SRI LANKA: STATE OF HUMAN RIGHTS 2016

LAW AND SOCIETY TRUST

SRI LANKA:
STATE OF HUMAN RIGHTS 2016

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Signed articles represent the view of the respective author, and are not necessarily those of their affiliated institution or employer, other contributors to this volume, nor of the Law & Society Trust.

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ABBREVIATIONS & ACRONYMS

BBS	*Bodu Bala Sena*
CID	Criminal Investigation Division
COPE	Parliamentary Committee on Public Enterprises
CPA	Center for Policy Alternatives
ECT	Environmental Conservation Trust
FR	Fundamental Rights
GoSL	Government of Sri Lanka
GSP Plus	Generalised Scheme of Preferences Plus
HRC	Human Rights Commission
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICPAPED	International Convention on the Protection of All Persons from Enforced Disappearances
JHU	*Jathika Hela Urumaya*
JVP	*Jathika Vimukthi Peramuna*
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
NCEASL	National Christian Evangelical Alliance of Sri Lanka
OHCHR	Office of the High Commissioner for Human Rights

OISL	Office of the High Commissioner for Human Rights Investigation on Sri Lanka
OHCHR	Office of the High Commissioner for Human Rights
OMP	Office of Missing Persons
PRC	Public Representation Committee on Constitutional Reform
PTA	Prevention of Terrorism (Temporary Provisions) Act
RTI	Right to Information
SC	Supreme Court
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
TNA	Tamil National Alliance
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNF	United National Front
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNP	United National Party
WAN	Women's Action Network

INTRODUCTION

The 2015 volume of this Report offers a mix of the old and the new in terms of its scope. It carries the familiar chapters that consider the overview of respect for human rights and the judicial interpretation of fundamental rights during the period under review. The other chapters, however, explore broader themes signaling a slight departure from the earlier traditions of this report. The 2015 volume includes a chapter that considers public opinion through the prism of selected newspaper cartoons. Another chapter considers the relationships between democracy and human rights in a year which witnessed a presidential and a general election. Another chapter considers international human rights monitoring mechanisms in relation to Sri Lanka. These chapters taken as a whole offers diverse and critical perspectives on human rights in Sri Lanka in 2015.

Authoring the 'Overview of the State of Human Rights in 2015' for the fourth consecutive year, Gehan Gunatilleke offers an incisive analysis of the politics of human rights protection. He notes that during the period under review there was a 'notable decrease in state repression of citizens' and a 'withdrawal of the state's direct support for gross human rights violations'. His analysis captures the contradictory practices of the state in 2015. He discusses the adoption of the Nineteenth Amendment to the Constitution, the co-sponsored resolution before the UN Human Rights Council and also the reports of torture, media repression

and religious violence. Gunatilleke argues that the disregard for human rights by the state in 2015 is due to 'its willingness to let repressive interests infiltrate the lawmaking process' rather than due to a conscious dismissal or disregard of its human rights obligations. Elsewhere, in commenting on the continued reporting of incidents of torture he states that 'these are types of violations that emanate from institutional weaknesses, and the government's failure to remedy such weaknesses, rather than from concerted policy choices.' He commends the introduction of the right to information through the Nineteenth Amendment to the Constitution but points out the critical need for a comprehensive Right to Information legislation that would give teeth to this fundamental right. Commenting on civil society activism during this same time, Gunatilleke observes that 'the success of the civil society campaign, alongside the support of the international community and the government's receptiveness, was perhaps the main human rights success story of 2015.'

The chapter on 'Judicial Interpretation of Fundamental Rights' suggests modest progress in the judicial protection of human rights in comparison to the immediately preceding years. The jurisprudence signals a renewed commitment to a deeper consideration of fundamental rights and a critical engagement with the interpretation of those rights. This modest improvement is evident in judicial review of the constitutionality of proposed Bills as well. However, when considering the broader political, social and economic context, it is evident that the contestations

before the Supreme Court hardly reflect the scale or the intensity of the human rights violations that were experienced. As the author points out, a timid judiciary and a largely inaccessible constitutional remedy prevents an effective vindication of fundamental rights in 2015 by the judiciary as in the past.

In 'Human Rights and Democracy', Thiagi Piyadasa considers the impact of the change of government on human rights protection in 2015. The Presidential and Parliamentary elections and the conduct of the new government are evaluated through the combined lens of democracy and human rights. This chapter foregrounds the undeniable link between respect for democracy and human rights. Reflecting on the themes of gender, land, and transparency she analyses the losses and gains for human rights in 2015 subsequent to the democratic change of government. She rightly points out that while considerable improvements have been achieved through the democratic process for improving respect for human rights, certain problems persist such as the impunity of the state, its indifference to gender issues and the continued lack of transparency of the government. She observes that democracy in Sri Lanka must move beyond procedural democracy to embrace the substantive. She concludes her analysis by cautioning that 'the benefits of democracy cannot be limited to the political alone' but that 'it must directly enrich the economic, social and cultural life as well.'

For the first time the *State of Human Rights* offers an analysis of 'meaning - making' of human rights through mass media in the

chapter titled 'The Death Penalty Debate through Newspaper Cartoons'. Through an analysis of selected cartoons published in newspapers, Andi Schubert considers human rights perceptions in popular culture and their possible implications for the rule of law and respect for human rights in Sri Lanka. The cartoons assessed by Schubert are indicative of the contestations in popular culture about gender, violence, criminal justice, representative democracy, law enforcement, justice and human rights. This chapter provides a refreshing and new approach to reviewing human rights through the lens of the debate about the death penalty that took place in popular culture and in mass media. He argues that 'the popular perception of the death penalty was that its implementation would be an effective deterrent to the pressing social issue of increasingly violent crimes against women and children'. This perception builds on a disturbing positing of the rule of law and human rights as competing norms in Sri Lanka's legal system rather than as complementary norms. This 'surprising turn' away from established international human rights law standards in popular culture in Sri Lanka which the author points out requires further investigation and reflection for improving human rights practice.

In the final chapter of this volume, 'International Monitoring of Human Rights', Dinushika Dissanayake reviews the contribution of international human rights monitoring mechanisms to the promotion of human rights in Sri Lanka. She traces the monitoring of Sri Lanka's post-war human rights protection by the UN

Human Rights Council and foregrounds the politics around the resolution at international and domestic levels. She considers among other things the implications of the OISL report, the *Paranagama* report and Sri Lanka's engagement with the Working Group on Enforced Disappearances. She concludes her analysis by observing that in spite of several shortcomings, Sri Lanka 'still managed to accomplish a significant number of achievements on the human rights front' and argues that 'these achievements are traceable to international pressure'. She further points out that the institutional and legislative reforms introduced in 2015 are a 'testimony' to the 'importance of continuing international and regional scrutiny of the human rights situation in Sri Lanka.'

As suggested by the authors, the year 2015 will be marked in Sri Lanka's history. The democratic change of government, the significant shifts in state policy towards human rights are but two reasons for the significance of this time period. However the analysis in this volume also emphasizes that many of the institutional and attitudinal issues experienced in Sri Lanka, particularly in relation to respect for human rights and the rule of law, continue. The challenge is to acknowledge this tension and to be able to devise sustainable reforms that would address these issues.

Dinesha Samararatne
Editor


SRI LANKA
National capital
Provincial capital
Town, village
Provincial boundary
Main road
Secondary road
Railroad
Airport
INDIA
Kankesanturai
Point Pedro
Jaffna
Palk Strait
Elephant Pass
Devipattinam
Rameswaram
Dhanushkodi
Talaimannar
Kilinochchi
Puthukkudiyiruppu
Mullaitivu
Vellankulam
Manalaru
NORTHERN
Nedunkeni
Puliyankulam
Mannar
Pulmoddai
Gulf of Mannar
Bay of Bengal
Silavatturai
Madhu Road
Vavuniya
Nilaveli
Pankulam
Kebithigollewa
Trincomalee
Medawachchiya
Horuwapotana
Habarana
Polonnaruwa
Kantale
Pomparippu
Anuradhapura
NORTH CENTRAL
Kalpitiya
Maragahawa
Kathiraveli
Puttalam
Kekirawa
Galgamuwa
NORTH WESTERN
Dambula
Vaharachchenai
Chenkalady
Batticaloa
Mahi
Nalla
EASTERN
Ganewatta
Chilaw
Maha Oya
Kurunegala
Kuliyapitiya
Matale
Polonnaruwa
CENTRAL
Kathiravelu
Kalmunai
Pannala
Kandy
Mahiyanganaya
Uhana
Ampara
Negombo
Kegalla
Bibile
Gampaha
Ja Ela
Nuwara Eliya
Badulla
Colombo
Sri Jayewardenepura Kotte
UVA
Mount Lavinia
Moratuwa
WESTERN
Horana
Haputale
Monaragala
Arugam Bay
Panadura
Ratnapura
Buttala
Okanda
Kalutara
SABARAGAMUWA
Balangoda
Pelmadulla
Tanjung Dondra
Kumana
Beruwala
Matugama
Rakwana
Kataragama
Deniyaya
Embilipitiya
Tissamaharama
Ambalangoda
Udugama
SOUTHERN
Kirinda
INDIAN OCEAN
Hambantota
Akuressa
Tangalle
Galle
Matara
Dondra Head
SRI LANKA
The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

I

OVERVIEW OF THE STATE OF HUMAN RIGHTS IN 2015

Gehan Gunatilleke[*]

1. Introduction

2015 will be remembered as a year of remarkable transition. It will be remembered as the year that Sri Lankan citizens ousted an authoritarian regime and replaced it with a government that was – relatively speaking – more accountable. They succeeded in doing so without the use of force or violence, but through the simple power of their ballots. This transition raised expectations that the country's human rights record would steadily improve. Hence 2015 also marked an important turning point for human rights protection in Sri Lanka.

This overview chapter examines Sri Lanka's human rights record in 2015. It attempts to analyse the impact the regime change may have had on this record, and offers certain perspectives on the promising and sobering features of that impact. The chapter is presented in three sections. The first discusses the positive developments that took place in 2015 – both in terms of state measures to respect, protect and promote human rights, and the role of civil society. It focuses

[*] Attorney-at-law; Research Director, Verité Research; Commonwealth Scholar, New College, University of Oxford; Advisor to the Ministry of Foreign Affairs on Treaty Compliance.

on improvements in free speech and the right to information, and discusses the commendable decision of the Sri Lankan government to co-sponsor a resolution on Sri Lanka at the 30th session of the United Nations Human Rights Council (UNHRC). The second section discusses some of the major human rights failings encountered during the year. It focuses specifically on disturbing trends with respect to torture and religious violence. The final section attempts to contextualise the positive and negative experiences of 2015 by locating them within broader political tensions that exist within government despite regime change. This final section accordingly argues that Sri Lanka is faced with certain systemic human rights challenges that arise regardless of the government in power. In human rights terms, this recent transition from authoritarianism to republicanism must be understood as a shift from the 'acute' to the 'chronic'; a shift from the state's direct perpetration of gross human rights violations to its incapacity to prevent systemic human rights abuses.

2. Improvements in Human Rights

The election of Maithripala Sirisena as president in January 2015 heralded a new era for Sri Lankan civil society and media. Sirisena's campaign promise of 'good governance' encapsulated greater space for civil society, the restoration of media freedom and a renewed commitment to human rights. The campaign stood in sharp contrast to the corruption, media repression and gross human rights violations that had characterised the Mahinda Rajapaksa administration. This section examines three positive developments that took place in 2015 largely due to the change in government. The first is the restoration of general conditions of free speech in the country. The second specifically relates to the right to information. The third

relates to the government's change in approach and strategy in dealing with international criticism of Sri Lanka's human rights record.

2.1 Restoration and protection of free speech

Soon after he was elected, Sirisena ordered the Telecommunication Regulatory Commission of Sri Lanka to lift all bans on news websites, including bans on a number of websites that had been critical of the previous regime.[1] This move signalled the new government's initial commitment to restoring media freedom. 2015 did not contain the types of egregious attacks on journalists or media institutions that Sri Lanka had grown accustomed to during the post-war years.[2] Freedom House reported that '[t]he level of verbal and physical attacks on journalists also dramatically lessened during the year…'[3] This apparent transformation prompted the return of a number of exiled journalists.[4] Meanwhile, journalists with reputations for greater independence and integrity were appointed as editors of state newspapers. For example, Lakshman Gunasekara, a journalist and advocate for media freedom, was appointed as the editor of the Sunday Observer in February 2015. The move came

[1] Shihar Aneez & Frank Jack Daniel, 'Sri Lanka's new government promises end to repression', *Reuters*, 11 January 2015, at http://www.reuters.com/article/us-sri-lanka-rights-media-idUSKBN0KK0G020150111 [Last accessed on 16 March 2016].

[2] For a discussion of media repression during the post-war period (2009-2014) in Sri Lanka, see Gehan Gunatilleke, 'Survivalist and Irrepressible: The Two Faces of the Sri Lankan Media' in S. Udupa and S. McDowell (eds.) *Media as Politics in South Asia* (Routledge: forthcoming)

[3] Freedom House, 'Sri Lanka' in *Freedom in the World 2016*, available at https://freedomhouse.org/report/freedom-world/2016/sri-lanka [last retrieved 12 October 2016].

[4] *Ibid.*

as an important shift in the state's attitude to the media, and demonstrated its willingness to entrust its institutions to those who value free speech.

Some progress was seen in the investigations into past attacks on media personnel. For example, fresh investigations into the 2009 murder of the editor of the *Sunday Leader*, Lasantha Wickramatunge were initiated in early 2015. Moreover, several military personnel suspected of involvement in the 2010 disappearance of political cartoonist Prageeth Eknaligoda were arrested in August 2015.[5]

Despite improvements in the overall climate of media freedom in Sri Lanka, incidents of violence against journalists and state interference in media independence were recorded during 2015. In April, the police arrested a journalist affiliated to *Hiru* TV two weeks after he complained about police intimidation following his coverage of a protest.[6] The journalist claimed that false charges of theft were subsequently instituted against him in order to compel him to withdraw the complaint. In fact, according to Freedom House, there were a number of incidents in the Northern and Eastern provinces of Sri Lanka in which journalists were 'physically obstructed or assaulted while attempting to cover local government affairs'.[7] Meanwhile, there were occasions on which the state applied subtle pressure on the media to

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[5] *Ibid.* Also see United States Department of State, 'Sri Lanka 2015 Human Rights Report', in *Country Reports on Human Rights Practices for 2015* (2016), at 6.

[6] United States Department of State, *op. cit.*, at 18.

[7] Freedom House, 'Sri Lanka' in *Freedom of the Press 2016*, available at https://freedomhouse.org/report/freedom-press/2016/sri-lanka [last retrieved 12 October 2016].

control messaging on certain key issues. For example, the state media significantly downplayed the contents of the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) report when it was released in September 2015. Moreover, its coverage of the 30th session of the Human Rights Commission was relatively sparse. It is possible to speculate that such sparse coverage was intended to prevent a backlash against the government's ostensible cooperation with the international community.[8]

Two negative developments pertaining to the legal and institutional framework that deals with media freedom took place during the year. The first involved the reinstitution of the Sri Lanka Press Council. The *Sri Lanka Press Council Law,* No. 5 of 1973 had been criticised for prohibiting the disclosure of fiscal, defence, and security information. It also empowers the Council to enforce the prohibition through penalties including imprisonment. In a somewhat surprising move, President Sirisena appointed new members to the Council in July 2015. The move was severely criticised by civil society actors and independent media institutions such as the Sri Lanka Press Institute.[9] The Institute asserted that the self-regulatory mechanism set up by the media industry was more than adequate, and that the state should not be involved in regulating the media. The decision to reinstate the Sri Lanka Press Council signalled the new government's intention to quietly retain certain tools of media suppression. The second development perhaps confirms this intention. In December 2015, the Minister of Justice tabled two bills

[8] See Verité Research, *The Media Analysis* Vol. 5 No. 36 (23 September 2015).
[9] Sri Lanka Press Institute, 'Media Release on Press Council Act', January 2 016, at http://www.slpi.lk/media-release-on-press-council-act [last retrieved 12 October 2016].

to respectively amend the Penal Code, No. 2 of 1883 and the Code of Criminal Procedure Act, No. 15 of 1979. The amendment bills sought to introduce a new offence on hate speech, purportedly in response to calls for criminalising hate speech in the country. While the aim of the bills appeared to be noble, on closer inspection, it transpired that the bills aimed to replicate section 2(1)(h) of the *Prevention of Terrorism (Temporary Provisions) Act,* No. 48 of 1979 (PTA). The relevant section which describes hate speech reads:

> [Any persons who] by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups [commits an offence].

The section has been used specifically to harass and punish outspoken journalists and political actors. In 2009, journalist J.S. Tissainayagam was convicted under this provision for accusing the Sri Lankan armed forces of committing war crimes against Tamil civilians in the Eastern Province.[10] In 2013, the same provision was also used to arrest and detain

[10] See Kishali Pinto-Jayawardena, Jayantha de Almeida Gunaratne and Gehan Gunatilleke, *The Judicial Mind: Responding to the Protection of Minority Rights* (Law & Society Trust 2014), at 243-244. The authors claim: 'The fundamental contention of the prosecution was that an article written by a Tamil journalist accusing a predominantly Sinhalese Army [of war crimes against Tamil civilians] would incite the commission of acts of violence by Sinhalese readers against Tamils, or lead to racial or communal disharmony.' Also see *The Democratic Socialist Republic of Sri Lanka v. J.S. Tissainayagam*, H.C. 4425/2008, judgment of Deepali Wijesundara J.

