Statute of the International Criminal Court (ICC) – 17 July 1998 (date of adoption), 1 July 2002 (entered into force)

SCHEDULE V

Fundamental Rights (FR) Cases Decided during the year 2011/2012

Article 12 (1) – Fundamental Right to Equality

Abdul Razak Mohamed Hussain v. M.M.N.D. Bandara, Secretary, Ministry of Education and Others, S.C. (FR) Application No. 464/2007, S.C. Minutes of 15.03.2011

Centre for Policy Alternatives Ltd. And Another v. Attorney-General and Others SC (FR) Application No. 578/2008, S.C. Minutes 18.03.2011

Damayanthi Namalee Haupe Liyanage v. H.P.S. Somasiri, Director General of Irrigation and Others, S.C. (FR) Application No. 317/2010, S.C. Minutes of 26.03.2012

Dasanayake Gayani Geethika and Others v. D.M.D. Dissanayake, Principal, D.S. Senanayake College and Others, S.C. (FR) Application No. 35/2011, S.C. Minutes of 12.07.2011

Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Others, S.C. (FR) Application No. 455/2005, S.C. Minutes of 21.07.2011

Dr. C.L. Illesinghe and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others, S.C. (FR) Application No. 469/2008, S.C. Minutes of 29.09.2011

Dr. W.L.D.S.G. Perera v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others, S.C. (FR) Application No. 598/2008, S.C. Minutes of 10.03.2011

Everard Anthony Payoe and Others v. Sub Inspector W.M. Anandasiri, Police Station, Hatton and Others, S.C. (FR) Application No. 456/2005, S.C. Minutes of 21.07.2011

H. Dilanka Wijesekara and Others v. Gamini Kulawansa Lokuge, Minister of Sports and Public Recreation and Others, S.C. (FR) Application No. 342/2009, S.C. Minutes of 10.06.2011

Harshani S. Siriwardena v. Secretary, Ministry of Health and Indigenous Medicine, S.C. (FR) Application No. 589/2009, S.C. Minutes of 10.03.2011

Madaduwege Susil de Silva and Another v. M.G.O.P. Panditharathne, Principal, Ambalangoda Dharmashoka Vidyalaya and Others, S.C. (FR) Application No. 31/2011, S.C. Minutes of 28.03.2012

Mohamed Uzman Nazeem v. Upali Gunasekera, Principal, Royal College and Others, S.C. (FR) Application No. 30/2012, S.C. Minutes of 30.08.2012

Mr. N.N. De Silva, Superintendent of Police v. Mr. Jayantha Wickremaratne, S.C. (FR) Application No. 341/2009, S.C. Minutes of 19.07.2011

Ms. S.M.S.D. Ramayanayeke v. Institute of Fundamental Studies and Nineteen Others, S.C. (FR) Application No. 371/2009, S.C. Minutes 31-01-2012

Poddiwela Hewage Thelma Kumari Hemachandra v. Elpitiya Pradeshiya Sabha and Others, S.C. (FR) Application No. 457/2008, S.C. Minutes of 31.03.2011

Prof. Hapugabange Ranjith Wimalanath Dharmaratne and Another v. Institute of Fundamental Studies and Twelve Others, S.C. (FR) Application No. 73/2007, S.C. Minutes 31-01-2012

Prof. K. Tennakone v. Institute of Fundamental Studies and Twelve Others, S.C. (FR) Application No. 413/2009, S.C. Minutes of 31.01.2012

Rajaratnampillai Seyon v. Airport and Aviation Service (Sri Lanka) Limited. and Others, S.C. (FR) Application No. 276/2009, S.C. Minutes of 10.05.2011

Ravidu Viduranga Lokuge v. Upali Gunasekera, Principal, Royal College and Others, S.C. (FR) Application No. 492/2011, S.C. Minutes of 12.10.2012

Sergeant N.W.A. Nihal and Another v. M.G.O.P. Panditharathne, Principal, Dharmashoka College and Others, S.C. (FR) Application No. 32/2011, S.C. Minutes of 28.03.2012

Sri Lanka Principals' Service Grade 1 Officers' Association and Others v. Justice P.R.P. Perera, Chairman, Public Service Commission and Others, S.C. (FR) Application No. 572/2008, S.C. Minutes of 24.02.2011