Azath Salley, a politician who criticised the then government for its failure to prosecute those involved in the attack on the Dambulla Mosque.[11] As discussed later in this chapter, the new government announced plans to repeal and replace the PTA during the 30th session of the UNHRC. Yet within months of such a commitment, it attempted to introduce one of the most draconian provisions of that law into the regular criminal law of the country. The two amendment bills were subsequently withdrawn following a challenge in the Supreme Court,[12] severe civil society opposition[13] and a strong response from the Human Rights Commission of Sri Lanka.[14] One of the main contentions of these opponents was that the new law would be used to suppress dissent and deny media freedom – much in the same way section 2(1)(h) of the PTA has been used in the past.

The entire episode reflected a disturbing feature of the new government – its willingness to let repressive interests infiltrate the lawmaking process. It also demonstrated the dangers of placing unconditional trust in the government's law reform machinery, and the importance of the 'watchdog'

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[11] Pinto-Jayawardena *et al*, *op. cit.*, at 262.

[12] 'Two petitions in SC against Govt. amendments to Penal Code on hate speech', *The Daily FT*, 16 December 2015, at http://www.ft.lk/article/509053/Two-petitions-in-SC-against-Govt—amendments-to-Penal-Code-on-hate-speech [last retrieved 12 October 2016].

[13] 'Civil Society urges Govt. to Withdraw Bills Criminalizing Hate Speech', *Colombo Telegraph*, 15 December 2015, at https://www.colombotelegraph.com/index.php/civil-society-urges-govt-to-withdraw-bills-criminalizing-hate-speech [last retrieved 12 October 2016].

[14] Human Rights Commission of Sri Lanka, Letter to the Prime Minister dated 15 December 2015, at http://hrcsl.lk/english/wp-content/uploads/2015/12/Proposed_-amendment_to-_the_Penal_code_on_Hate_Speech.pdf [last retrieved 12 October 2016].

role played by independent actors. On the positive side, however, 2015 confirmed that civil society activism and the voices of independent institutions mattered enough to prevent the enactment of repressive legislation.

2.2 Advances in the right to information

One of the promises included in Maithripala Sirisena's election manifesto was the enactment of right to information legislation.[15] This commitment was consistent with the government's broader agenda on good governance and transparency. In fact in October 2015, the government endorsed the Open Government Declaration and joined the Open Government Partnership.[16] The government announced plans to draft a right to information (RTI) law, and established a committee of eminent persons to draft the law. The first draft of the law entered public circulation in late January 2015. It became clear that the draft law of 2004 formed the basis for the new law.[17] Although by the end of the year, the law had not been enacted by parliament, it was formally gazetted as a Bill on 18 December 2015.

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[15] New Democratic Front, A Compassionate Maithri: Governance – A Stable Country (December 2014), at 17.

[16] The Declaration and Partnership aim to
'to foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government.' See Ministry of Foreign Affairs Sri Lanka, *Sri Lanka joins the Open Government Partnership*, at http://www.mfa.gov.lk/index.php/en/media/media-releases/6234-sri-lanka-joins-the-open-government-partnership [last retrieved 10 December 2016].

[17] See Right to Information Bill (L.D.O. 4/2015). For a discussion on the 2004 draft law, see Gehan Gunatilleke, *The Right to Information: A Guide for Advocates* (Sri Lanka Press Institute; UNESCO 2014) at 61.

The Bill was hailed as one of the best in the world by organisations including ARTICLE 19.[18]

The new Bill is certainly a positive advancement with respect to the fulfilment of RTI in Sri Lanka. Several features of the Bill warrant mention. First, the Bill sets out a sound process through which any citizen could apply for information held by a public authority. The Bill provides a fairly broad definition for the term 'public authority'. The definition includes private entities or organisations 'carrying out a statutory or public function or a statutory or public service…but only to the extent of activities covered by that statutory or public function or that statutory or public service.'[19]

Second, section 4(1) of the Bill provides:

> The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

This clause ensures that a future RTI law would supersede any other written law that is designed to deny or restrict access to information. For example, the RTI law would

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[18] ARTICLE 19, 'Sri Lanka: Right to Information law must be adopted', 14 December 2015, https://www.article19.org/resources.php/resource/38220/en/sri-lanka:-right-to-information-law-must-be-adopted [last retrieved 12 October 2016].

[19] Right to Information Bill (L.D.O. 4/2015), section 46.

prevail over the aforementioned *Sri Lanka Press Council Law,* No.5 of 1973, which severely restricts media freedom. It will potentially supersede the *Official Secrets Act,* No.32 of 1955, which requires officials to withhold information that may be considered sensitive. Other laws that restrict access to particular types of information, including the Profane Publication Act, No.41 of 1958, the *Public Performance Ordinance,* No.7 of 1912, the *Obscene Publications Ordinance,* No.4 of 1927, and the PTA may also be superseded. Crucially, section 4(1) of the Bill may empower public servants constrained by non-disclosure provisions in the Establishments Code to become whistleblowers.[20]

Third, amidst a range of grounds for denying information requests,[21] the Bill contains a 'public interest override' clause. Section 5(4) provides that 'a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.' Hence an information officer and eventually the Right to Information Commission - tasked with *inter alia* hearing complaints from citizens - is obliged to provide information where the public interest in such disclosure outweighs all other considerations.

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[20] See Establishments Code of Sri Lanka: section 3 of Chapter XXX1 of Volume 1 and section 6 of Chapter XLVII of Volume 2. The Code provides: 'No information even when confined to statement of fact should be given where its publication may embarrass the government, as a whole or any government department, or officer. In cases of doubt the Minister concerned should be consulted.'

[21] See Part II of the Bill. The grounds on which information requests may be denied include privacy, national security, commercial confidence, trade secrets or intellectual property, professional privilege, parliamentary privilege and contempt of court.

Apart from the RTI Bill, another important development took place in Sri Lanka with respect to RTI. The Nineteenth Amendment to the Constitution was enacted on 15 May 2015. The Amendment was a historic move in the right direction for a number of reasons. It limited the 'authoritarian scope of the president's office' and the president's powers of appointment.[22] It also restored term limits on the presidency,[23] and reduced the scope of presidential immunity.[24] Moreover, the Amendment circumscribed presidential powers in making appointments to independent commissions and high offices including the Chief Justice, the Attorney-General and the Inspector General of Police, by subjecting such appointments to the recommendations of the Constitutional Council.[25] Apart from these crucial reforms, the Nineteenth Amendment introduced a new fundamental right into the chapter on fundamental rights. The new article 14A guarantees to all citizens 'the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right.'

The Amendment may have formally constitutionalised RTI for the first time in Sri Lanka's constitutional history. Yet certain features of article 14A are problematic, as they result in the imposition of serious limitations on the RTI framework.

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[22] Gehan Gunatilleke & Nishan de Mel, *'19th Amendment: The Wins, The Losses, and the In-Betweens* (Verité Research: 2015).

[23] Constitution of Sri Lanka (as amended by the Nineteenth Amendment), article 31(2).

[24] *Ibid.* article 35(1).

[25] *Ibid.* articles 41B(1) and 41C(1).

First, access to information under article 14A appears to be entirely contingent on a pre-existing process already 'provided for by law'. Hence without enabling legislation, the fundamental right is dormant and incapable of substantively providing for access to information. Such access would be dependent on the implicit right to information to some extent recognised by the Supreme Court under articles 10 and 14(1)(a) of the constitution, which respectively guarantees the freedom of thought, conscience and religion, and the freedom of speech and expression.[26] For instance, in the 2004 *Galle Face Green* case,[27] petitioners succeeded in obtaining information pertaining to an agreement between the Urban Development Authority and a private company for the management of Colombo's Galle Face Green. They relied on *inter alia* article 14(1)(a). In theory, however, article 14A would have been no use to the petitioners, as the right to access such information was not 'provided for by law'. In fact, the Urban Development Authority Law, No. 41 of 1978 does not provide for the publication of agreements between the Authority and third parties.

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[26] In *Fernando v. The Sri Lanka Broadcasting Corporation* (1996) 1 Sr.L.R. 157, Justice Mark Fernando observed 'information is the staple food of thought, and that the right to information … is a corollary of the freedom of thought guaranteed by Article 10' (at 171). He also observed that the 'right to obtain and record information', was an implied guarantee that made the express guarantee of the freedom of speech and expression meaningful (at 179). Also see *Visuvalingam v. Liyanage* (1984) 2 Sri.L.R. 123 at 131. See further Gehan Gunatilleke, 'The Freedom of Information as a Fundamental Rights' in Asanga Welikala (Ed.), *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives 2016), at http://constitutionalreforms.org/the-nineteenth-amendment-to-the-constitution-content-and-context [last retrieved 12 October 2016].

[27] SC (F.R.) Application No. 47/2004, judgment dated 28th November 2005.

Second, article 14A only grants the right to access information insofar as it is 'required for the exercise or protection of a citizen's right'. It is not immediately clear as to what a 'citizen's rights' means in this context. However, it is reasonable to assume that such right refers to a citizen's fundamental rights guaranteed under the constitution. Hence, as observed elsewhere, this feature 'restricts the scope of the right to information, as it attaches another prerequisite to the exercise of such right', i.e., the prerequisite that the information sought is required for the exercise or protection of a right specifically recognised by the constitution.[28] For example, the right to housing is not explicitly recognised under the Sri Lankan constitution. Hence a citizen may not be able to invoke article 14A alone to access information on the internal policies of the Ministry of Housing.

Given the nature and scope of article 14A of the constitution, the extent to which it advances RTI may be somewhat limited. However, article 14A becomes important if it is read in combination with a new RTI law. Since an RTI law would 'provide for' the right to information 'by law', a citizen could also invoke article 14A to access information that he or she would have accessed through the RTI law – provided it is required for the exercise or protection of a right. Hence in certain contexts, the Supreme Court's fundamental rights jurisdiction pertaining to article 14A could offer a citizen an additional avenue to seek access to information.[29] This could be an important avenue for the vindication of rights, particularly if the statutory process offered by a RTI law becomes weak. Hence, at least in

[28] Gunatilleke, 'The Freedom of Information as a Fundamental Rights', *op. cit.* at 191.

[29] Constitution of Sri Lanka, article 17 read with article 126.

prospective terms, article 14A may be an important development for the advancement of RTI in Sri Lanka. Nevertheless, much will hinge on the government's ability to enact a sound RTI law in 2016.

2.3 Co-sponsored resolution

In October 2015, Sri Lanka co-sponsored Resolution 30/1 at the UNHRC.[30] This was an unprecedented development. Sri Lanka's decision to not only support a resolution on its own human rights record, but to also cosponsor it, marked a radical shift in Sri Lanka's engagement with the Council. The Resolution contains commitments relating to specific human rights and rule of law issues, security sector reform and demilitarisation, power sharing and international engagement. Yet above all, the Resolution represents Sri Lanka's transitional justice agenda, particularly in terms of establishing mechanisms on truth, justice, reparations and guarantees of non-recurrence.

Certain positive features of the discourse surrounding the Resolution's formulation and adoption warrant further discussion. First, on 14 September 2015, Sri Lanka's Foreign Minister issued a clear statement at the UNHRC outlining the government's commitments to improve the human rights situation in the country and advance transitional justice reforms.[31] The statement in many ways set the agenda for

[30] Resolution 30/1 adopted at the 30th session of the United Nations Human Rights Council on 1 October 2015 (A/HRC/RES/30/1).

[31] Statement delivered by Mangala Samaraweera, Minister of Foreign Affairs of Sri Lanka at the 30th Session of the UN Human Rights Council, Geneva, on 14 September 2015, available at http://www.news.lk/fetures/item/9742-statement-by-mangala-samaraweera-at-the-30th-session-of-the-unhrc-geneva [last retrieved 12 October 2016].

negotiations around the resolution and reflected the extent to which Sri Lanka was willing to commit. The Foreign Minister's statement contained substantive commitments including to review and repeal the PTA, and 'replace it with anti-terrorism legislation in line with contemporary international best practices'. It also commits to establishing an Office on Missing Persons, a Commission for Truth, Justice, Reconciliation and Non-recurrence, and a judicial mechanism with a special counsel to prosecute crimes committed during the war. The statement was encouraging and suggested a radical departure from the hostility in which the Sri Lankan government had previously engaged the international community on matters of human rights and transitional justice. In fact, cooperation with international actors and the UN's special procedures improved significantly during the year. On 17 December 2015, the Sri Lankan government extended a standing invitation to all special procedure mandate holders, including the UN Special Rapporteur on Torture, UN Special Rapporteur on Freedom of Expression, and the UN Special Rapporteur on Independence of Judges and Lawyers.

The Foreign Minister's statement also included a clear commitment to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to criminalise enforced disappearances. The problem of disappearances has been a longstanding issue in Sri Lanka, with thousands of disappearances taking place since the late 1980s.[32] The Presidential Commission to Investigate into Complaints regarding Missing Persons chaired by Maxwell Paranagama ('Paranagama Commission')

[32] See Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History* (Oxford University Press: 2015), at 260.

continued its work in 2015. Notwithstanding serious criticism of its continued operation, the Paranagama Commission did, at the very least, confirm the extent of the problem. It acknowledged over 21,000 complaints on missing persons.[33] In this context, Sri Lanka's ratification of the International Convention for the Protection of All Persons from Enforced Disappearance on 10 December 2015 was particularly encouraging. Moreover, the UN Working Group on Enforced Disappearances conducted a visit to Sri Lanka from 9-18 November 2015 and was granted access to places of detention including locations suspected of being used for secret detention.[34] Yet overall progress on tracing missing persons, criminalising enforced disappearances and holding perpetrators to account was slow during the year.

Second, Sri Lankan civil society activism was well coordinated and reasonably effective. A civil society statement issued on 22 September 2015 called upon the government to *inter alia*:

> …(2) Introduce domestic statutory reforms to incorporate international crimes such as war crimes, crimes against humanity and genocide, without [a] statute of limitations.

[33] Report on the Second Mandate of the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances (August 2015), para.52.

[34] Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015), at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E [last retrieved 10 December 2016].

> (3) Incorporate modes of liability with respect to international crimes such as command responsibility and joint and co-perpetration into domestic law.
> (4) Provide for the appointment of international judges, lawyers, prosecutors and investigators to a special hybrid court…[35]

The statement called on the members of the Council to 'ensure that the consensus resolution on Sri Lanka…adopted at the present Council session endorses the positive commitments of the government' and to ensure a reporting role for the Office of the High Commissioner for Human Rights (OHCHR). Civil society advocates succeeded in ensuring the inclusion of most of the priorities mentioned in the civil society statement. Notably, the final resolution adopted by the Council contains a commitment to ensure:

> …the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant to violations and abuses of human rights and violations of international humanitarian law, including during the period covered by the Lessons Learnt and Reconciliation Commission [LLRC].[36]

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[35] Statement by Sri Lankan civil society members on OHCHR reports on Sri Lanka, 22 September 2015, available at http://www.ft.lk/article/473455/Statement-by-Sri-Lankan-civil-society-members-on-OHCHR-reports-on-Sri-Lanka [last retrieved 12 October 2016].
[36] Resolution 30/1, *op. cit.* at para.7.

The said paragraph clearly recognises the obligation to try and punish those most culpable in the commission of war crimes and crimes against humanity. Moreover, the reference to the period covered by the LLRC ensures that crimes dating back to the late 1980s as well as those committed soon after the armed conflict could be considered.[37] Hence the resolution sets out a fairly broad agenda for the investigation and eventual prosecution of perpetrators of crimes committed during Sri Lanka's armed conflict.

The final resolution also 'affirms…the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.'[38] Once again, the role of civil society in ensuring the inclusion of a commitment on international involvement is noteworthy. The idea that a Sri Lankan government would even endorse – let alone co-sponsor – a resolution that refers to the participation of foreign judges was unthinkable a year earlier. In such a context, the success

[37] See Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011). It is noted that the LLRC was mandated to inquire and report into matters taking place between 21 February 2002 and 19 May 2009. However, the Commission in fact covered a much broader period. It inquired into incidents ranging from the late 1980s to mid 2011. It considered the eviction of Sinhalese from Ottamvady and Panama in the late 1980s (para.6.16) and the incident involving the disruption of a Jaffna civil society meeting on 29 May 2011 (para.5.158). In paragraph 8.307 of its report, the Commission makes a direct reference to the Tamil National Alliance report on post-war violations of human rights in the North and East of Sri Lanka, tabled in Parliament on 21 October 2011. The Commission noted that 'cognizance should be taken of these allegations in terms of their relevance to the Commission's Warrant'.

[38] Resolution 30/1, *op. cit.* at para.6.

of the civil society campaign, alongside the support of the international community and the government's receptiveness, was perhaps the main human rights success story of 2015. It, however, remains to be seen just how far the government would go in fulfilling its commitments in the co-sponsored resolution.

3. Disturbing Trends in Human Rights

The end of the Mahinda Rajapaksa regime in many ways symbolised the end of authoritarianism and repression and the restoration of good governance and democratic space. As seen in the preceding section, such a transition was evident in some areas. This section offers a different perspective on 2015 by focusing on certain disturbing trends observable during the year. The section accordingly exposes a unique dichotomy, which is explored in the final section of this chapter.