Sumanasiri G. Liyanage and Another v. H.E. Mahinda Rajapakse, President of Sri Lanka and Others, S.C. (FR) Application No. 297/2008

T.G. Samadi Subarshana Ferdinandis and Another v. Mrs. S.S.K. Aviruppola, Principal, Visakha Vidyalaya and Others, S.C. (FR) Application No. 117/2011, S.C. Minutes of 25.06.2012

Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others, S.C. (FR) Application No. 29/2012, S.C. Minutes of 25.06.2012

Walawe Durage Dulani v. Nimal Bandara, Secretary, Ministry of Education and Others, S.C. (FR) Application No. 391/2009, S.C. Minutes of 31.01.2011

Warabenage Pavithra Dananjanie De Alwis v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others, S.C. (FR) Application No. 578/2009, S.C. Minutes of 01.11.2011

Weerawarna Kurukulasooriya v. Mr. Anura Edirisinghe, Commissioner General of Examinations and Others, S.C. (FR) Application No. 577/2009, S.C. Minutes of 01.11.2011

Wijerathne Mudiyansele Mithila Sheyamani Kumarihamy and Another v. The Principal, Mahamaya Balika Vidyalaya and Others, S.C. (FR) Application No. 661/2010, S.C. Minutes of 28.03.2012

Article 13 (Freedom from Arbitrary Arrest, Detention and Punishment)

Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Other S.C. (FR) Application No. 455/2005, S.C. Minutes of 21.07.2011

Article 14 (1) (g) – Freedom to engage in a profession, trade, business or enterprise

Don Gregory Ajith Udugama and Others v. Chandra Fernando, Inspector General of Police and Other S.C. (FR) Application No. 455/2005, S.C. Minutes of 21.07.2011

SCHEDULE VI

Cases Cited – Sri Lanka and other Jurisdictions

Ashbridge Investments Ltd. v. Minister of Housing and Local Government [1965] 1 WLR 1320

Bulankulama v. Secretary, Ministry of Industrial Development, [2000] 3 SLR 243

Ceylon Paper Sacks Ltd. v. Janatha Estate Development Board and Others, 1993 BLR Vol. 5 Part 1, p. 6

Chandrasena v. Kulatunga and Others [1996] 2 SLR 327

Charanjit Lal Chowdhury v. The Union of India and Others AIR 1951 SC 41 and *Budhan Chaudhry v. State of Bihar* AIR 1955 SC 191

Choolanie v. The People's Bank and Others, [2008] 2 SLR 93

Coleen Properties Ltd. v. Minister of Housing and Local Government [1971] 1 WLR 433

Dayarathna and Others v. Minister of Health and Indigenous Medicine And Others, [1999] 1 SLR 393

Deva Susila Premalatha Karunathilaka and Another v. D.M.G.A. Jayalath de Silva, The Principal, G/Dharmashoka Maha Vidyalaya and Others, S.C. (FR) Application No. 334/2002, S.C. Minutes of 25.11.2002

Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries and Others, [1985] 1 SLR 285

Fernando and Others v. Associated Newspapers of Ceylon Ltd. And Others, [2006] 3 SLR 141

Gamaethige v. Siriwardena and Others, [1988] 1 SLR 384

Haputhanthrige and Others v. Attorney General, [2007] 1 SLR 101

Jayakody v. Sri Lanka Insurance and Robinson Hotel Co. Ltd. and Others [2001] 1 SLR 365

Jayantha Adikari Egodawele v. Dayananda Dissanayake, Commissioner of Elections, FRD (2) 292

Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Other, [2003] 1 SLR

Lanka Rajya Sanstha Ha Podu Sevaka Samlthya, Mendis And Irangani De Silva v. Building Materials Corporation Ltd., [2008] 2 SLR 186

Palihawadana v. Attorney General and Two Others, [1978-79-80] 1 SLR 65

Premachandra v. Major Montague Jayawickrema and Another, [1994] 2 SLR 90

Rajaratne v. Air Lanka Ltd. [1987] 2 SLR 128

Ram Krishna Dalmia v. Justice Tendolkar, AIR 1958 SC 538

Rienzie Perera and Another v. University Grants Commission and Another [1978-79-80] 1 SLR 128