3.1 Torture

Torture is prohibited under article 10 of the Sri Lankan constitution and criminalised under the *Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act,* No. 22 of 1994. On the one hand, the domestic law contains a range of prohibitions on ill treatment of persons in custody and procedural safeguards for their protection from torture.[39] Yet it has been observed even in 2015 that 'the police often bypass or ignore procedural

[39] See article 13 of the Sri Lankan constitution; Circular No. 2104/2008 issued by the Inspector General of Police on Rules relating to Persons in Police Security Custody; and Police (Appearance of Attorneys-at-Law at Police Stations) Rules of 2012, published by Gazette (Extraordinary) No. 1758/36 of 18 May 2012.

safeguards that exist in Sri Lankan law.'[40] On the other hand, the legal system in Sri Lanka continues to retain certain incentives for law enforcement officials to commit torture. Section 16 of the PTA provides that statements made by a suspect to an officer not below the rank of Assistant Superintendent of Police may be admissible as evidence against the suspect. As noted elsewhere, this provision has incentivised torture and has been severely abused by law enforcement officials.[41] Moreover, suspects arrested under the law have no statutory or constitutional right to promptly access legal counsel.[42] This gap in the law is particularly problematic in the context of police interrogations, as law enforcement officials can obtain incriminating evidence from suspects through torture. The presence of a lawyer would create obvious disincentives to such practices. The United Nations Committee Against Torture has observed: 'criminal suspects held in custody [in Sri Lanka] have no statutory right to…have prompt access to a lawyer of their choice.'[43] It also observes that Sri Lanka's *Code of Criminal Procedure Act,* No. 15 of 1979 lacks 'fundamental legal safeguards, such as the right to have a lawyer present during any interrogation and…the right to confidential communication

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[40] Human Rights Watch, *We Live in Constant Fear: Lack of Accountability for Police Abuse in Sri Lanka* (October 2015), at https://www.hrw.org/report/2015/10/23/we-live-constant-fear/lack-accountability-police-abuse-sri-lanka [last retrieved 12 October 2016].

[41] International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (2012), at 52.

[42] For a discussion on the issue, see Gehan Gunatilleke, 'GSP+: A Revaluation of Benefits' (2016) 22 *The Bar Association Law Journal* 112.

[43] United Nations Committee against Torture, *Concluding observations of the Committee against Torture: Sri Lanka*, 8 December 2011, CAT/C/LKA/CO/3-4, at para.7.

between lawyer and client.'[44] In this context, the government's commitments under the UNHRC Resolution 30/1 and its recent decision to apply for the European Union's (EU) Generalised Scheme of Preferences (GSP) Plus facility are encouraging. The EU withdrew GSP Plus from Sri Lanka in 2010 citing fifteen issues. Incidentally, reforming the PTA and granting suspects prompt access to legal counsel were two of these issues. Given these conditions, and the current government's clear intention to regain the facility, there is a reasonable basis to argue that the government is committed to removing from the law incentives to torture.

Meanwhile, despite the criminalisation of torture, only five or six torture convictions have been secured since 1994.[45] Two of these convictions were in fact secured during 2015. In December, the High Court of Kandy sentenced two police officers, Nihal Rajapakse and W.M. Balasuriya to seven years imprisonment for the torture of Rohitha Liyanage and Sarath Bandara ten years earlier.[46] Yet the extremely low rate of convictions no doubt serves to promote impunity with respect to police torture.

Problems concerning impunity and the lack of effective safeguards appear to have been carried forward from the previous regime. Yet a question remained on whether the

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[44] *Ibid.*

[45] See Juan E. Mendez, *Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment: on the Official joint visit to Sri Lanka – 29 April to 7 May 2016*, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E [last retrieved 12 October 2016].

[46] United States Department of State, *op. cit.* at 3.

rate of torture had in fact reduced in 2015. The United States Department of State report on Sri Lanka's human rights situation in 2015 only mentioned a single case of torture. According to the report, in June 2015, parents and relatives of a missing child were tortured by Kilinochchi police officers during their interrogation.[47] The report also refers to two other reports by international organisations that claimed that torture continued to take place under the new government. The first is Freedom from Torture's report *Tainted Peace: Torture in Sri Lanka since May 2009*.[48] According to the report, six of the torture cases processed by Freedom from Torture were from 2014.[49] It, however, goes on to note that 'Freedom from Torture has direct knowledge of a number of specific cases of torture committed in Sri Lanka since January 2015' without further elaboration. The second report is the International Truth and Justice Project's report titled *Silenced: Survivors of Torture and Sexual Violence in 2015*.[50] The report contains evidence of 20 cases of torture, all of which it is claimed took place in 2015. Additionally, the report refers to five abductions that took place after the August 2015 parliamentary elections.[51] The two reports offer compelling evidence of torture in Sri Lanka during the post-war period. They also offer some intuitive sense of the very high likelihood that the practice of torture continued

[47] *Ibid.* at 8.

[48] Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009* (August 2015), at https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf [last retrieved 12 October 2016].

[49] *Ibid.* at 15, at footnote 9.

[50] International Truth and Justice Project, *Silenced: Survivors of Torture and Sexual Violence in 2015* (January 2016), at http://www.itjpsl.com/assets/Silenced-jan-2016.pdf [last retrieved 12 October 2016].

[51] *Ibid.* at 13.

throughout 2015. Yet, due to certain methodological weaknesses, the two reports fail to offer conclusive evidence for the claim that torture took place specifically in 2015.

The Freedom from Torture report states that 'the Sri Lankans whose [Medico-legal Reports] feature in this study were referred by their legal representatives to Freedom from Torture centres in Birmingham, Glasgow, London, Manchester and Newcastle.'[52] Moreover, the International Truth and Justice Project states that the victims considered in the report were now 'in three different countries.'[53] Hence the entire research sample considered by the two organisations comprised those who were currently living outside Sri Lanka. Such an attribute would not necessarily devalue the claim that these were victims of torture, given the corroborative methods adopted. Yet the corroborative methods used to establish precisely *when* the injuries were sustained were not as compelling. Thus the fact that the entire sample resided outside Sri Lanka raises a serious doubt with respect to the claim that such torture took place specifically in 2015. The main reason for such doubt stems from the fact that a large majority of the interviewed victims were asylum seekers. In fact, the International Truth and Justice Project report states that all except one witness had pending asylum applications.[54]

Thus a large majority of interviewed victims were undoubtedly incentivised to establish a continuing threat of persecution in terms of the situation in 2015 – *after* the

[52] Freedom from Torture, *op. cit.* at 14.
[53] The International Truth and Justice Project, *op. cit.* at 13.
[54] *Ibid.* at 34.

change of government. Of course, this may not have been the case at all. However, methodologically speaking, the incentive structure that applied to virtually the entire sample of victims weakened the claim that these cases were from 2015, rather than from before the regime change.

The Human Rights Commission of Sri Lanka later put to rest all doubts about the rate of torture in 2015. One of its commissioners, Ambika Satkunanathan, stated that the Commission received a total of 413 complaints of torture in 2015.[55] The figure was also corroborated during a media interview of the Chairperson of the Human Rights Commission, Dr. Deepika Udagama.[56] These figures indicate that the practice of torture continued even after the change of government in January 2015. They also indicate that, in Sri Lanka, the practice of torture is institutionally embedded, and extends well beyond the policy preferences of the government of the time. The statistics reveal that Sri Lanka may very well be entering a period in which serious human rights violations continue to take place under 'normal' circumstances. These are the types of violations that emanate

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[55] Raisa Wickrematunge, *A Broken System: Sri Lanka's ongoing battle against torture*, 26 June 2016, at https://social.shorthand.com/raisalw/3ge03UdC7c/a-broken-system [last retrieved 12 October 2016].

[56] Ruwan Laknath Jayakody, 'Over 50 complaints of torture during first three months', *The Nation*, 2 July 2016, at http://nation.lk/online/2016/07/02/50-complaints-torture-first-three-months.html [last retrieved 12 October 2016]. At the time of writing this overview chapter, the Human Rights Commission of Sri Lanka published its report to the United Nations Committee Against Torture, which confirmed that 420 complaints of torture had been made to the Commission in 2015. See Human Rights Commission of Sri Lanka, *Report of the Human Rights Commission to the Committee Against Torture: Review of the 5th Periodic Report of Sri Lanka* (October 2016), at 4.

from institutional weaknesses, and the government's failure to remedy such weaknesses, rather than from concerted policy choices. In some sense, the battle to ensure the government's acknowledgement of the problem and commitment to reform may be won. Yet, as these statistics clearly suggest, the war to combat the actual practice of torture in Sri Lanka is far from over.

3.2 Religious violence

The post-war era witnessed a surge in religious violence in Sri Lanka. In *The Chronic and the Acute: Post-war Religious Violence in Sri Lanka*, this author explored statistical data on religious violence from 2013 and 2014. Over 200 attacks on the Muslim community were perpetrated during each of the two years.[57] Moreover, over 60 such attacks were perpetrated against Christians.[58] Meanwhile, a study produced by Verité Research and the National Christian Evangelical Alliance of Sri Lanka (NCEASL) concluded that '[i]n 2013 and 2014 alone, 39 churches were forced to suspend activities'.[59]

Hate groups, such as the *Bodu Bala Sena* (BBS), were responsible for instigating much of the violence against religious minorities during this period. One of the features of such violence was the tacit endorsement the state afforded to groups such as BBS. These groups accordingly enjoyed incredible impunity to attack individuals, businesses and places of worship. Thus, with the change of government

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[57] Gehan Gunatilleke, *The Chronic and the Acute: Post-war Religious Violence in Sri Lanka* (Equitas; ICES: 2015), at 18-24.
[58] *Ibid.* at 19-26.
[59] Verité Research & NCEASL, *Silent Suppress ion: Restrictions on Religious Freedom of Christians (1994-2014)* (2016), at 3.

in 2015, there was an expectation that religious violence in the country would come to a swift end. This expectation was partially met in 2015 due to a notable decrease in what has been described as 'acute' violence, i.e., 'sporadic episodes of high-intensity violence…characterised by widespread physical assaults, destruction of property and a general breakdown in law and order.' [60]

However, two disturbing trends in religious violence continued to take place in 2015. First, 'chronic' acts of violence continued against Christian groups. 'Chronic' violence has been defined as 'continuous, low-intensity attacks ranging from hate campaigns and propaganda, to threats, intimidation, minor destruction of property and occasional physical violence.'[61] Despite the regime change, the normalised realm of violence against religious minorities – often perpetrated at the local level without concerted state backing – continued during the year. By October 2015, NCEASL recorded as many as 60 incidents of 'violent attacks, intimidation and harassment' against churches and Christian groups after the government changed in January 2015.[62] Given the fact that around the same number of incidents was recorded in 2013 and 2014, it is apparent that

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[60] Gunatilleke, *The Chronic and the Acute*, *op. cit.* at 10.

[61] *Ibid.*

[62] Athula Vithanage, Violence against Christians in Sri Lanka continue, *www.jdslanka.org*, 12 October 2015, at http://www.jdslanka.org/index.php/news-features/human-rights/564-violence-against-christians-in-sri-lanka-continue [last retrieved 12 October 2016], reproducing two incident reports of the NCEASL. The number of attacks against Christians in 2015 was subsequently confirmed as 87. See United States Department of State – Bureau of Democracy, Human Rights, and Labour, 'Sri Lanka 2015 International Religious Freedom Report' in *International Religious Freedom Report for 2015* (2016), at 6.

governmental change has had no impact whatsoever on 'chronic' violence against the Christian community. In one particularly egregious incident on 23 July 2015, two Buddhist monks together with a mob intimidated a Christian pastor at his residence – demanding that he undertakes not to use his residence as a place of Christian worship. Later that day the residence was stoned, and a week later a vehicle at the residence was set ablaze and destroyed.

The support of lower level state actors was obtained in some of the reported incidents. For example, on 6 September 2015, a local police station enforced a 2008 circular issued by the then Ministry of Religious Affairs and Moral Upliftment to compel a Christian pastor in Bandaragama, Kalutara to register with the equivalent ministry in order to operate a religious centre.[63] Similarly, on 9 September, four officers from the religious affairs branch of the Divisional Secretariat in Kegalle visited a pastor operating a religious centre and threatened to seal the premises if he refused to register the centre with the ministry.[64] It is noted that the 2008 circular is illegal, as it is not issued in terms of any written law.[65] However, state officials at the local level continue to enforce the circular against religious minorities – often at the behest of local Buddhist clergyman.

Second, hate groups continued to operate in 2015 without incurring any significant political costs for their actions during previous years. While the space to operate freely was undoubtedly diminished, the lack of credible investigations

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[63] Bureau of Democracy, Human Rights, and Labour, *op. cit.* at 5.
[64] *Ibid.*
[65] Verité Research & NCEASL, *Judicial Responses to Religious Freedom: A Case Analysis* (2015), at 7-8.

and prosecutions for past acts perpetuated their impunity. This impunity emboldened them to continue hate campaigns targeting religious minorities. For example, the BBS launched a campaign to remove a Muslim shrine close to a Buddhist monastery in Kurugala. At a media briefing in February 2015, the General Secretary of the BBS, Galagoda Aththe Gnanasara Thero, declared: 'we will not allow these infidel Muslims to run riot in Kurunegala.'[66] Hence, much like the situation pertaining to Christians, a drop in 'acute' violence against Muslims in 2015 did not necessarily mean that 'chronic' violence ceased.

A rare exception to the general impunity in which Gnanasara Thero acted was witnessed in October 2015, when he was compelled to surrender himself to a magistrate's court.[67] An arrest warrant had been issued against him for his failure to answer court summons. The case concerned pending charges against Gnanasara Thero under the Sri Lankan Penal Code for allegedly insulting the Quran in March 2014.[68] Yet the state's ability to sustain his cooperation soon waned. The BBS subsequently issued a public statement in November announcing that its members would refuse to appear in response to such summons in the future. Gnanasara Thero accordingly refused to appear in court for the next hearing of the case.

2015 thus proved to be a mixed year in terms of religious violence. On the one hand, the space to commit 'acute' acts of violence against religious minorities decreased. This notable decrease in such violence since the change of

[66] Bureau of Democracy, Human Rights, and Labour, *op. cit.* at 7.
[67] *Ibid.* at 4.
[68] *Ibid.*

government ought to be acknowledged. On the other hand, 'chronic' violence continued to take place with impunity. Moreover, no real progress was achieved in prosecuting perpetrators of past acts of religious violence.

4. Conclusion

The January 2015 presidential election marked an important shift in terms of the protection and promotion of human rights in Sri Lanka. This shift was sustained throughout the year and was reflected in a notable decrease in state repression of citizens. Journalists, human rights defenders and political activists operated relatively freely and without fear of violence. In this context, 2015 reminds us of the importance of democratic transitions in the advancement of human rights, and of the interdependence of democracy and human rights. The transition from authoritarianism to republicanism – at least in relative terms – appears to have had a demonstrably positive impact on the overall human rights situation in the country. In this context, the most important positive feature of Sri Lanka's human rights situation in 2015 was the withdrawal of the state's direct support for gross human rights violations. The year did not see the same spate of extrajudicial killings, enforced disappearances and media repression that was witnessed in previous years.

This positive shift was also evident in the realm of critical discourse, where media freedom and civil society activism saw significant gains during the year. In fact, civil society activism and the intervention of independent institutions such as the Human Rights Commission of Sri Lanka became crucial to preventing the enactment of repressive legislation. Thus the broadening space for activism and criticism in 2015 must be safeguarded as a means of containing future repressive forces and consolidating progress.

Yet 2015 also paints a bleaker picture. Amidst the advances, the year still failed to deliver on at least two major human rights challenges. First, the practice of torture continued at an alarming rate – the Human Rights Commission of Sri Lanka received, on average, more than one torture complaint per day. Second, religious violence continued to take place particularly at the local level. While the state did not actively encourage such violations, it did little to prevent the violations, or the impunity with which they were perpetrated. What is evident from Sri Lanka's torture and religious violence records in 2015 is that such human rights challenges and general conditions of impunity run very deep, and that they exist regardless of the government in charge. Hence post-2015, Sri Lanka must confront the reality that certain systemic human rights challenges cannot be addressed purely through democratic transitions. Sri Lanka's 'acute' human rights problems – exemplified by egregious violations both during and immediately after the armed conflict may have ended. But they are in a sense survived by 'chronic' problems. These problems have existed for decades, and will continue to exist for decades more if not understood properly.

The role of the state in this transition from the 'acute' to the 'chronic' is significant. Prior to 2015, the state was a direct perpetrator of human rights abuses. In 2015, its culpability related mostly to its incapacity to prevent systemic rights abuses. The systemic practice of torture and the continuing – and disturbingly normalised – acts of violence against religious minorities perfectly represent this 'chronic' phenomenon. During the year, the present government also revealed a glimpse of a more repressive side to it. Its decision to replicate draconian provisions of the PTA in a purported attempt to curb hate speech reveals that actors within the

government are still keen to control free speech and suppress opposition. Hence the role of independent actors in resisting such repressive agendas is vital to ensuring progress in eradicating the 'chronic' abuse of human rights, and preventing relapse towards more 'acute' violations.

When it began, 2015 was poised to become a truly transformative year. It represented a new chapter in Sri Lanka's political history and promised a transformation of our political culture. Yet at the end of the year, that promise, though not quite broken, was far from fulfilled. Space for critical discourse was won and maintained during the year; yet the familiar story of impunity prevailed throughout. It is therefore hoped that in 2016, that very discourse would somehow produce something distinctly transformative – a permanent break from a history of impunity.

II
JUDICIAL INTERPRETATION OF FUNDAMENTAL RIGHTS

*Dinesha Samararatne**

1. Overview

The contribution of the judiciary to the interpretation of fundamental rights (FR) in the year 2015 is not qualitatively different from its record in the recent past. Past issues of this volume demonstrate that on the one hand the types of petitions that challenge FRs are restricted to a few issues and on the other judicial interpretation of these FRs are static. Most judgements are primarily concerned with findings of fact rather than with jurisprudential questions. Furthermore the jurisprudence of the Supreme Court (SC) does not reflect the contestations regarding human freedom that are ongoing in Sri Lanka, particularly in the post-war context. Based on an analysis of FR judgements; writ applications before the Supreme Court and its Special Determinations, it is argued in this chapter that regrettably, the year 2015 is a continuation of this trend.

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2. Judiciary in 2015

In his speech at the Ceremonial Farewell to Chief Justice Bandaranayake the then President of the Bar Association of Sri Lanka Upul Jayasuriya observed that 'All the democratic institutions that we cherished have collapsed around us. We have to build them afresh.'[1] The year 2015 began on a rather difficult note for the Sri Lankan judiciary due to the problematic manner in which Chief Justice Bandaranayake was restored to her office prior to her voluntary retirement. The abrupt 'unseating' of the 'de facto Chief Justice' and the resumption of office by the 43rd Chief Justice was, to say the least, an extra-legal response to a grave and unprecedented constitutional crisis. The purported impeachment of Chief Justice Bandaranayake initiated by the Parliament end of 2014 was challenged by the Chief Justice on two main grounds. One was that impeachment by way of standing orders of Parliament was a violation of the Rule of Law. The Court of Appeal upheld this argument and had in fact quashed the report of the Parliamentary Select Committee on that basis.[2] The second was that even within the existing process, there was a procedural error in that a formal address has not been made to request the President to impeach the Chief Justice.[3] The few who

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[1] See copy of the speech reproduced at https://www.colombotelegraph.com/index.php/goodbye-to-the-first-ever-lady-chief-justice-of-sri-lanka/ accessed on 5 July 2016.

[2] *Shirani Bandaranayake v. Speaker of Parliament* CA (Writ) Application 411/2012, CA Minutes 7 January 2013. This decision was reversed in the Supreme Court in *AG v Shirani Bandaranayake* SC Appeal No 67/2013, SC Minutes 21 February 2014

[3] See for instance 'How President Sirisena Used his Powers to Remove Mohan Peiris and Restore Shirani Bandaranayake as Chief Justice' 28 January 2015 available at http://dbsjeyaraj.com/dbsj/archives/37844 accessed 5 July 2016.

defended the impeachment argued that the procedure that was followed was mandated by the Constitution and that the Speaker's Certificate should cure any defects in the process that was followed.[4] The upheaval and turbulence experienced over the impeachment caused serious and long term damage to the independence of the judiciary, its legitimacy and the rule of law. Arguably, this crisis is evident in the jurisprudence of this period as well.

3. Scope of Analysis

This chapter reviews the SC jurisprudence of 2015: the fundamental rights judgements; writ applications determined in appeal by the SC; and the Special Determinations on the constitutionality of Bills placed in the order paper of Parliament. The FR and writ judgements have been obtained from the official website of the SC while the Special Determinations have been obtained from the *Hansard* records for 2015.[5] The primary limitation of the analysis undertaken is that dismissal of FR petitions, bench orders on FR and writ matters, or refusal for special leave to appeal in writ matters are not discussed. Accessing information with regard to these aspects of the SC's work is challenging as the information is not readily accessible to the public.

4. Judgements under Art 126

In keeping with the general trend in the FR jurisdiction of the SC, all sixteen FR judgements involved the right to

[4] See for instance 'Removal of a Chief Justice from Office' 2 March 2015 *The Island* available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=120601 accessed 5 July 2016.

[5] For the FR and Writ judgements see www.supremecourt.lk and for the *Hansard* see www.parliament.lk

equality. In many of these cases the Court considered the right to be free from arbitrary arrests and detention and the right to be free from torture in addition to the right to equality. Ten of the sixteen cases were dismissed by the Court while compensation was granted in three of the six cases in which the Court held with the petitioner. The table below provides a summary of these judgements.

Figure 1
Judgements on Fundamental Rights in 2015

	Case	FR challenged	Issue	Order	Amount of Compe -nsation
01.	*Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence*[6]	Art 12 (1), 12 (2), 13 (1), 13 (2)	Detention, false charges and abduction	Respondents infringed Articles 12 (1), 13 (1), 13 (2)	per petitioner Rs. 25 000 as costs and 20 000 as compensation
02.	*ACME Lanka Distillers v Min of Finance* [7]	Art 126 (2)	Excise notification in the Gazette	Application set down for hearing merits.	-
03.	*Sakir v Principal, Holy Family Convent*[8]	Art 12 (1)	School admission- proximity of residence	Application dismissed.	-

[6] *Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence* SC(FR) 108/ 2010 SC Minutes 28 July 2015.

[7] *ACME Lanka Distillers v Min of Finance* SC(FR) 64/ 2015, 71/ 2015, 72/ 2015, 81/ 2015 SC Minutes 24 June 2015.

[8] *Sakir v Principal, Holy Family Convent* SC(FR) 39/ 2013 SC Minutes 23 March 2015.

	Case	FR challenged	Issue	Order	Amount of Compe -nsation
04.	*Sampath v Principal, Vishaka Vidyalaya*[9]	Art 12 (1)	School admission- proximity of residence	Application dismissed.	-
05.	*Safra Travels and Tours v Zameel*[10]	Art 12(1), 14(1)e	'Hajj' Quota	Application dismissed.	-
06.	*Chandraratne v Governor of the North Western Province*[11]	Art 12 (1)	Not considered for promotion	Application dismissed.	-
07.	*Alles v Inspector General of Police*[12]	Art 13 (1), 12(1)	Arbitrary arrest	Violation of 12 (1), 13 (1)	Maintain status quo until final hearing.
08	*Coral Sands Hotel v Min of Finance*[13]	Art 12 (1), 13 (6)	Excise license fee extension	Restraining interim order until final hearing	-
09	*Disanayake v Secy Min of public Administrative and Home Affairs*[14]	Art 12 (1)	Recruitment scheme and seniority issues	Application dismissed.	

[9] *Sampath v Principal, Vishaka Vidyalaya* SC(FR) 31/ 2014 SC Minutes 26 March 2015.

[10] *Safra Travels and Tours v Zameel* SC(FR) 230/ 2015 SC Minutes 23 July 2015.

[11] *Chandraratne v Governor of the North Western Province* SC(FR) 204/ 2011 SC Minutes 20 May 2015.

[12] *Alles v Inspector General of Police* SC(FR) 171/ 2015 SC Minutes 2 September 2015.

[13] *Coral Sands Hotel v Min of Finance* SC(FR) 170/ 2015 SC Minutes 8 December 2015.

[14] *Disanayake v Secy Min of public Administrative and Home Affairs* SC(FR) 611/ 2012 SC Minutes 10 September 2015.

	Case	FR challenged	Issue	Order	Amount of Compe -nsation
10	*Kumara v Secy Min of Youth Affairs and Skills*[15]	Art 12 (1)	Appointment scheme	Application dismissed.	-
11	*Mangala v Inspector General of Police*[16]	Art 12 (1), 13 (3), 13 (5)	Disciplinary matter	Application dismissed.	-
12	*Nimalasiri v Commanding Officer, Panagoda Army Camp*[17]	Art 12 (1)	Re-enlistment in Army	Application dismissed.	-
13	*Sriikith v National Water Supply & Drainage Board*[18]	Art 12 and 14(g)	Recruitment scheme	Application dismissed.	-
14	*Banneheka v Principal, Maliyadeva Boys College*[19]	Art 12 (1)	Proximity to school	Application dismissed.	-
15	*Jagath Perera v Inspector of Police, Mirigama Police Station*[20]	Art 11, 12 (1), 13 (1), 13 (2)	Police assault	Articles 11 and 12(1) infringed.	Rs. 500 000
16	*Wahalathanthri v Inspector General of Police*[21]	Art 12(1), 12(2), 14(1) (a) Articles 13(1), 13 (2)	Election violence, police inaction	Articles 12 (1) (2), 14(1)(a) infringed	Rs. 20 000

[15] *Kumara v Secy Min of Youth Affairs and Skills* SC(FR) 451/ 2011 SC Minutes 17 September 2015.

[16] *Mangala v Inspector General of Police* SC(FR) 273/ 2014 SC Minutes 4 June 2015.

[17] *Nimalasiri v Commanding Officer, Panagoda Army Camp* SC(FR) 256/ 2010, SC Minutes 17 September 2015.

[18] *Sriikith v National Water Supply & Drainage Board* SC(FR) 498/ 2011 SC Minutes 25 March 2015.

[19] *Banneheka v Principal, Maliyadeva Boys College* SC(FR) 46B/ 2014, SC Minutes 25 March 2015.

[20] *Jagath Perera v Inspector of Police, Mirigama Police Station* SC(FR) 1006/ 2009 SC Minutes 15 December 2015.

[21] *Wahalathanthri v Inspector General of Police* SC(FR) 768/ 2009 SC Minutes 5 November 2015.

4.1 Right to Equality

During the period under review no significant judicial advancements were made in the right to equality jurisprudence. In keeping with the general trend in the FR jurisprudence the judgements primarily involve a determination of facts with minimal critical jurisprudential engagement. Certain observations made by the Court with regard to the test that should be satisfied in establishing a violation of the right to equality however, are noteworthy as they reflect the gaps in Sri Lanka's jurisprudence on the right to equality.

In the case of *Sampath v Principal, Vishaka Vidyalaya*[22] the Court ruled on the standard that must be satisfied in establishing a violation of the right to equality and/or the prohibition on non-discrimination. This ruling is problematic in that the Court cited the Indian SC which held that 'intentional and purposeful discrimination' should be 'shown to be present'.[23] Under International Human Rights law, intention and/or purpose is irrelevant for the purpose of establishing discrimination.[24] None of the descriptions of the right to non-discrimination in human rights treaties refer

[22] *Sampath v Principal, Vishaka Vidyalaya* SC(FR) 31/ 2014 SC Minutes 26 March 2015.

[23] Court cited *Buddhan Choudhury v State of Bihar*, 1955 AIR (SC) 191, Das C.J 'The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.'24 See in this regard, Art 2(1) of the ICCPR.

to intention or purpose.[25] The Court's observations in the *Sampath* case therefore is problematic and contradict established international human rights law standards which have been accepted by Sri Lanka.[26]

Similarly in the case of *Chandraratne v Governor of the North Western Province*[27]in discussing the test for a violation of the right to equality the Court invoked an older judicial view. Relying on a judgement issued in 1986 the Court observed that 'to sustain the plea of discrimination based on 12(1)' a petitioner would have to 'satisfy' the Court that he had 'been treated differently' and that such treatment was 'without a reasonable basis.'[28] The expansion of the scope of 12(1) in Sri Lanka in the 1990s to encompass violations of criteria stipulated in regulations; departure from stated policy; and more broadly violations of the Rule of Law is now well established and known.[29] Moreover, the right to equal treatment has been interpreted to include principles of administrative law such as rules of natural justice and the concept of legitimate expectations.[30] The Court's invocation

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[25] See for instance, Art 26 of the ICCPR 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such asrace, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

'[26] Sri Lanka has ratified all the major human rights treaties including the ICCPR.

[27] *Chandraratne v Governor of the North Western Province* SC(FR) 204/ 2011 SC Minutes 20 May 2015.

[28] *Chandraratne v Governor of the North Western Province*ibid 13.

[29] For a discussion of this development and relevant case law see Mario Gomez 'The Modern Benchmarks of Sri Lankan Public Law' (2001) 118 SALJ 581.

[30] See for instance, *Samarakoon v UGC* [2005] 1 Sri LR 119.

of the earlier approach to determining 'equal treatment before the law' is not merely anachronistic but also conceptually narrow to an unacceptable degree. This earlier approach was followed and affirmed in the case of *Kumara v Secy Min of Youth Affairs and Skills*[31] and in *Disanayake v Secy Min of public Administrative and Home Affairs*[32] which were also decided in the same year.

In another case, the Court adopted a deferential view to expert opinion and administrative discretion in the area of recruitment. In *Dissanayake v Secy Mininstry of Public Administrative and Home Affairs*[33] the Court refused to uphold the petitioner's claim that the scheme of recruitment for post of statistician in the Department of Census and Statistics was arbitrary. Court noted that 'Even from a practical point of view, the functions of the Court is not to advice in matters relating to promotions of public officers. The Court can only strike down a scheme of recruitment if it is wholly unreasonable (...) It would be hazardous and risky for the Court to tread an unknown path and should leave such task to the expert bodies.'[34] This is a commendable approach in that the Court strikes a balance between ensuring respect for due process while acknowledging a 'margin of appreciation' for the expertise of the administrator.

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[31] *Kumara v Secy Min of Youth Affairs and Skills* SC(FR) 451/ 2011 SC Minutes 17 September 2015.

[32] *Disanayake v Secy Min of public Administrative and Home Affairs* SC (FR) 611/ 2012 SC Minutes 10 September 2015.

[33] *Disanayake v Secy Min of public Administrative and Home Affairs* SC(FR) 611/ 2012 SC Minutes 10 September 2015.

[34] *Disanayake v Secy Min of public Administrative and Home Affairs* 8.

This view was echoed in the case of *Nimalasiri v Commanding Officer, Panagoda Army Camp.*[35] While the Court reaffirmed its view that the doctrine of legitimate expectation (procedural and substantive) are within the scope of Art 12(1) it held that it can only arise under clear and definite circumstances. This case involved a petition which alleged a violation of a legitimate expectation that the petitioner would be enlisted in the Army subsequent to being discharged from legal proceedings that had been instituted against the petitioner. In rejecting this claim, Court succinctly recalled the principles relating to the doctrine of legitimate expectation as it applies in Sri Lankan public law. Mention was made of its European origins and its current applicability in both public law and in labour law in Sri Lanka. The Court noted that a legitimate expectation arises where 'an undertaking or promise' is given by a public official.[36] However the Court further noted that this is not the only condition under which a legitimate expectation would arise and that the doctrine 'has a potential to develop further.'[37] Further the Court pointed out that expectations are 'legitimate' if they are reasonable and if the fulfilment of the expectation is within the jurisdiction of the public authority.[38]

The above analysis suggests that in the application of principles of administrative law the Court's reasoning is more sound that when it applies the concept of the right to equality. The understanding of the Court of the right to equality and

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[35] *Nimalasiri v Commanding Officer, Panagoda Army Camp* SC(FR) 256/ 2010, SC Minutes 17 September 2015.
[36] *Ibid 9*.
[37] *Ibid.*
[38] *Ibid.*

non-discrimination, seems to be out of step with the jurisprudential advancements that are being made in this area in international human rights law.

4.2 Right to Liberty

Significant jurisprudential developments are not discernible with regard to the right to liberty during the period under review. Nevertheless in the handful of cases in which this right was upheld the Court has affirmed and followed the progressive interpretation of the right that has been established by the SC in the past. For instance, the case of *Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence*[39]determined during the period under review amounts to a useful and commendable restatement on the scope of the right liberty in Sri Lanka. The petition was filed by a lawyer on behalf of 13 former Army Officers who (at the time) were being detained without charges. They were supporters of a Presidential candidate in the election of 2010 who had been arrested and detained. In concluding that the petitioners' right to be free from arbitrary arrest and detention were violated, Court recalled several of the celebrated opinions of the SC (such as the *Channa Pieris v AG)* in which the right to liberty was critically discussed incisively.[40]

The case of *Alles v Inspector General of Police*[41] in which leave to proceed was granted in 2015 is a classic example of particular type of petitions that were reported as being filed

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[39] *Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence* SC(FR) 108/ 2010 SC Minutes 28 July 2015.

[40] *Channa Pieris v AG* [1994] 1 Sri LR 1.

[41] *Alles v Inspector General of Police* SC(FR) 171/ 2015 SC Minutes 2 September 2015.

before the SC more recently.[42] The petitioner claims that he fears an imminent violation of his right to be free from arbitrary arrest. In this case, the Court ordered that the status quo of the petitioner should be maintained until the SC proceedings are concluded. Relying on precedent Court observed that 'It is for the Court to determine the validity of the arrest objectively' and also that the executive is required to establish the reasons for the arrest through the provision of 'sufficient material'.[43] In other words, the Court affirms the right to liberty of all persons and the limited power of the state to restrict this freedom based on reasonable grounds. Judicial review of such restrictions is essential as a check on the power of arrest and detention of the state.

The right to freedom from torture was considered by the Court only in one petition for the year 2015. It is not clear as to whether this number is a result of the lack of petitions being filed before the Court or because petitions were dismissed by the Court. The prevalence of torture and its gruesome form is well documented and established.[44] The observations made by the Special Rapporteur on Torture at the conclusion of his visit to Sri Lanka[45] and the report of

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[42] See for instance, 'Right's Petition against imminent arrest: Basil refused leave to proceed' *Daily Mirror* 9 June 2016, available at http://www.dailynews.lk/?q=2016/06/09/law-order/84157 accessed on 7 July 2016.

[43] *Alles v Inspector General of Police* SC(FR) 171/ 2015 SC Minutes 2 September 2015 3.

[44] See for instance, *'Authority without Accountability: the crisis of impunity in Sri Lanka (International Commission of Jurists 2012).*

[45] Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez* on the Official joint visit to Sri Lanka – 29 April to 7 May 2016 - Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&Lang ID=E accessed on 11 July 2016

the OISL (OHCHR Inquiry on Sri Lanka) are but two examples of such documentation.[46] The lack of cases being reported and/or determined by the SC on the freedom from torture is an example of the gap between the jurisprudence of the Court and the contestations regarding human freedom in wider Sri Lankan society. In the one case that considered the freedom from torture, *Jagath Perera v Inspector of Police, Mirigama Police Station* the right was vindicated.[47] The petition narrates what appears to be a common experience of vulnerable or weaker sections of society – a man who gets involved in an inquiry to assist his colleague is ultimately beaten mercilessly and tortured by the police. The Court quoted extensively from the case of *Silva v Kodituwakku* in this case.[48] As early as 1987 in the *Silva* case the then SC adopt a broad definition of torture and affirmed it as an absolute right. The Court describes the state responsibility to refrain from torture and the Court's duty to 'protect and defend this right jealously to its fullest measure.'[49] Accordingly, the Court concludes that the right to be free from torture and the right to equality of the petitioner has been violated.

4.3 Freedom of Speech and Expression

Only one case involved the freedom of expression in 2015. The case of *Wahalathanthri v Inspector General of Police*[50] provided the SC the opportunity to consider the scope of

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[46] OISL Report (September 2015).

[47] *Jagath Perera v Inspector of Police, Mirigama Police Station* SC(FR) 1006/ 2009 SC Minutes 15 December 2015.

[48] *Amal Sudath Silva v Kdituwakku* [1987] 2 Sri LR 119.