Samaraweera v. The People's Bank and Others, [2007] 2 SLR 362

Schmidt v. Secretary of State for Human Affairs ([1969] 1 All ER 904

Senansinghe v. Karunatilleke, Senior Superintendent of Police, Nugegoda and Others, [2003] 1 SLR

Siriwardene v. Rodrigo, [1986] 1 SLR 384

Snowden v. Hughes, [1943] 321 US 1

Sriyani Silva v. Chanaka Iddamalgoda, [2003] 1 SLR 14

Wijebanda v. Conservator General of Forests and Others, S.C. (FR)
Application No. 118/2004, S.C. Minutes of 05.04.2007

Wijeratne and Another v. People's Bank and Another, [1995] 2
SLR 352

Bibliography

Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice. March 2010.

"A disappearance every five days in post-war Sri Lanka." *Groundviews*. August 30, 2012. http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/#_ftn1.

Amnesty International. *"Reconciliation at a crossroads: Continuing impunity, arbitrary detentions, torture and enforced disappearances"*. April 2012.

—. *Locked away: Sri Lanka's security detainees*. London: Amnesty International Ltd, 2012.

—. *Sri Lanka: Human Rights Council vote a step in the right direction*. March 22, 2012. <http://www.amnesty.org/fr/node/30429>.

"Army barges into Noolaham Foundation meeting in Jaffna." *transcurrents.com*. May 29, 2011. <http://transcurrents.com/news-views/archives/889>.

Asian Human Rights Commission. *The State of Human Rights in Sri Lanka in 2012 (AHRC-SPR-011-2012)*. 2012.

Bhavani Fonseka; Mirak Raheem. *A Short Guide to 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' Circular: Issues & Implications*. Centre for Policy Alternatives (CPA), 2011.

"Bigoted monks and militant mobs: Is this Buddhism in Sri Lanka today?" *groundviews.org*. April 23, 2012. <http://groundviews.org/2012/04/23/bigoted-monks-and-militant-mobs-is-this-buddhism-in-sri-lanka-today/>.

Bloomfield, David; Barnes, Teresa; Huyse, Luc (eds.). *Reconciliation After Violent Conflict: A Handbook*. Stockholm: International IDEA, 2003.

Centre for Policy Alternatives. *Attacks on Places of Religious Worship in Post-War Sri Lanka* . March 2013.

Centre on Housing Rights and Evictions - Sri Lanka. "Waiting to Return: Applying the Pinheiro Principles in Sri Lanka (The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons)." n.d.

Comittee to Protect Journalists. "As election nears, pro opposition journalist disappears." *ifex.org*. January 25, 2010. http://www.ifex.org/sri_lanka/2010/01/25/ekneligoda_missing/.

"Commentary on Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces." *Centre for Policy Alternatives*. March 12, 2013. <http://www.cpalanka.org/commentary-on-accelerated-programme-on-solving-post-conflict-state-lands-issues-in-the-northern-and-eastern-provinces/>.

Commission of Inquiry on Lessons Learnt and Reconciliation. "Report of the Commission of Inquiry on Lessons Learnt and Reconciliation ." 2011.

"Concern over missing journalist." *BBC Sinhala*. January 25, 2010. http://www.bbc.co.uk/sinhala/news/story/2010/01/100125_prageeth_missing.shtml.

Department of Foreign Affairs and Trade (Australia). "Australia's response to Sri Lanka's LLRC Report." February 13, 2012.

Department of International Relations and Cooperation of South Africa. "South African Government position on the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) in Sri Lanka ." January 30, 2012.

Edirisinghe, Dasun. "Buddhist clergy wants birth control operations banned." *island.lk*. n.d. <http://>

- www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=58004.
- Edrisinha, Rohan; Jayakody, Aruni (Eds.). "The Eighteenth Amendment to the Constitution: Substance and Process." Centre for Policy Alternatives, 2011.
- "Emergency Regulations lifted in Sri Lanka." *Asian Tribune*. August 25, 2011. <http://www.asiantribune.com/news/2011/08/25/emergency-regulations-lifted-sri-lanka>.
- Ferdinando, Shamindra. "GR alleges TNA split over Sampanthan's reconciliation move." *island.lk*. June 19, 2011. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=28195.
- Fernando, Manjula. "National HR Action Plan: Stresses commitment to protect human rights of all Lankans." <http://www.sundayobserver.lk/>. n.d. <http://www.sundayobserver.lk/2012/01/08/fea02.asp>.
- Fonseka, Bhavani, and Mirak Raheem. *Trincomalee High Security Zone and Special Economic Zone*. Centre for Policy Alternatives, 2009.
- Foreign and Commonwealth Office (United Kingdom). "Foreign Office Minister responds to report on the conflict in Sri Lanka." January 12, 2012.
- Government of Canada. "Minister Baird Comments on Final Report of Sri Lanka's Lessons Learnt and Reconciliation Commission." January 11, 2012.
- "Govt Not Committed To Resolve Conflict – Sampanthan." *The Sunday Leader*. March 17, 2013. <http://www.thesundayleader.lk/2013/03/17/govt-not-committed-to-resolve-conflict-sampanthan/>.
- "GTF puts forth demands: Calls for international Investigations." *Ceylon Today*. April 2, 2013. <http://>

www.ceylontoday.lk/51-28779-news-detail-gtf-puts-forth-demands.html.

Gunasekera, Tisaranee. "Sinhala- Only National Anthem, Buddha Statues, Beheaded Images and Other Omens." *Asian Tribune*. April 8, 2012. <http://www.asiantribune.com/news/2012/04/07/sinhala-only-national-anthem-buddha-statues-beheaded-images-and-other-omens>.

Gunatileke, Nadira. "HR Action Plan will improve Rights of all Sri Lankans." <http://www.dailynews.lk>. n.d. <http://www.dailynews.lk/2012/05/25/fea01.asp>.

Gunatilleke, Gehan, and Nishan de Mel. "Sri Lanka: LLRC Implementation Monitor - Statistical and Analytical Review No. 1." Verite Research, November 2012.

Gunatilleke, Godfrey. "Truth and Accountability: The Last Stages of the War in Sri Lanka – An Analysis and evaluation of the Report of the UN Secretary General's (UNSG) Panel of Experts on Accountability in Sri Lanka." Marga Institute, July 21, 2011.

Hansard. March 21, 2013. http://www.parliament.lk/uploads/documents/hansard/PUBDOC4455_document.pdf.

Haviland, Charles. "Offices of anti-government Lankaenews.com set on fire." *BBC News*. January 31, 2011. <http://www.bbc.com/news/world-south-asia-12322916>.

—. "Parents of dead Sri Lankan Tamil prisoner 'denied' last rites." *BBC News*. July 9, 2012. <http://www.bbc.co.uk/news/world-asia-18770072>.

—. *President rejects APRC proposals*. January 15, 2010. http://www.bbc.co.uk/sinhala/news/story/2010/01/100115_mahinda_tamil.shtml.

- "Hon. Sampanthan's speech on 5th September 2007 in Parliamentary Debates." In *Hansard*. 2007.
- Ilangamuwa, Nilantha. "Sri Lanka: Truth and myth." *Asian Human Rights Commission*. August 10, 2012. <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-071-2012/?searchterm=None>.
- Interantional Crisis Group. *SRI LANKA'S NORTH II: REBUILDING UNDER THE MILITARY*. March 16, 2012.
- Internal Displacement Monitoring Center. *Numbers of IDPs in Sri Lanka*. April 19, 2012. http://new.sangam.org/2012/04/IDPs_SriLanka.php?uid=4688.
- "Issues and problems facing people of Northern and Eastern provinces – by M.A. Sumanthiran MP." *dbsjeyaraj.com*. July 10, 2011. <http://dbsjeyaraj.com/dbsj/archives/2529>.
- "Jaffna: Brutal Assault of Civilians in Navanthurai." *Groundviews*. August 25 , 2011. <http://groundviews.org/2011/08/25/jaffna-brutal-assault-of-civilians-in-navanthurai>.
- "Japan accepts Sri Lanka's human rights action plan." *hirunews.lk*. n.d. <http://www.hirunews.lk/55108>.
- Jeyaraj, D.B.S. "Vicious attack by Army in Alaveddy on TNA meeting with MPs present." *dbsjeyaraj.com*. June 16, 2011. <http://dbsjeyaraj.com/dbsj/archives/2320>.
- Joint Civil Society. "Joint Civil Society Submission to the UN Universal Periodic Review (Sri Lanka): Second Cycle, 14th Session 2012." *lawandsocietytrust.org*. n.d. <http://www.lawandsocietytrust.org/PDF/JCS%20UPR%20DOC%20SL%20APRIL%202012.pdf>.
- Joint-Civil Society Sri Lanka. "Submission to UN Universal Periodic Review of Sri Lanka 14th Session." UN

Universal Periodic Review of Sri Lanka 14th Session, October-November 2012.