[49] *Ibid 8.*

[50] *Wahalathanthri v Inspector General of Police* SC (FR) 768 2009 SC Minutes 5 November 2015.

the freedom of expression in the context of criticising the government. This case involved a petition made by a member of the JVP (*Janatha Vimukthi Peramuna)* alleging police inaction regarding election violence perpetrated against the party. The police in this instance had pressed charges against the petitioner for allegedly violating the Penal Code by virtue of a banner displayed at the party office. Section 120 of the Penal Code, under which the petitioners were charged, criminalises the causing of feelings of disaffection to among other things the Government. In holding with the petitioner in this case, Court observed that 'Every citizen has a right to criticise an inefficient or corrupt government without fear of civil as well as criminal prosecution. This absolute privilege is founded on the principle that it is advantages [sic] for the public interest that the citizen should not be in any way fettered in his statements (...).'[51]Commendably the Court located its determination against the robust jurisprudence of the SC by drawing from celebrated cases such as the *Channa Pieris* case and the *Jana Gosha* case.[52] In these cases the Court vigorously defended the freedom to protest against the government and the right to liberty. In the *Jana Gosha* case for instance, the Court upheld a violation of the right to freedom of expression where a protester was prevented from beating a drum. In the present case, the Court drew from this jurisprudence in defending the petitioner's right to freedom of expression.

4.4 Procedural Requirements

The time bar and the scope of the term 'executive and administrative action' under Art 126 were considered by the

[51] *Wahalathanthri v Inspector General of Police* SC (FR) 768/ 2009 SC Minutes 5 November 2015, 11.

[52] *Channa Peiris v AG* [1994] 1 Sri LR 1; *Amaratunga v Sirimal* [1993] 1 Sri LR 264.

SC in the case of *ACME Lanka Distillers v Minster of Finance.*[53] The petitioners challenged an Excise notification regarding licensing fees that had been published pursuant to budgetary proposals. The petitions were filed within one month of the relevant Gazette being available for purchase by the public. It was argued on behalf of the state that the petitions were out of time on the basis that time began to run from the time the budgetary proposals were made in Parliament. Court rejected this preliminary objection affirming that 'Article 126(2) must be given a generous and purposive construction.'[54] Court further noted that failure to petition Court regarding an imminent infringement does not preclude a victim from filing a petition claiming an actual violation. Court also noted that '(…) perhaps the most important defining feature in a democratic society based upon the rule of law is that any aggrieved person has the opportunity of challenging the decision of the Hon. Minister of the Government of the day, in appropriate cases.'[55]

As was pointed out above, the number of cases for which leave to proceed was denied or the number of cases in which petitions were dismissed are unknown. Therefore, it is difficult to evaluate the judicial attitude to procedural requirements of the FR jurisdiction. In the judgements that are available for year 2015 however, the Court seems to have adopted a progressive attitude to the procedural requirements.

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[53] *ACME Lanka Distillers v Min of Finance* SC (FR) 64/ 2015, 71/ 2015, 72/ 2015, 81/ 2015 SC Minutes 24 June 2015.

[54] *ACME Lanka Distillers v Min of Finance* SC (FR) 64/ 2015, 71/ 2015, 72/ 2015, 81/ 2015 SC Minutes 24 June 2015 7.

[55] *ACME Lanka Distillers v Min of Finance* SC (FR) 64/ 2015, 71/ 2015, 7 2/ 2015, 81/ 2015 SC Minutes 24 June 2015, 6.

4.5 Relief and Compensation

In cases where the Court held with the petitioners, compensation was granted only in three cases in 2015. The actual amount granted was highest in the case of *Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence*[56] where the Court ordered that each petitioner (13 petitioners) be given Rs 25 000 as costs and Rs 20 000 as compensation. In the case of *Coral Sands Hotel v Min of Finance*[57] interim relief was granted to a petitioner who complained of the violation of the right to equality due to a request made by the Commissioner General of Excise for a balance payment of an enhanced licence fee payable due to revisions made. Whether the relevant notification was valid in the absence of confirmation by Parliament was a question to be determined in hearing the merits of the petition. In the interim, Court issued a restraining order preventing the charging of such enhanced fee. In arriving at this conclusion, the Court observed that under Art 126 the SC 'has the implicit power to issue whatever direction or order necessary (...) to secure enforcement of the citizen's fundamental right.'[58]

The grant of relief and remedies by way of compensation and other means within a 'just and equitable jurisdiction' by the SC has not been the subject of sustained assessment yet. The previous issues of this report have noted the need for such an analysis in ascertaining the basis on which the

[56] *Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence* SC (FR) 108/ 2010 SC Minutes 28 July 2015.

[57] *Coral Sands Hotel v Min of Finance* SC (FR) 170/ 2015 SC Minutes 8 December 2015.

[58] *Coral Sands Hotel v Min of Finance* SC(FR) 170/ 2015 SC Minutes 8 December 2015, 4.

Court determines the appropriate relief and/or remedy and to analyse it in terms of its impact: on the victim, the state and on society at large. The justification is not apparent in recent FR jurisprudence in general and the jurisprudence of 2015 too is plagued with the same problem.

5. Writ matters before Supreme Court

As per the Constitution original writ jurisdiction lies with the Court of Appeal and in relation to devolved matters it lies with the Provincial High Court[59] In exceptional circumstances as specified by the Constitution, it lies with the SC.[60] Since the SC is recognised as the exclusive adjudicator of FR, the CA is required to refer any writ application which includes 'prima facie evidence' of the violation of FR to the SC for determination.[61] The constitutional text compartmentalises adjudication on FR petitions and original jurisdiction for adjudication of petitions seeking writs. However, based on several writ applications that were determined by the SC on appeal, it has recently been argued that that administrative law (originally inherited from English law) is explicitly and implicitly shifting to a rights based approach in Sri Lanka.[62] Moreover, in the seminal case of *Heather Mundy v Central Environmental Authority* the Court held that the scope of Sri Lanka's writ jurisdiction is to be viewed expansively with a corresponding 'shrinking' of administrative discretion.[63]

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[59] Art 140 and Art 154(P)(4) of the Constitution.

[60] Art 140 of the Constitution.

[61] Art 126(3) of the Constitution.

[62] Mario Gomez 'Blending Rights with Writs: Sri Lankan Public Law's New Brew' (2006 Supplement) Acta Jur 451

[63] *Mundy v Central Environmental Authority* SC Appeal 58/2003, CA Application 688/2002 SC Minutes 20 January 2004

Within this context it is useful to examine the writ applications considered by the SC on appeal, for the purpose of understanding judicial interpretation of FR.

The four appeals from the Court of Appeal that were considered by the SC in the year 2015 did not lead to any express consideration of fundamental rights.[64] In one of the cases, the substantive scope of natural justice was considered in detail. In the case of *Amarasinghe v Wijeratne* the Court affirmed the view long espoused by the Sri Lankan judiciary that the rules of natural justice apply to the exercise of quasi-judicial powers.[65] However, the Court noted that where a body has been vested with authority to make decisions that affects rights natural justice should be respected 'except in cases where such right is excluded, either by express words or by necessary implication, by the legislature.'[66] This view contrasts with the view that natural justice applies regardless of stated or implied legislative policy as recently as 2009 where in the case of *Hapuarachchi v Commissioner of Elections* the SC recognized a duty to give reasons regardless of legislative policy.[67] However the *Hapuarachchi* judgement was a determination on a FR petition. In the *Amarasinghe* case it

[64] *Amarasinghe v Wijeratne* SC Appeal 40/2013, CA Ap 347/1988, SC Minutes 12 November 2015; *Perera v University of Colombo* SC Appeal 46/2011, CA (Writ) App 1682/2006, SC Minutes 7 October 2015; *Himiyange v Hemaratna* SC App 47/2011 CA (Writ) App 569/2003, SC Minutes 9 March 2015; *Wijewardena v Minister of Lands* SC App 56/2008, SC (Spl) LA 100/2008, S C Minutes 24 November 2015.

[65] *Amarasinghe v Wijeratne* SC Appeal 40/2013, CA Ap 347/1988, SC Minutes 12 November 2015

[66] *Amarasinghe v Wijeratne* SC Appeal 40/2013, CA Ap 347/1988, SC Minutes 12 November 2015, 18.

[67] SC (FR) 67/2008, SC Minutes 19 March 2009.

is interesting to note that even though the SC discusses the scope of Natural Justice in strong terms, it shies away from locating the discussion under Art 12(1). Compared to noted cases such as *WKC Perera v Daya Edrisinghe*[68] and *Kunanathan v University of Jaffna*[69] the *Amarasinghe* case was another opportunity for the Court to pursue the 'rights based approach' in its determination of writ applications. The Court however chose not to go down that path.

6. Pre-enactment Judicial Review of Legislation

Pre-enactment judicial review of Bills by way of Special Determinations (SD) is the only means by which the Sri Lankan judiciary is able to consider the impact of legislative policy on fundamental rights guarantees. Interestingly, this is the only jurisdiction (or instance) in which the Constitution expressly requires that the Court provides reasons. However, as has been pointed out elsewhere by this author, the SDs generally reflect a near mechanical judicial approach: one in which the Court is often preoccupied with whether the Bill requires two thirds approval in parliament and/or approval at a referendum.[70] That preoccupation foregrounds the 'entrenched provisions' of the Constitution in SDs at the cost of ignoring other equally significant constitutional

[68] *WKC Perera v Prof Daya Edirisinghe* [1995] 1 Sri LR 148.

[69] *Visakuntharan Kunananthan v University of Jaffna* [2006] 1 ALR 16.

[70] See for instance 'Judicial Interpretation of Fundamental Rights' in *Sri Lanka: State of Human Rights 2014* (Law & Society Trust 2015).

[71] Only the freedom of thought, conscience and religion and the freedom from torture are entrenched provisions of the FR chapter. See further,

provisions including the bill of rights.[71] This narrow judicial attitude was evident in the SDs of 2015 as well.

6.1 Right to Information

In an unprecedented move, in April 2015, the Government proposed a series of constitutional reforms through a single Amendment i.e. the Nineteenth Amendment. Among the reforms proposed was the proposal for the inclusion of a right to information in the bill of rights. In considering the constitutionality of this proposed amendment, the Court had the opportunity to also consider the scope of the proposed right to information.[72] Regrettably however, the Court confined itself to the specific arguments raised by petitioners who challenged the relevant clause. The challenge involved the wording of the clause as proposed made it possible for non-citizens to avail themselves of the right. The state agreed to redraft the clause to confine the right to citizens who require information from the state for the purpose of enjoyment of another fundamental right or access to right to information. The Court makes no further observations or comments about the proposed introduction of a right to information. The judicial response to the introduction of the right to information through the Nineteenth Amendment is clearly insufficient and also disappointing. In 2005, it was the SC that recognized the right to information within the freedom of expression.[73] Moreover, the Nineteenth Amendment was the only Amendment that expanded the scope of the bill of rights of the Constitution since its adoption in 1978. As the guardian of human freedom and

[72] *Parliamentary Debates (Hansard)* 234(3) 9 April 2015, 262, *In re the Nineteenth Amendment to the Constitution* SC 04/2015, SC Minutes 6 April 2015.

[73] See *Environmental Foundation Limited v Urban Development Authority* (the Galle Face Green case) SC (FR) 47/2004 SC Minutes 28 November 2005

autonomy, it would not be unreasonable to expect the Court to eagerly embrace this provision of the Bill and to commend it. However, the judiciary engages in a mechanical analysis of wording without making any attempts to locate the attempted reform within its broader political and jurisprudential context.[74]

6.2 Public Health

In 2015 in the course of pre-enactment review of two different bills, the SC had the occasion to consider state responsibility towards protecting public health in the context of legislative policy.

A bill to ament the *National Authority on Tobacco and Alcohol Act* was considered by the SC early 2015 immediately after the new President assumed office. This Amendment was the culmination of a series of events that unfolded since the Government required that pictorial warnings be mandatory on the packaging of tobacco products.[75] The Bill was challenged on the basis that the change of policy through the Amendment, i.e. to raise the percentage of the warning from 60% to 80% amounted to a violation of the legitimate expectation of the petitioner, a company selling cigarettes. Court held that change of policy was a legitimate and core function of the state. It is only if the state acts arbitrarily in the application of such policy that legitimate expectations could be violated. Accordingly the proposed Bill was determined to be in accordance with the Constitution.

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[74] On 24 March 2016, the Parliament passed a Right to Information Act.

[75] For a detailed discussion see Dinesha Samararatne & Chamaka Ambagahawita 'The Story of a Picture: Law Reform for Mandatory Graphic Warnings in Packaging of Tobacco Products in Sri Lanka' 1(1) 2016 Colombo Law Journal 19.

The *National Medicine Regulatory Authority* Bill, declared as 'urgent in the national interest' was referred to the SC by the President for a determination on its constitutionality.[76] Having considered the revisions that were sought to be introduced Court went further and observed in its conclusion that even though public health is not specifically referred to in the Directive Principles of State Policy, 'adequate and affordable health facilities ... providing and regulating safe drugs for affordable prices' etc are 'necessary to ensure "an adequate standard of living" for all citizens alike'.[77] This observation of the Court is commendable and is in keeping with Sri Lanka's obligations under international level, specifically the ICESCR. It further affirmed that state policy since 1940 by which Sri Lanka has consistently maintained universal access to health care. However, the Court made no observation on the declaration made by the Cabinet that the Bill should be considered as 'urgent in the national interest'. Past experience shows that this clause has been taken advantage of to short circuit the legislative and democratic process of law making. The repeal of this provision by way of the Nineteenth Amendment to the Constitution makes this discussion academic. However, it must be noted that even in the face of blatant abuse of this clause where there is no prima facie evidence of urgency in the national interest, the Court has never required the Executive to provide reasons.

In these two SDs, the Court assumes that the state is responsible for public health even in the absence of specific constitutional or legislative provisions that recognise such a

[76] See Art 122(1)(b) of the Constitution. *Parliamentary Debates (Hansard)* 232(9) 18 February 2015, 906, SD 03/2012 SC Minutes 10 February 2015.
[77] *Parliamentary Debates (Hansard)* 232(9) 18 February 2015, 906, 909.

responsibility. Perhaps in the consideration of these Bills, the Court could have delved further into the origins of this responsibility and also marked out its scope. Drawing from the principle of *Salus populi suprema lex esto* (the good of the people is the supreme law)[78]; from the ICESCR and its General Comment 14; legislative policy; and national policy, Court could have expounded on clear terms the nature and scope of the responsibility of the state towards public health. Such an approach would have clarified the constitutional and legislative basis for recognising an obligation of the state towards public health.

7. Hope for a new beginning?

The analysis of the judicial enforcement of human rights in the year 2015 suggests that no significant improvement can be seen in comparison with the jurisprudence of the last few years. The narrow scope of the FR petitions that are determined by the Court continued during this year. The gap between the FR violations that are recorded before the Court and violations of human rights documented in broader society too continues.[79]

Currently, Sri Lanka is engaged in the drafting of a new constitution which has created the space for critically reflecting on, among other things, the content of a bill of rights and the judicial enforcement of such rights. The submissions received by the Committee for Public Representations (PRC) evidences that the public has

[78] See further in this regard, Martin Loughlin *Foundations of Public Law* (OUP 2010) 383 ff.

[79] See for instance, 'Authority without Accountability: the crisis of impunity in Sri Lanka (International Commission of Jurists 2012).

demanded improvement in relation to the expansion of the scope of the bill of rights as well with regard to their enforcement.[80] For instance, judicial enforcement of economic, social and cultural rights have been proposed by the public and also proposed that the remedy be made more accessible in terms of geographical access and legal aid programmes. The judicial review of legislation has also been proposed by the public. In other words according to the submissions before the PRC, a more active contribution from the judiciary in the enforcement of human rights is expected by the public. When taking these proposals into account, it would be essential to also consider the actual jurisprudence that has been developed by the Court since 1978 and in particular its contribution in the last few years. Unless some of the gaps in the process as well as in the outcome are acknowledged and dealt with as far as it is possible, the sustainability of any reform, no matter how progressive, will be undermined.

As suggested in the analysis undertaken for the previous issues of this report, the Court needs to regain for itself legitimacy and credibility as the arbiter of fundamental rights.[81] This is not an outcome that can be achieved by the Court on its own but it is a goal that requires concerted effort by all stakeholders. The legal profession has to support the strengthening of this jurisdiction for instance by taking up cases pro bono for victims of FR who are otherwise unable

[80] See *Report on Public Representations on Constitutional Reform* (PRC May 2016).

[81] See the chapter on judicial enforcement of fundamental rights in the *State of Human Rights* report by Law & Society Trust for the years 2014, 2013, 2012-2011.

to file petitions. Legal education must ensure sound training on human rights law and public law ensuring that lawyers are able to support the Court effectively in the adjudication process. Civil society actors must support the Court by engaging it and facilitating the mobilization of society on this matter. Contribution from these different stakeholders is essential for the revival of this jurisdiction of the SC.

8. Conclusion

Effective and fastidious judicial enforcement of fundamental rights is essential for the healthy functioning of a society. The jurisprudence of the year 2015, which reflect the trends evident in the past few years of the Court, suggest that petitions that are determined by it, fall within a narrow scope with most cases being determined in relation to Art 12(1). The right to equality is being challenged primarily in relation to school admissions and in relation to the state functioning as an employer. Even in determining these petitions, the Court is primarily engaged in the determination of facts. At a time when constitutional reforms are being considered, it is essential that these matters are taken note of. In moving forward, seeking answers to some of the questions raised and some of the problems identified in this analysis is crucial.

III

HUMAN RIGHTS AND DEMOCRACY

Thiagi Piyadasa[1]

1. Introduction

The Sunday Times carried a cartoon on 27 December 2015[2] showing Prime Minister Ranil Wickremesinghe and President Maithripala Sirisena facing each other, scratching their heads, standing in front of a score card titled 'Balanced Score Card'. The 'strengths' were listed as democracy, law and order, rule of law and freedom of expression. The 'weaknesses' were rising fiscal deficit, large trade deficit, balance of payments problems, depreciating rupee and slow growth.

Contesting on a platform *of* good governance and human rights, the Wickremesinghe-Sirisena duo was heavily supported by civil society activists and human rights defenders[3].This was mainly due to the heavy handed manner in which the Rajapaksa regime dealt with human rights. For example several significant rights violations took place in 2014. This included the detention of over sixty five people

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[1] Lawyer and development practitioner.

[2] M.Munaf. *The Sunday Times*, 27 December 2015 (Accessed on 15 September 2016 http://www.sundaytimes.lk/151227/columns/2015-year-of-political-gains-and-economic-slippages-176480.html)

[3] Gehan Gunatilleke, "Overview of the State of Human Rights in 2014", *State of Human Rights2015*, pp.25-27

in February and March 2014 on suspicion of terrorist activities[4]; religious attacks on the Muslim community in the South of Sri Lanka in Aluthgama, Dharga Town, Valipanna and Beruwala, where the police failed to contain the violence[5]; summoning and questioning of journalists by the Criminal Investigations Department (CID) over their reporting of the events that unfolded in Aluthgama when the Government actively sought to conceal the issue from the public[6]; and instructions by the Defense Secretary in July 2014 to 'refrain from holding press conferences, workshops and training for journalists, and disseminating press releases'[7].

The political moment of 8 January 2015 was therefore seen as a democratic moment. For ethnic and religious minorities, human rights defenders and critics of the Rajapaksa family, this was an opportunity to defeat what was seen as an increasingly autocratic and repressive regime. It would not be an exaggeration to say that within the human rights community, the Presidential Election results of 2015 was received with jubilation. One can only understand this relief if one recalls the numerous occasions where human rights defenders were abducted, threatened, arrested and jailed for speaking up about the violations of the government, armed forces or for questioning the actions of those in power[8]. Therefore, the immediate and most tangible change was the freedom from fear and violence for dissenting voices. In addition, President Maithripala Sirisena's 100 Day

[4] *Ibid.*, p.10
[5] *Ibid.*, pp.13-14
[6] *Ibid.*, p.22
[7] *Ibid.*, p.24
[8] For example, Balendran Jeyakumari, Ruki Fernando and Rev. Praveen Mahesan were arrested in 2014.

program[9] detailed specific targets to restore democracy and good governance. This included measures to abolish the authoritarian executive presidential system; establishing independent commissions to promote good governance; appointing special commissions to investigate allegations of corruption; and introducing right to information laws to name a few.

Beyond the freedom from fear and violence however, is it possible for the Wickremesinghe-Sirisena regime to claim it has 'restored' democratic rights in the country? More importantly, to what extent did this 'renewal of democracy' further human rights? This chapter will discuss these questions in relation to select human rights issues, some new and some old, in the context of the promise and hope of democracy that marked the change of regime in January 2015.

2. The Promise of Democracy, Respect for Human Rights, and Good Governance

After the end of the war in 2009, 2015 will be remembered as the most significant political milestone in Sri Lanka's history. Rajapaksa was a popular leader who came into power in 2005 with the promise of freeing the country from terrorism. Having defeated the LTTE in 2009, he appeared to be riding on a wave of popularity with no formidable opposition in sight. The decade long Rajapaksa regime was characterized by autocracy through militarization. Human rights defenders and journalists were threatened and their movements under constant surveillance. The armed forces

[9] Maithripala Sirisena's 100 Day Work Program https://www.colombotelegraph.com/index.php/maithripala-sirisenas-100-day-work-programme-detailed-diary-description/ (Accessed on 2 December 2016)

spearheaded rapid infrastructure development which led to displacement and evictions. However, due to strong executive powers, very little could be done to control this growing power.

In an unprecedented turn of events in November 2014, the Secretary of the Sri Lanka Freedom Party Maithripala Sirisena was nominated as the common candidate of a broad coalition of Opposition political parties. These parties included the United National Party (UNP), Jathika Hela Urumaya (JHU), Sri Lanka Muslim Congress (SLMC) and ostensibly though, perhaps, not overtly, the Jathika Vimukthi Peramuna (JVP) and Tamil National Alliance (TNA). This was certainly an important democratic moment for Sri Lanka. It showed the people that political parties were willing to look beyond ideological differences to work together when it mattered, albeit when their interests converge. Furthermore, the defeat of the Rajapaksa regime was surprising because at least till November 2014, there was a sense that it would be almost impossible to electorally defeat the popularity and ruthlessness of an authoritarian President. Symbolically, the joint opposition also wanted to drive home another point. By choosing Independence Square for the Presidential inauguration, the message was clear; Rajapaksa may have won the war and defeated the LTTE but had not secured true 'freedom' for the people. The public also flocked to witness not only the inauguration of President Sirisena but also the appointment of Ranil Wickremesinghe as Prime Minister, with great hope for the democratic reforms that were promised under the '100 Day Program' of the coalition.

The popular understanding of democracy is that it is governance by the people. Prof Jayadeva Uyangoda in a

speech titled 'Celebrating the Idea of Democracy in a Year of Elections' stated that "in human history, there are perhaps only four secular normative ideals to which millions of people have even been willing to sacrifice their lives. They are freedom, justice, dignity, and equality. They are in one way or another intimately connected with the vision and promise of democracy."[10] These 'normative ideals' are also the pillars of human rights.[11] Therefore, the idea of democracy has expanded beyond the power of the people to include the rights of the people. It is implicit therefore that while people entrust the power to govern in elected representatives for a specific period of time, there is also an expectation that the rights of the people will be upheld and protected. This is generally understood as good governance where through transparency and accountability, the representatives are made answerable to the people.

While democracy can further human rights, the practice of democracy sometimes falls short of the normative standards demanded by human rights. In order to stay in power, politicians are compelled to make decisions that 'balance ethical standards with political standards'[12].This was evident in the interim cabinet that was appointed soon after the Presidential election in 2015 as well as in subsequent cabinet appointments. Several of the Members of Parliament who crossed over to back the Sirisena-Wickremesinghe

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[10] Celebrating the idea of democracy in a year of elections", Prof. Jayadeva Uyangoda, *The Island*, 20 September 2015.This is a text of a talk given at the inauguration of the MHRD Course, CSHR, University of Colombo on 20 August 2010).

[11] *Preamble of the Universal Declaration of Human Rights (UDHR)*, 10 December1948

[12] To Laugh or Cry", Prof. Jayadeva Uyangoda, *The Island*, March 2015

government were in fact one time supporters and close allies of Rajapaksa, and could not claim to have clean hands. Therefore, the government that came to power on a platform of good governance had to resort to 'a little bit of political corruption to ensure its own survival'[13].

Human rights on the other hand, is a normative framework based on the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.[14]It is a standard to be achieved, and requires impartiality, transparency and accountability at all times on the part of state and non-state actors. Thus, all actions of the state, as well as non-state actors have the potential to impact on human rights. Unfortunately, the need to maintain political popularity almost always leads to compromises, and this tendency inevitably has a negative impact on human rights. It is therefore pertinent to bear this in mind when recalling the status of human rights and democracy in 2015.

3. The Political Transition from 'Autocracy' to 'Democracy'

Sri Lanka's elections commissioner Mahinda Deshapriya was widely acclaimed for 'two peaceful and disciplined national elections held within an unprecedentedly short period'[15]. This was no small feat considering previous voter intimidation and violence[16]. This perception of a free, fair and peaceful

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[13] Democracy in Sri Lanka will soon confront its second moment of truth", Prof. Jayadeva Uyangoda, *Sri Lanka Brief*, 27 July 2015.

[14] Preamble, *Universal Declaration of Human Rights* (UDHR)

[15] Finally Loosening the Grip of that 'Satakaya'?", Kishali Pinto Jayawardena, *The Sunday Times*, 23 August 2015

[16] Election Violence", Sri Lanka Brief (Accessed on 10 October 2015 http://srilankabrief.org/tag/election-violence/)

election contributed to restored faith in a democratic system among the general public. This renewal of faith also has direct relevance to the protection of human rights. If not for the resolute elections commissioner, the elections may have had a very different outcome.

Another interesting factor in the elections held in 2015 was the immense popularity of social media for political campaigning and expression of public opinion. This was a direct response to the partisan State media coverage of the elections. Young people from all parts of the country appeared to be actively engaged in all three languages on various social media platforms. This was a new phenomenon for Sri Lankan politics. Candidates and voters were able to directly engage in dialogue and raise issues that the mainstream media often chose not to highlight. Interestingly, however, soon after the elections many politicians did not appear to engage as effectively on issues via social media. For citizens however social media has become an active platform to raise issues and grievances, and even to publicly shame politicians, and their family members for abuse of power. This space was highly regulated prior to 2015 and people were very reluctant to express their political opinion.

The social and political transition in 2015 directly impacted on the status of human rights. Perhaps the biggest impact was the manner in which civil society activists were perceived and portrayed by the State. Under President Rajapaksa, civil society activists were painted as conspirators of the Pro-LTTE Western Diaspora to undermine Sri Lanka's sovereignty. As the watchdogs of human rights, activists were under constant attack and surveillance prior to 2015. Non-governmental organisations and international non-governmental organisations had to contend with several

restrictions, which included prohibitions on openly discussing human rights in the North and East.

The newly appointed Government however not only welcomed a partnership with civil society activists, in many ways they needed the activist community to help rebuild Sri Lanka's image in the international community. The recognition of the importance of addressing issues of human rights was also primarily due to the necessity of proving to the international community, and the west in particular, that Sri Lanka was in fact a modern democratic nation that respected and fostered human rights for its citizenry. Unlike Rajapaksa, promoting Sri Lanka as a modern democratic nation was important to the Sirisena-Wickremesinghe government.

Because of the prominent role played by democratic civil society in the new regime, the space for engaging with the State expanded significantly in 2015. This is not to suggest that there were no protests or grievances against the State in 2015. However, in many instances appeals to the Prime Minister appeared to provide a speedy solution, unlike before. In the very least the space to openly call out the State on issues of human rights, without fear of reprisal was available. Likewise, a survey conducted by Social Indicator and the Centre for Policy Alternative (CPA) in April 2016 found that a majority of 60 percent of those surveyed indicated that they were 'completely free' to express a political opinion no matter where they were or who they were with. The report indicates that compared with previous data, there was an increase from 2015[17] indicating greater democratic space than before.

[17] Center for Policy Alternatives, "Democracy in Post War Sri Lanka in 2016", CPA, April 2016.

A long term expectation of the people, and a principal promise made during the Presidential election in 2015 was the abolishing of the executive presidency. The 18th Amendment to the Constitution not only repealed the 17th Amendment, it removed restrictions on the number of terms one individual can hold the office of President. This allowed President Rajapaksa to contest for a third time in January 2015 which went against accepted principles of democracy. Critics noted that this Amendment gave room for corruption and enabled the exercise of excessive State power by one individual.

Keeping their promise to restrict the powers of the executive and restore mechanisms for accountability, the new government passed the 19th Amendment on 28 April 2015. The 19th Amendment which incorporated many provisions of the 17th Amendment; broadened the scope of Article 14 of the Constitution by introducing the right to information as a fundamental right; repealed the 18th Amendment and not only limited the number of terms a President may hold office, it also expanded the powers of the Prime Minister and Cabinet of Ministers in a promise to reduce the powers of the executive and give more power to elected representatives[18]. As noted by Prof Uyangoda "democracy is a rule by law, and not rule by men alone. Democratic institutions mediate the relations and resolves disputes between the citizens and the state on the basis of the principle of popular sovereignty. They mitigate, control and act as a check on the oppressive, potentially tyrannical, and

[18] Center for Policy Alternatives, "A Brief Guide to the Nineteenth Amendment to the Constitution", CPA, May 2015.

violent behavior of the state."[19] This was precisely the intention of the 19th Amendment, particularly through the restoration of the independent commissions. Prof Savitri Goonesekere further pointed that the 19th Amendment "connects the concept of people's sovereignty and people's rights through the establishment of some of the key norms of democratic governance associated with the democratic process"[20]. Therefore, the 19th Amendment has the capacity to strengthen human rights through the introduction of checks and balances on the power of the executive and greater democratization of decision making.

The abysmal state of the judiciary under the Rajapaksa government was of great concern to many human rights defenders, and also to the international community. The unprecedented manner in which Sri Lanka's first female Chief Justice Shirani Bandaranayake was ousted from her office demonstrated the lengths to which the Rajapaksa government would go to maintain control and power. The new regime however refused to recognize the legality of the appointment of Chief Justice Mohan Peiris. It was for this reason that President Sirisena took oaths before Supreme Court Justice Sripavan instead of following the customary practice of taking oaths before the Chief Justice.

In a fast tracked process, Justice Mohan Peiris was asked to vacate his office to allow Justice Shirani Bandaranayake to resume duties[21]. All of her privileges were restored. However

[19] "Rebuilding Institutions in the Transition from Soft Authoritarianism", Prof. Jayadeva Uyangoda, *The Island*, 9 February 2015.

[20] "19th Amendment and the Future of Sri Lanka", Prof. Savitri Goonesekere, *Sri Lanka Brief*, 29 June 2015

[21] Associated Press, "Sri Lanka's new president reverses 'revenge politics' of Rajapaksa regime", *The Guardian*, 29 January 2015.

the day after resuming duties, Chief Justice Bandaranaike tendered in her letter of resignation. Justice Sripavan was appointed as Sri Lanka's 44th Chief Justice. This was not only a legitimate choice, as Justice Sripavan was the most senior Judge serving on the Supreme Court, it was also symbolically important. It aimed to restore faith in the judiciary that had taken a beating during the previous regime. Re-instating Chief Justice Bandaranayake was also important to restore the relationship between the bar and the executive. Given the role played by the judiciary as the final arbiter of human rights, prioritizing the restoration of faith in the judiciary was critical.

The newly appointed legislature in 2015 however was an example where political rationality trumped democratic principles. Several members of Parliament who had lost their seats at the General Elections in 2015, were brought in to Parliament through the National List. These were mostly SLFP MPs who were supportive of the Sirisena Presidency. The vote is perhaps the most important act within a democracy. It cannot and should not be ignored. When it is ignored, those in power are essentially rejecting the sovereignty of the people. There can be no claim to restoring democracy or good governance thereafter. Many were also disappointed with the number of Ministers, Deputy Ministers and State Ministers that were appointed. These appointments seemed as extravagant as appointments made prior to 2015. Despite this displeasure by the general public, it was also clear that these negotiations were a political necessity given that the government did not have a strong majority in Parliament. The cabinet appointments were therefore tradeoffs to ensure that the government would be able to pass relevant pieces of legislation, promised during the elections.

4. Status of Human Rights and the Expectations of Democracy

4.1 Law and Human Rights

In recognition of the political changes taking place in Sri Lanka after the Presidential Elections in 2015, the United Nations agreed to delay the release of the Report by the Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) to September 2015[22]. The Report states that "the Government which took office after Presidential elections in January 2015 did not change its stance on cooperation with the investigation, nor admit the investigation team to the country, but it engaged more constructively with the High Commissioner and OHCHR. It also took some important steps which have had a positive impact on the human rights situation."[23] The eagerness to rebuild Sri Lanka's international image had to be balanced against the forthcoming general election, and this included taking a stand against what was perceived as unwelcome international pressure.

The OISL was tasked with carrying out a comprehensive investigation into human rights violations and related crimes that occurred between 2002 and 2011. The team observed "patterns of commission of gross human rights violations and serious violations of international humanitarian law, the indications of their systematic nature, combined with the widespread character of the attacks all point to the possible

[22] The Human Rights Council by Resolution 25/1 adopted in March 2014 requested the OHCHR to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the LLRC.

[23] OHCHR Report on Sri Lanka, p.6

perpetration of international crimes"[24]. Among the many recommendations, the report urged that the Constitutional Council be made fully operational to ensure that individuals of the "utmost independence and integrity"[25] were appointed to institutions like the Human Rights Commission (HRC); the report also called for strengthening of the independence of the HRC; review of the Supreme Court decision in *Nallaratnam Singarasa* v. *Attorney General*[26] in order "to affirm the applicability of international human rights treaties in domestic law and reinstate the competence of the UN Human Rights Committee to consider individual complaints"[27]; security sector reform; review and repeal of the Prevention of Terrorism Act (PTA) and the Public Security Ordinance and the formulation of a new national security framework in compliance with international law; and ratification of the International Convention on the Protection of All Persons from Enforced Disappearances (ICPAPED), the Additional Protocols to the Geneva Conventions and the Rome Statute of the International Criminal Court[28]. Not only were many of these recommendations part of the joint United Nations Resolution 30/1 on Sri Lanka, in his statement at the Thirtieth Session of the UN Human Rights Council Foreign Minister Mangala Samaraweera specifically mentioned the Government's commitment to achieve the same.

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[24] *Ibid*., p.245.
[25] *Ibid*., 248.
[26] SC Special App.(LA) No.182/99
[27] OHCHR Report on Sri Lanka, p.249
[28] *Ibid*., p.250

One such example was Minister Samaraweera's promise to "review the Public Security Ordinance and to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international best practices"[29]. It was also notable that the Minister pledged to ratify the ICPAPED which would greatly enhance the rights of citizens by criminalizing enforced disappearances and provide for the issuance of certificates of absence to families of the missing. Despite this assertion however activists claimed that 19 individuals were arrested under the PTA between January to August 2015[30]. Furthermore, the actual number of those detained under the PTA and Emergency Regulations have not been released to the public yet. Human Rights Watch (HRW) stated their concern that "the government has still not put forward a plan to provide redress for those unjustly detained…or addressed the issue of detainees charged and prosecuted solely on the basis of coerced confessions obtained during detention"[31].This is questionable given the commitment made internationally, and the claim to promote greater transparency and accountability in Sri Lanka.