Kamalendran, Chris. "Fishermen's ire, police fire and a widow's tears." *The Sunday Times*. February 19, 2012. http://www.sundaytimes.lk/120219/News/nws_17.html.

—. "Uthayan news editor brutally attacked." *sundaytimes.lk*. July 31, 2011. http://sundaytimes.lk/110731/News/nws_06.html.

Lankacnews. *Genesis of Bodu Bala Sena*. n.d.

Masstricht Guidelines on Violations of Economic, Social and Cultural Rights *Masstricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997*. n.d. http://www1.umn.edu/humanrts/instreet/Maastrichtguidelines_.html.

Miller, Jonathan. *Sri Lanka execution video: evidence of war crimes?* *Channel 4 News*. August 2009. <http://www.channel4.com/news/sri-lanka-execution-video-evidence-of-war-crimes>.

Ministry of Defence, Democratic Socialist Republic of Sri Lanka. *Humanitarian Operation Factual Analysis: July 2006 – May 2009*. July 2011.

Ministry of Land - Sri Lanka. *Guidelines for the preparation of a Resettlement Action Plan: National Involuntary Resettlement Policy*. Ministry of Lands - Sri Lanka, 2003, 31-36.

"National Action Plan for the Protection and Promotion of Human Rights: 2011-2016." <http://www.hractionplan.gov.lk>. n.d. http://www.hractionplan.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf.

National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency. January 2013.

http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf.

National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Agency. February 26, 2013. http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf.

National Plan of Action to Implement the Recommendations of the LLRC. July 26, 2012. http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm.

news.lk. *Decisions taken by the Cabinet at its Meeting held on 14.12.2011.* December 14, 2011.

Nimalaruban, Ganesan. "A damning murder, funeral and silence." *Groundviews*. July 13, 2012. <http://groundviews.org/2012/07/31/ganesan-nimalaruban-a-damning-murder-funeral-and-silence;> .

"No attack on TNA, only a clash between MSD and army." *island.lk*. June 28, 2011. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=28907.

"Non-resettlement in Valikamam – North and impact of 20 years in IDP camps." *vimarsanam-vimansa.org*. February 14, 2013. <http://vimarsanam-vimansa.org/report/non-resettlement-in-valikamam-north-and-impact-of-20-years-in-idp-camps/>.

Office for the Coordination of Humanitarian Affairs. "Guiding Principles on Internal Displacement." *United Nations High Commissioner for Refugees*. September 2004. <http://www.unhcr.org/43ce1cff2.html>.

"Petrol bomb attack on Dambulla mosque." <http://english.srilankamirror.com/>. April 2012. <http://>

english.srilankamirror.com/2012/04/petrol-bomb-attack-on-dambulla-mosque/ .

“Prevention of Terrorism (Temporary Provisions) Act.” No. 48. 1979.

Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The United Nations, 2011.

Reporters without Borders. *Sri Lanka*. March 11, 2011. <http://en.rsf.org/sri-lanka-sri-lanka-11-03-2011,39720.html>.

“Resettlement Figures.” *Ministry of Resettlement*. n.d. http://resettlementmin.gov.lk/site/index.php?option=com_content&view=article&id=5&Itemid=7&lang=en.

Samarasinghe, Mahinda. “We Strongly Object to any Unfair, Biased, Unprincipled and Unjust Approach by UNHRC with Regard to Human Rights in Sri Lanka.” *dbsjeyaraj.com*. February 28, 2013. <http://dbsjeyaraj.com/dbsj/archives/17340>.

“Sampur population remains displaced.” *vimarsanam-vimansa.org*. February 08, 2013. <http://vimarsanam-vimansa.org/report/sampur-population-remains-displaced/>.

Satkunanathan, Ambika. “Sri Lanka remembers to forget.” *opendemocracy.net*. May 21, 2013. <http://www.opendemocracy.net/opensecurity/ambika-satkunanathan/sri-lanka-remembers-to-forget>.