In May 2016 arrests under the PTA in Chavakachcheri[32] prompted the Human Rights Commission of Sri Lanka to

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[29] Minister Mangala Samaraweera statement at 30thsession of the UN Human Rights Council

[30] PTA to be Repealed", Easwaran Rutnam, *The Sunday Leader*, 24 September 2016.

[31] "Sri Lanka urged to enforce Human Rights Commission's directives on terror detainees, revoke PTA", ColomboPage News Desk, 13 June 2016 (Accessed on 28 September 2016 http://www.colombopage.com/archive_16B/Jun13_1465797457CH.php)

[32] *Ibid.*

issue Directives on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979. The HRC asserted their mandate "to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention"[33]. The fact that the HRC proactively exercised their mandate in this regard is reflective of their faith in the political leadership to pay heed. The PTA and Emergency Regulations have long been viewed by staunch nationalists as essential to the protection of the State. It remains to be seen if the government will take firm action by repealing the PTA and ensuring full transparency and accountability with regard to those unfairly affected by this draconian law. Prof. Uyangoda points out that most of the domestic victories of this regime are mostly negative achievements, meaning that it is "more a product of preventing the state agencies doing certain things, than doing positive things such as the abrogation of the PTA or taking concrete steps towards demilitarization"[34]. He rightly points out that this "record of negative achievements" could potentially mean the loss of "loyalty of its 'natural' domestic constituency, the democratic civil society movement".

4.2 Law Enforcement and Human Rights

The expectation of the police is to protect the rights of citizens and implement the law. If the new regime is to claim to have restored democracy, addressing corruption and violence in the police should be a top priority. The Police play a crucial role in maintaining law and order in a

[33] *Ibid.*

[34] "Sri Lanka in Global Affairs: The Journey Since January 2015", Prof. Jayadeva Uyangoda, *Colombo Telegraph*, 15 June 2016

democracy, regrettably however the Sri Lankan Police came under considerable criticism in 2015. This is partly due to the highly militarized environment where the police have become accustomed to measures that would not be tolerated in a 'peaceful' state, as well as a culture of impunity that has been cultivated over many years. Accusations of police torture continue while many cases remain unresolved. A study conducted in 2014 and 2015 by Human Rights Watch found that torture and abuse of power are entrenched in the Sri Lankan Police[35]. Three notable incidents took place in 2015: the death of a youth in Embilipitiya who police claim 'fell' from a balcony; the death of two youth in Angulana; and the torture of suspects in Seya Sadewmi's murder. The latter incident revealed how easily the police succumb to public pressure by resorting to a "hit or miss mode to beat the living daylights out of the first unfortunate suspect who fell into their net and wring a convenient confession from him that would prove his guilt beyond all doubt"[36].

The rape and murder of 18-year-old S. Vithiya from Pungudutheevu highlighted a complete lack of respect for due process on the part of the police. When Vithiya had not returned home after school on 13 May 2015 her parents had complained to the local police. Instead of taking down their complaint and investigating it, the police had allegedly

[35] "We Live in Constant Fear", Human Rights Watch, 23 October 2015 (Accessed on 28 September 2016 https://www.hrw.org/report/2015/10/23/we-live-constant-fear/lack-accountability-police-abuse-sri-lanka)

[36] Don Manu, Sunday Punch "Police brutality in the dock", *The Sunday Times*, 8 November 2015 (Accessed on 28 September 2015 http://www.sundaytimes.lk/151108/columns/police-brutality-in-the-dock-170853.html)

responded by saying she must have eloped with her lover[37]. Vithiya's body was found the next morning by residents. While the villagers were outraged by police inaction, the police denied these allegations and claimed that they took prompt action. However, soon after this incident the Inspector General of Police effected several high ranking transfers. While it would not be fair to judge the police based on this one incident, the public outrage reflects a breakdown in confidence in law enforcement, and this cannot be ignored. Failures in law enforcement often lead people to seek alternate means of justice and redress and take justice into their own hands.

In addition to this, the extreme and violent response by the police directed at a protest of university students in April 2016 once again highlighted the issue of police brutality and the tacit support of the government. One writer stated that while the Wickremesinghe-Sirisena government received wide support from the university students, this sent a clear message that any attempt to resist new austerity measures would not be tolerated[38].

In a step towards addressing these growing concerns regarding ongoing police corruption and brutality, a seven member National Police Commission (NPC) was appointed in October 2015, headed by Prof. S.T. Hettige. The NPC was reconstituted by virtue of the 19th Amendment and has

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[37] "After rape and murder, fear and tension in Jaffna over covert menace to public safety", Chrishanthi Christopher, *The Sunday Times*, 24 May 2015

[38] Pradeep Ramanayake, "Sri Lankan police crackdown on protesting students", World Socialist Web Site, *International Committee of the Fourth International (ICFI),* 3 April 2015. (Accessed on 28 September 2016 https://www.wsws.org/en/articles/2015/04/03/univ-a03.html)

powers to investigate public complaints against a police officer or the police service[39]; as well as appoint, promote, transfer, take disciplinary action or dismiss any police officer below the rank of Inspector General of Police (IGP)[40]. Members are recommended by the Constitutional Council and appointed by the President, and responsible and answerable to Parliament promoting greater accountability.

4.3 Gender

The troupes of mothers and wives were prominent in discussions about public policy during the Rajapaksa regime. Instead of advancing substantive equality, state policy was increasingly protectionist, severely limiting women's choices and opportunities. The state not only turned a blind eye to *Bodu Bala Sena's* crackdown on women's reproductive health rights, the Sri Lanka Foreign Employment Bureau introduced policies that prevented women with children under 5 years of age from migrating abroad for employment[41]. These policies only applied to women and reinforced gendered divisions of labour that do not take into consideration women's right to employment.

In contrast to this response to women's rights, the newly appointed Wickremesinghe-Sirisena government appears to have taken certain progressive steps to achieve substantial equality for women. A long-term demand by women's rights groups is the mandatory quota for women in local

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[39] Article 155G (2) of the Constitution as amended by Section 43 of the 19th Amendment 2015

[40] Article 155G (1) (a) of the Constitution as amended by Section 43 of the 19th Amendment 2015

[41] *8th Periodic Report by the Government of Sri Lanka to CEDAW*, 30 April 2015, p.31.

government. This was a key demand for nearly two decades and finally resulted in the allocation of a 25% mandatory quota for women in local government through the Amendment to the Local Authorities Elections Act in February 2016.This was significant as this quota was not granted in the 2012 Amendments. Chulani Kodikara in a brief analysis of the Amendment cautions that the quota does not actually challenge the status quo as it only increases the number of seats at local government level and mandates that those extra seats be allocated only to women. Furthermore, political parties will nominate women candidates "on a separate list according to the proportion of votes obtained by each party at the level of each local council"[42]. Kodikara states that "from the point of view of democracy and women's empowerment – it is an extremely weak quota"[43]. Kodikara points out that this is because the nomination through a list is entirely dependent on the political party, rather than a voter base. Therefore, the likelihood of perpetuating political patronage of a gendered kind is possible.

Regrettably, the actual parliamentary debate surrounding the Bill was disrupted and only five members of Parliament were able to speak. Kodikara points out that

[42] Chulani Kodikara, "The Quota for Women in Local Government: A Pledge for Parity and a Parody in Parliament?", Women and Media Collective, 14 March 2016. (Accessed on 28 September 2016 http://womenandmedia.org/the-quota-for-women-in-local-government-a-pledge-for-parity-and-a-parody-in-parliament/)

[43] *Ibid.*

> …the theatrics in parliament that day can be seen as a parody of the inattention given to the issue of women's representation in political institutions by politicians over the years. Indeed, even if those members of the joint opposition were not against increasing women's representation, their behaviour effectively trivialized and reduced it to a non issue. Those who supported the quota, could speak for no more than four minutes. The whole debate lasted no more than 35 minutes. Ultimately the (non)debate failed to adequately foreground the historical significance of the law that was passed as well as its limitations in furthering democracy and women's political empowerment[44].

This took place before the General Elections in August 2016, however, it speaks to the larger issue that despite changes in political leadership at the very top, a larger systemic change is necessary if women's rights are to be meaningfully achieved in a democratic process. Unfortunately, systemic change cannot be achieved when leaders are reluctant or unwilling to disrupt the status quo. Increasing the number of seats to accommodate women suggests a stance of not wanting to disrupt the status quo. Any denial of seats for male candidates could have had negative implications at the forthcoming General Elections. Similarly, regulations preventing women with children under 5 years from migrating abroad for employment continue to apply, despite the fact that this regulation leads to undocumented migration which could put the women at even more risk of violence and exploitation. In terms of women's equality and human rights

[44] *Ibid.*

therefore, it remains to be seen if this regime is willing to promote substantive equality.

We will also recall that during the Presidential campaign in December 2014, Minister S.B.Dissanayake made crude remarks concerning former President Chandrika Bandaranaike Kumaranatunga. These were serious comments that warranted immediate action. No action was taken against Minister Dissanayake. In fact, after having lost his seat during the General Election in 2015, he was nominated through the Nationalist List, and appointed as the Minister of Social Empowerment and Welfare. During the last ten years, the Sri Lankan Parliament has allowed blatantly discriminatory and derogatory treatment of women in politics[45] and demonstrated a strong resistance to recognize women's agency. There can be no hope in achieving transformative legislation for women when the very people entrusted with this task violate women's rights.

In response to increasing reports of violence against women in the country, in 2014 the United National Party established an Opposition Commission on Violence Against Women[46]. In May 2015, Prime Minister Ranil Wickremasinghe appointed members of this commission to a Task Force on the Prevention of Violence against Women and the Girl Child to recommend actions to be taken to address issues highlighted in the Commission report. The Task Force released its recommendations in February 2016. This report

[45] Women and Media Collective, "Parliament's Representation of Women: A Selective Review of Sri Lanka's Hansards from 2005-2014". January 2016.
[46] *Report of the Leader of the Opposition on the Prevention of Violence Against Women and the Girl Child*, December 2014.

was presented to relevant heads of government departments, such as the Attorney General with direct instructions from the Prime Minister. This was perhaps the first time a head of government accepted such a report *in toto*. The report included far reaching recommendations that called for the inclusion of non-discrimination on the basis of sexual orientation and gender identity; recognition of the liability of non-state actors for violations of the equality clause in the constitution; and investigation and prosecution of allegations of violence against women committed during the period of armed conflict, just to name a few[47]'.Many of these recommendations were long term demands by women's rights groups, but it was significant that the Prime Minister himself made an effort to ensure that the recommendations were directed to the relevant authorities for action. It remains to be seen if any of these recommendations would be implemented.

Simultaneously however, the United Nations Development Program (UNDP) together with the Ministry of Women's Affairs and Children, embarked on a program to develop a National Action Plan to Address Gender-based Violence in Sri Lanka. This was done in consultation with 8 different Ministries, civil society, and international and national non-governmental organizations. This was approved by Cabinet on 7 June 2016. However, this action plan did not receive the same reception as the Task Force Recommendations, despite many of the issues being identical or in the very least complimentary.

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[47] *Action Plan Based on Recommendations of the Leader of the Opposition's Commission on Violence Against Women and the Girl Child*, Task Force on the Prevention of Violence Against Women and the Girl Child, 5 February 2016, pp.3 and 6

While recognizing the significance of the Prime Minister taking an interest in addressing violence against women, it is important to consider the implications of duplication in the process, as well as the weight given to the respective outputs. The modus operandi of tackling policy level issues appears to be the appointment of a 'Task Force' that directly reports to the Prime Minister. While this may be an efficient way of dealing with the task at hand, from a good governance point of view, it also works to undermine a bureaucracy mandated to advise the government on matters of public policy and law. One unfortunate repercussion of militarization is the undermining of the public service, and this critical aspect of Sri Lanka's democracy needs to be strengthened. The protection and promotion of human rights should not be regime or leadership dependent. After years of corruption, politicization, lack of transparency and accountability within the public sector, it would be important to strengthen these individuals and institutions to uphold the values of democracy.

4.4 Transparency, Development and Human Rights

In the immediate aftermath of the war in 2009, the State launched into a heavy economic development and reconstruction phase, emphasizing economic development as the pathway for national reconciliation. This led to many forced evictions and communities being displaced in many parts of the country, contrary to existing policies such as for example the National Involuntary Resettlement Policy developed during the construction of the Southern Highway in 2001.The loss of housing and land directly affected people's right to adequate shelter and security, food, and livelihoods. Despite many protests and petitions, the State was steadfast in their development plans which required citizens to fall in line. One such example was the Paanama

land grab where the community was forced out of their lands to make room for a Navy run tourist hotel.

The community in Paanama has been threatened by local politicians since 2006, forcing the community to quit their lands. By 2010 nearly 350 families were forcibly evicted from lands they had lived on for nearly 40 years. Two villages were forcibly evicted by a group of armed men. The community was initially informed that this land would be used to construct housing for disabled soldiers, however the Sri Lanka Navy constructed a hotel called Lagoon Cabana Hotel and part of the land that was taken was used by the Presidential Secretariat to construct an international conference centre[48]. Electric fences were erected to prevent the community from entering the land, and the Sri Lanka Police also prevented the community from entering the land. The community was informed that this land was State land, despite the fact that certain families had deeds and permits. Based on a complaint by the affected community, the Sri Lanka Human Rights Commission conducted an investigation in 2010 which found no valid reason for the Sri Lanka Police to prevent the community from entering and repossessing the land in question. When the police initiated legal action against individuals for trespass, in May 2015 the Magistrate of Pottuvil found the accused not guilty and ordered the police to allow the community to return to the land. Subsequently, communities in two villages have returned to their lands but await formal distribution by the government. On 11 February 2015 the Cabinet took a decision to re-distribute this said land to the community.

[48]Sajeewa Chamakara. *The Panama Land Grab and Destruction of Village Life*, Environmental Conservation Trust. 2014.

However, despite this Cabinet decision, and a court order in the community's favour, in May 2016 the Divisional Secretary of Lahugala issued an eviction notice to the community.

During a Parliamentary debate on 22 June 2015, JVP Member of Parliament, Anura Kumara Dissanayake raised this issue in Parliament. The Minister of Tourism Development and Christian Religious Affairs and Minister of Lands responding to questions directed at him stated that the government had no plans of allowing tourist hotels to be constructed on this land, and that there was no obstacle preventing the Cabinet Decision of 11 February 2015 from being carried out. The Minister also declared that Minister Daya Gamage had taken steps to construct and distribute 350 houses among this Paanama community. MP Anura Kumara rightly pointed out that this was problematic, and emphasized that these communities had deeds and permits to this land, and the just solution would be to return this land immediately[49].

By September 2016, the community in Paanama still awaits implementation of the Cabinet Decision of February 2015, and despite all the assurances that have been made in Parliament, the community remains dispossessed from lands and livelihoods. This continued dispossession contradicts assurances of good governance and democracy. The Environmental Conservation Trust (ECT) has accused Minister Gamage of going ahead with the construction of hotels, much like the previous regime.[50] The community is

[49] Parliamentary Debates, 22 June 2015, pp.1239-1244 (Accessed on 10 October 2016 https://www.parliament.lk/uploads/documents/hansard/1467092257039111.pdf)

[50] 'Panama Land Grab': Environ mentalists castigate Gamage", M.Mudugamuwa, *The Island*, 23 June 2016.

being promised houses and 20 perches of land, overlooking the fact that this was largely a farming community with each family cultivating at least1-2 acres of paddy land. The ECT reports that in total nearly 1200 acres of land was taken over by the armed forces by 2010. The previous regime initiated development programs with complete disregard for the welfare and wishes of the local community, and it appears that these communities are yet to receive any satisfactory solution from this new regime.

The joint UN resolution in September 2015 called upon the GoSL to "accelerate the return of land to its rightful civilian owners, and to undertake further efforts to tackle the considerable work that lies ahead in the areas of land use and ownership, in particular the ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality to civilian life, and stresses the importance of the full participation of local populations, including representatives of civil society and minorities". However, there has been no transparency in the process to date, and no discussions and consultations have been held with the community prior to this announcement of the government's plans to construct houses in Ampara as part of a larger development program in the District. There is no accountability despite the Magistrate Order, the recommendation of the Human Rights Commission, and a Cabinet Decision.

The announcement of intentions to construct 65,000 houses in the North through a foreign contractor was also a decision that was taken without any prior consultation with the local community. Civil society groups highlighted the value of owner-driven housing schemes in stimulating the local economy in a context where no jobs could be found in

farming and fisheries, as pointed out by Ahilan Kadirgamar "…housing related small industries in roof tile making and carpentry workshop would have been possible with a well planned locally constructed housing scheme"[51]. As pointed out by Ahilan Kadirgamar, the 2016 Budget left much to be desired given the crisis of falling incomes and lack of job opportunities in the North[52]. The proposed houses would cost approximately 2.1 million rupees, and civil society activists stressed that with the previous housing schemes such as the Swiss Agency for Development Cooperation project it was found that one million rupees was sufficient to construct a house in an owner-driven system. The remaining money could be directed to stimulate livelihoods and address other necessities[53]. Civil society activists also warned that as these houses would cost significantly more than previous housing schemes, this would cause tension within the community due to 'inequalities and multiple standards'[54].Having inspected a model house, many engineers also cautioned against moving ahead with this proposal. What is most disturbing however is the complete lack of transparency in the process from the very inception. Given the overwhelming support for the UNF alliance from the North and East in the General election, one can assume that in the very least these communities have some say in the reconstruction of their homes.