Secretary General of the United Nations, Government of Sri Lanka. *Joint Statement at the Conclusion of the UN Secretary-General's Visit to Sri Lanka*. New York, May 23, 2009.

“Sinhala Only National Anthem And.” *thesundayleader.lk*. January 2, 2011. <http://www.thesundayleader.lk/2011/01/02/sinhala-only-national-anthem-and/>.

“Situation Report: North and East Sri Lanka.” October 21, 2011. <https://docs.google.com/file/d/0B0vgVMXCV>

- udFNzE4YmJlM2MtZWZhOC00Nzc4LWJmNjUtM2NjMDRjNDU3ZDZj/edit?hl=en_US&pli=1.
- Skanthakumar, B. "Embedded in the State: The Human Rights Commission of Sri Lanka." *ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, 2012.
- "Solution lies entirely in the hands of Sri Lanka." *Ceylon Today*. March 24, 2013. <http://www.ceylontoday.lk/59-27919-news-detail-solution-lies-entirely-in-the-hands-of-sri-lanka.html>.
- "Solution lies entirely in the hands of Sri Lanka." *Ceylon Today*. March 24, 2013. <http://www.ceylontoday.lk/59-27919-news-detail-solution-lies-entirely-in-the-hands-of-sri-lanka.html>.
- Somachandran, Subash. "Sri Lankan military attacks Tamil villagers." *World Socialist Website*. September 26, 2011. <http://www.wsws.org/en/articles/2011/09/sljfs26.html>.
- "Speech by Basil Rajapakse, Minister for Economic Development, Parliamentary Debates on 21st October 2011." In *Hansard*. 2011.
- "Sri Lanka Delegation briefs 20th Session of HRC in Geneva." *Ministry of External Affairs*. June 20, 2012. <http://www.mea.gov.lk/index.php/en/media/news-archive/3497-sri-lanka-delegation-briefs-20th-session-of-hrc-in-geneva>.
- "Sri Lanka government orders removal of Dambulla mosque." *BBC News*. April 22, 2012. <http://www.bbc.com/news/world-asia-17805202>.
- "Sri Lanka: A hidden displacement crisis." *internal-displacement.org*. October 2012. <http://www.internal-displacement.org>.

“Sri Lanka: Government Proposal Won’t Address War Crimes.” *Human Rights Watch*. May 7, 2010. <http://www.hrw.org/news/2010/05/07/sri-lanka-government-proposal-won-t-address-war-crimes>.

“Sri Lanka: Inquiry into armed conflict fundamentally flawed.” *Amnesty International*. September 7, 2011. <http://www.amnesty.org/en/news-and-updates/report/sri-lanka-inquiry-armed-conflict-fundamentally-flawed-2011-09-07>.

“Sri Lanka: State of Human Rights 2009-2010.” Law & Society Trust, May 2012.

“Sri Lanka’s North II: Rebuilding Under The Military.” *International Crisis Group*. March 16, 2012. <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/220-sri-lankas-north-ii-rebuilding-under-the-military.pdf>.

Sri Lankan parliament to impeach first woman chief justice. October 31, 2012. <http://www.lankaweb.com/news/items/2012/10/31/sri-lankan-parliament-to-impeach-first-woman-chief-justice-report/>.

“Sri Lanka’s Jaffna sees clashes over Tamil rebel remembrance.” *BBC News*. November 28, 2012. <http://www.bbc.co.uk/news/world-asia-20531233>.

Sumanthiran, M. A. “Development v. Resettlement.” *Ceylon Today*. March 31, 2013. <http://ceylontoday.lk/78-28584-news-detail-development-vs-resettlement.html>.

Sumanthiran, M.A. “ISSUES AND PROBLEMS FACING PEOPLE OF THE NORTHERN AND EASTERN PROVINCES.” *dbsjeyaraj.com*. July 10, 2011. <http://dbsjeyaraj.com/dbsj/archives/2529>.

The International Commission of Jurists. *Authority without Accountability: The Crisis of Impunity in Sri Lanka*. November, 2012.

The Sri Lankan clergy and civil society. *SRI LANKA: The clergy and civil society condemn the arrest and unlawful detention of four students from the University of Jaffna and call for their immediate release*. December 7, 2012. <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-056-2012>.

UN Human Rights Council, 22nd Session. "Written statement submitted by International Movement Against All Forms of Discrimination and Racism (IMADR), Arbitrary detention in Sri Lanka,." *A/HRC/22/NGO/117*. Official Record, February 19, 2013.

—. "Written statement submitted by International Movement Against All Forms of Discrimination and Racism (IMADR): Freedom of expression in Sri Lanka." *A/HRC/22/NGO/118*. Official Record, February 19, 2013.

UN News Centre. *Deeming Sri Lanka execution video authentic, UN expert calls for war crimes probe*. January 7, 2010. http://www.un.org/apps/news/story.asp?NewsID=33423#Um_CvJQpaR1.

United Nations Economic and Social Council, Commission on Human Rights, 61st Session. "SET OF PRINCIPLES FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS THROUGH ACTION TO COMBAT IMPUNITY ." (*E/CN.4/2005/102/Add.1*). Official Record, February 2, 2005.

United Nations General Assembly, Human Rights Council, 22nd Session. "Written statement submitted by Amnesty International: Impunity persists for crimes under international law as Sri Lanka escalates attacks on critics." (*A/HRC/22/NGO/166*). Official Record, February 25, 2013.

United Nations Human Rights Council, 19th Session. "Sri Lanka: Land grabbing and development-induced displacement (A/HRC/19/NGO/64)." Official Record, February 13, 2012.

—. "United States of America: draft resolution - Promoting reconciliation and accountability in Sri Lanka "(A/HRC/19/L.2). Official Record, March 22, 2012.

—. "Written statement submitted by the International Movement of Against All Forms of Discrimination and Racism (IMADR): Enforced and involuntary disappearance in Sri Lanka." (A/HRC/19/NGO/123). Official Record, February 28, 2012.

United Nations Secretary General's Panel of Experts. "Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka." United Nations, March 11, 2011.

United Nations Security Council. "Report of the Secretary-General: The rule of law and transitional justice in conflict and post conflict societies." S/2004/616. August 23, 2004.

United States Department of State. "Daily Press Briefing." December 19, 2011.

Wamanan, Arthur. "TNA visited on USA invitation: Sumanthiran." *The Nation*. November 13, 2011. <http://www.nation.lk/2011/11/13/inter.htm>.

Watchdog. *Attacks on dissent in Sri Lanka – Incidents in 2012*. February 24, 2012. <http://transcurrents.com/news-views/archives/8602> .

Welikala, Asanga. *The farcical National Action Plan for the Promotion and Protection of Human Rights' in Sri Lanka*. March 8, 2009. <http://groundviews.org/2009/03/08/the-farcical-national-action-plan-for-the-promotion-and-protection-of-human-rights-in-sri-lanka/>.

- Wickremasekara, Damith, and Skandha Gunasekara. 27 *Dead and 59 Wounded in 'Welikada' War*. November 10, 2012. <http://dbsjeyaraj.com/dbsj/archives/12294> .
- Wijedasa, Namini. "TNA leader R. Sampanthan interviewed by Namini Wijedasa." *dbsjeyaraj.com*. February 26, 2012. <http://dbsjeyaraj.com/dbsj/archives/4522>.
- . *Watered down version of National Action Plan for Human Rights to be presented in Geneva UN*. December 25, 2011. <http://transcurrents.com/news-views/archives/6920>.
- Wijesinha, Rajiva. *Human Rights means time lines....* December 21, 2012. <http://www.dailynews.lk/2012/12/21/fea01.asp>.
- . *Kick-starting multi-culturalism*. December 28, 2012. <http://www.dailynews.lk/2012/12/28/fea04.asp>.
- . *Tired of being called a nuisance*. February 04, 2013. <http://www.dailynews.lk/2013/02/04/fea02.asp>.

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Sri Lanka: State of Human Rights 2013

This is a detailed account of the state of human rights in Sri Lanka focusing on the period January 2011 to December 2012

Sri Lanka: State of Human Rights 2013 contains the following chapters

- Overview of the State of Human Rights in 2011-2012
- Judicial Protection of Human Rights
- Implementation of LLRC Recommendations: Restitution & Reconciliation
- Implementation of LLRC Recommendations on Resettlement
- The National Human Rights Action Plan

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