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[51] "Houses at Rs. 2m. each for North-East displaced", Namini Wijedasa, *The Sunday Times*, 17 January 2016

[52] Challenges of reconstruction in 2016", Ahilan Kadirgamar, *Daily News,* 11 December 2015

[53] "Houses at Rs. 2m. each for North-East displaced", Namini Wijedasa, *The Sunday Times*, 17 January 2016

[54] *Ibid*

The Central Bank treasury bond issue in early 2015 also cast some doubt on the government's commitment to transparency and while many vehemently called for the resignation of the Central Bank governor, the Prime Minister insisted that there was insufficient cause. Reports claimed that Perpetual Treasuries, a company that was headed by the son- in- law of the Central Bank Governor at the time, Arjunan Mahendran, was issued directly and indirectly with Rs. 5 billion worth in bonds at 12.5%. This is currently under investigation by the Parliamentary Committee on Public Enterprises (COPE)[55].

5. Civil Society - between Scylla and Charybdis

As discussed in this Chapter, the most significant change in 2015 for civil society and human rights defenders was the space to engage openly on issues that the Rajapaksa regime vehemently opposed. In 2015, not only did human rights defenders enjoy basic freedoms that were once heavily restricted, the new regime actively sought to include them in many of the proposed reform processes. This included the Task Force on the Prevention of Violence against Women and the Girl Child and in early 2016 the Cabinet of Ministers appointed a 20 member Public Representations Committee on Constitutional Reforms (PRC) to seek public views on the constitutional reform. Later in 2016 an 11-member Consultation Task Force on Reconciliation Mechanisms (CTF) was appointed to seek public views on the design of reconciliation institutions.

Unlike in 2014, democratic civil society now had access to State power by being part of these reform processes while

[55] "Infamous Perpetual Treasuries Makes Over 5 Billion Profit After Bond Scam", *Colombo Telegraph*, 27 September 2016

the more pro-nationalist, and pro-Rajapaksa civil society groups like *Bodu Bala Sena* appeared to be subdued in 2015. By 2016 however tensions were visible in this newly formed relationship between democratic civil society and the regime. In the Rajapaksa regime, the role of civil society was clear. It was to highlight the excesses of the State with an interest to secure human rights, freedom and liberties of the people. By being coopted by the Wickremesinghe led government, civil society found itself caught between a rock and a hard place.

On the one hand, the alignment of democratic civil society with the new regime effectively collapsed the distinction between political actors and civil society. As a result, civil society was silent on several occasions when they should have spoken up. This included for example, the complete lack of transparency and accountability in the manner in which the Wickremesinghe led government dealt with the Central Bank bond issue, the slow progress made with regard to the repeal of the Prevention of Terrorism Act (PTA), the long delays in returning land to displaced, including for instance Panama, to name a few. On the other hand, however, the alignment with the new regime also meant that the fortunes of the regime are now directly linked to progress on the issues important to civil society actors. One direct implication of this situation is the serious concern that any critique of the ruling Wickremesinghe-regime would strengthen the hand of the Joint Opposition and other civil society actors such as the BBS that are seeking former President Rajapaksa's return to power. However, this does not mean that there has been no criticism whatsoever by democratic civil society. For instance, though the final report of the PRC was released in June 2016, it was not widely circulated for public discussion and debate. It was civil society that took a lead in disseminating the findings through

various forums and in print media in the local languages, at least in a small way. The State itself failed to adequately publicize this report. Similarly, the Office of Missing Persons (OMP) Bill was hurriedly tabled in Parliament and passed prior to the CTF interim report being released, certain groups raised their concern with regard to the lack of transparency in the process, as well as in the lack of adequate consultations with families of the disappeared. As valid as these critiques have been, it is difficult to shake the impression that democratic civil society and many human rights defenders would prefer to continue to engage with the current regime than return to the soft-authoritarianism of its predecessor. Due to these considerations, these groups have had to constantly negotiate political considerations before responding to government action or inaction. Therefore, in 2015 democratic civil society found itself on the horns of a serious dilemma as it sought to navigate the tension between strategic engagement and critique. By no means can or should this be considered a healthy situation for civil society. Therefore, in 2016 it is imperative that democratic civil society and human rights defenders recognize that human rights is a normative standard and leaves no room for compromises between tactics and principles. How these civil society actors respond to these concerns will have far-reaching consequences for the deepening of democracy and protection of human rights into the future as well.

6. Conclusion

The victory of the United National Front for Good Governance was contingent on a coalition between political parties, as well as a partnership with democratic civil society. A clear transition between the two regimes is visible on many fronts. The regime change provided greater space for freedom of expression by media and citizens and increased space for

democratic dialogue and dissent. Many positive laws were enacted in 2015, including the 19th Amendment, the Office of Missing Persons Act, the Right to Information Act and an Amendment to the Local Authorities Act which introduced a quota for women in local government, to name a few. Furthermore, the establishment of the independent commissions such as the Human Rights Commission and the National Police Commission provide hope for greater transparency and accountability, and the protection of human rights.

Despite the institutional successes however systemic corruption and abuse of power is still very visible in many quarters of the State machinery. Whether the independent commissions will be successful in reforming these bodies, is yet to be seen. However, the Central Bank Bond issue and related financial crisis together with the continued disregard for urgent action to address poverty and development related issues across the country, indicates a failure on the part of the government to restore faith in democracy and good governance. Furthermore, the lack of transparency in government decisions does nothing to invoke confidence in the people. To some, there appears to be little difference between the two regimes.

It is also important to note that contrary to what the present government would have people believe, the Rajapaksas are not solely responsible for the deterioration of democracy over the last decade. The decline of democracy through corruption, lack of transparency and accountability was well on its way before 2005. For example the Former President Chandrika Bandaranaike was directly responsible for the decline in judicial independence during her term as President. Therefore, even with the present government, it is imperative

that the rhetoric moves beyond 'doing better than the Rajapaksa's'. This will require going beyond 'negative achievements' to actively challenging the status quo that dispossess the less powerful.

Given that the Wickremesinghe-Sirisena regime came into power on a platform of good governance and respect for human rights, why is it that they have made so little progress? Based on the actions of this regime it appears that their priority is political survival. The UNP in particular has been desperate to re-gain political control since their defeat in 2004. Now that they are in power, they are more fixated on carefully managing and protecting this power, than bringing about any actual transformation. Many critical issues therefore, such as public security law reform, accountability for human rights violations during the last stages of the war, or the urgent issues relating to land, and development take a back seat. At the same time however, this regime appears to be more interested in their international image than the previous regime, and will therefore dabble with institutional remedies that may not bear any fruit in practical terms. This poses a threat to democratic civil society who are often coopted to many of these processes. While the representation of civil society in many of the reform processes gives legitimacy to the government, it also weakens the ability of civil society to play a critical role protecting and promoting human rights.

In future, it is critical that any democratic struggle by civil society go beyond the creation and dependence on institutions and systems. Being satisfied with institutionalized human rights, like procedural democracy, can become tokenistic. Sri Lanka's quest for democracy would need to move beyond procedural democracy to substantive

democracy. As outlined above, communities continue to be sidelined in important development decisions that affect their homes and livelihoods. The rights of workers and students are often pitted against the interests of a neoliberal economy that leaves no room for considerations of welfare and equity. The benefits of democracy cannot be limited to the political alone, it must directly enrich economic, social and cultural life as well.

IV

THE DEATH PENALTY DEBATE THROUGH NEWSPAPER CARTOONS

Andi Schubert[1]

1. Introduction

The heated debate over the need for the death penalty in 2015 spoke to the indexing of concerns about the application of domestic law, international norms and obligations to which Sri Lanka has committed, and the popular demand for justice and Rule of Law. This debate emerged in the context of the rape and murder of a young woman in the North (Sivaloganathan Vithiya) and a girl child in the South (Seya Sadewmi). These two incidents of rape/murder became the basis for increasingly vociferous calls for the re-introduction of the death penalty in Sri Lanka. As these calls grew louder, the capacity of Sri Lanka's legal system to address pressing social concerns such as a rising crime rate and the desire for a more secure, violence-free future for young women and girls in the country was increasingly called

[1] Andi Schubert is a Senior Researcher attached to the Social Scientists' Association, Sri Lanka (SSA). The author wishes to thank Dr. Shermal Wijewardene for her insightful comments on a previous draft of this article as well as Gihan De Chickera and Awantha Artigala of the *Daily Mirror* for providing a cartoonist's perspective on this topic. Naomi Jacob, Thiagi Piyadasa, and Dilhara Pathirana also provided research support at short notice. He also thanks Dr. Dinesha Samararatne and Vijay Nagaraj for their assistance with the framing of this chapter.

into question. This public debate over the status and capacity of the death penalty was also reflected in the political cartoons published in the daily newspapers. Therefore, the political cartoons from this period provide a useful pathway for discussing some of the concerns about Human Rights, justice, and the Rule of Law that emerged in 2015.

The relationship between political cartoons and public discourse has been variously described as being "functional in the transmission of political ideas to the readers/ electorate" (Kotzé, 1988, p. 60), as a "form of persuasive communication" (Medhurst & Desousa, 1981, p. 198), and as a vehicle to "set [a] social agenda" (Sani, et al., 2012, p. 156). Another view of this relationship is articulated by Josh Greenberg (2002) who argues that political cartoons have a very particular role to play in the construction of visual news discourse. Greenberg explicates this role as "constructing idealizations of the world, positioning readers within a discursive context of 'meaning-making' and offering readers a tool for deliberating on present conditions" (2002, p. 182). An explanation of what this means in a Sri Lanka context was suggested by *Daily Mirror* cartoonists Awantha Artigala and Gihan de Chickera in an interview conducted in the process of data collection. Both of them noted that there was a definite difference between a journalist who reported the news and a cartoonist who commented on the news. Artigala went on to explain that as he saw it, there was a gap between what people simply think about the world they live in and their complex experiences of it. He gave the example of the Police who, people like to say, are there for their protection but in reality were known to people as violent and oppressive. This led Artigala to suggest that the cartoonist's role in society was to "reveal the (complex) reality" that exists behind the simple façade that is generally projected about the world we live in. Therefore, this essay

approaches cartoons as an attempt made by cartoonists to represent their understandings of the complex realities that they felt their readers inhabited.

2. Methodology

Since this approach may appear to be unusual to readers who engage with the *State of Human Rights,* please allow me to explain. I am cognizant of Elisabeth El Refaie's caution that there is a "conspicuous lack of research into what audiences actually do with [political cartoons]" (Refaie, 2009). This paper however, certainly does not attempt to understand how the readership engaged with these political cartoons. Instead, it is concerned with how cartoonists articulated their understandings of how people living in Sri Lanka perceived the death penalty in 2015. Within this understanding, the task of the writer is to map and analyze how discussions of the death penalty in popular culture such as cartoons framed popular demands for more effective forms of justice. Through examining these representations my intention is to explore the implications of these demands for Human Rights and Rule of Law advocacy in the country. Towards this end, this chapter focuses on two inter-related research questions. Firstly, how was this debate captured in the political cartoons of the newspapers? And secondly, what concerns about Human Rights and the Rule of Law were at stake in the conversation about the death penalty that emerged in 2015? These questions will help me to analyze the positioning of Human Rights and the Rule of Law in popular discourse such as political cartoons.

The relationship between cartoons and news is complex. Even though cartoons appear in daily newspapers, as Artigala and De Chickera explained to me, the cartoon cannot be a source of news. Instead, the hope is that a cartoon can provide a commentary or a different/ unique take on issues that are

currently in the news. As a result, cartoonists often wait for a discussion to build up on particular issues before choosing to highlight them in their respective strips. This relationship also means that cartoonists tend to comment on issues that have generated a significant public discussion already. The cartoons about the death penalty emerged most prominently during the months of May-June in the immediate aftermath of S. Vithiya's rape and murder, as well as between September and October 2015 after the rape and killing of five-year-old Seya Sadewmi. There was a massive increase in the number of cartoons discussing the death penalty as the conversation over popular demands for justice in the wake of these two crimes increasingly focused on the need for the death penalty. The forty-six (46) cartoons that were relevant to this paper were selected for how they framed and commented on the link between these two incidents and the debate about the death penalty during this period. Of this pool of forty-six (46) cartoons, thirteen (13) appeared in the English newspaper, *Daily Mirror*[2] which usually carried on average two cartoons a day. The thirty-one (31) Sinhala cartoons were mainly sourced from the *Lakbima,*[3] *Lankadeepa*,[4] and *Ada*[5] daily newspapers.

[2] *Daily Mirror* is an English language daily. It is part of the Wijeya group of Newspapers and is the English daily with the largest circulation in the country. Its team of cartoonists is often recognized as the best in the country.

[3] *Lakbima* is a Sinhala daily. It is owned by a prominent member of the current and previous government, Hon. Thilanga Sumathipala MP.

[4] *Lankadeepa* is a Sinhala daily that is part of the Wijeya group of newspapers, a private newspaper company. This paper focused on its daily edition due to the high number of cartoons in the paper.

[5] *Ada* is also a subsidiary of the Wijeya group of newspapers. It is usually distributed heavily around railway stations and bus stops. It carries a daily cartoon by Awantha Artigala.

Unfortunately, even though many pages were dedicated to what took place in Punguditivu in the Tamil newspapers, *Thinakkural* and *Virakesari,*[6] the writer was only able to identify two (2) Tamil cartoons that explicitly discussed the issue.[7] It is true that most newspapers usually include some cartoon as a way of breaking the monotony of the page and offering an alternative form of commentary. However, these papers were mainly selected on the basis of their wide circulation as well as the high number of political cartoons that appeared in the newspaper.[8] Out of this pool of forty-six (46) cartoons, a total of twenty-three (23) that highlighted the most prominent Human Rights themes that emerged during the debate are discussed in the sections below. The cartoons are reproduced as figures in the Annexure to this chapter.

My discussion in this chapter begins with a brief overview of both local and international Human Rights perspectives

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[6] *Virakesari* is the oldest Tamil newspaper and currently has the largest circulation in the country. It is privately owned by the Express Newspapers. *Thinakkural* is a subsidiary of *Virakesari.*

[7] The apparent imbalance in these numbers is due to a number of reasons. Firstly, I am most conversant in Sinhala and English and had to rely on research assistance for the Tamil newspapers. However, I am fairly confident that the focus of the cartoons that appeared in these pages did not actively reflect on the demand for the death penalty or its aftermath in the same way that cartoonists in the South did a few months later when the story about Seya Sadewmi's rape and murder broke. The two Tamil papers that were analyzed appeared to be more concerned with political developments in the North than in discussions on the death penalty.

[8] The Sinhala newspaper, *Ada* which is the only exception to this rule was selected because it carried cartoons by Awantha Artigala, one of the country's most prolific young cartoonists. Artigala currently publishes a total of nine cartoons per week in either the *Daily Mirror* and *Ada* newspapers. In contrast to the *Ada* newspaper, there are usually three to four cartoons on average in the *Lankadeepa* paper, and around two to three in the *Lakbima* paper.

on the use of the death penalty with a view to contextualizing Sri Lanka's death penalty debate within the larger conversation about Human Rights, justice, and the Rule of Law. I then turn my attention to tracing how the discussion on these themes shifted through the cartoons of the death penalty. To this end, I first examine the cartoons that discussed the popular response to the gang-rape and murder of S.Vithiya in Pungudutivu before moving to the discussion on the death penalty that emerged in the aftermath of the rape and murder of Seya Sadewmi in Kotadeniyawa. Through this I hope to map the shifts in political commentary as responses to these popular demands for the death penalty. I end by reflecting on what these popular demands for the death penalty suggest for a reading of the relationship between law and society in Sri Lanka in 2015.

3. The Death Penalty: Domestic Law & International Obligations

The proper application of domestic law, in particular the effective use of the death penalty, was one of the major aspects of this conversation that took place in 2015. Capital punishment is recognized under Sri Lanka's Penal Code, which makes provisions for death sentences in cases of murder (Section 296) and sedition (Section 191). Apart from this, under Section 54A of the Poisons, Opium, and Dangerous Drugs Ordinance, those convicted of drug trafficking and related drug offences can also be sentenced to death. As statistics from the Department of Prisons in Sri Lanka indicate, most of the death sentences handed out by the courts relate to murder rather than drug related offenses. In 2015 for example, of a total of 186 death sentences, 175 were handed out to individuals convicted of murder, while only 11 individuals were sentenced to death for drug

offenses.[9] There have also been numerous attempts to do away with the use of the death penalty in the country. In 1956 for example, the death penalty was officially removed from Sri Lanka's legal system only for it to be reinstated following the assassination of the then Prime Minister, S.W.R.D. Bandaranaike in 1959. Since then, the public focus on the death penalty appears to wax or wane depending on the heinousness of a crime (like the killing of Judge Sarath Ambepitiya, for example). However, no execution has been carried out in Sri Lanka since 1976 even though Sri Lankan courts have continued to sentence individuals to death. This is because the President has either chosen not to sign the order that she or he is required to make under Section 286 of the Code of Criminal Procedure to confirm the death penalty or has chosen to commute the sentence to life imprisonment. Therefore, while there is still provision for capital punishment within Sri Lanka's legal framework, legal practice has tended to veer towards a moratorium on capital punishment in the country.

International norms have also moved speedily towards either a complete abolishment or at least, a moratorium on the use of the death penalty. Article 3 of the Universal Declaration of Human Rights (UDHR) encoded the right to life as a normative goal and value for States to uphold as far back as 1948. In 1980 Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR). Taking into account countries like Sri Lanka, Article 6 of the ICCPR recognized that there were some States that had yet to abolish capital punishment. However, in these instances the ICCPR

[9] See Table 4.12, item 1 under section A, and item 4 under section D, of Volume 35 of Prison Statistics (Sri Lanka Prisons, 2016).

affirmed that the death penalty could only be meted out for the most serious crimes under the penal code of these countries. The next major international move to abolish the death penalty was the adoption of the Second Optional Protocol to the ICCPR in 1989. Sri Lanka is yet to accede to this optional protocol even though it has unofficially maintained a moratorium on the death penalty for the best part of four decades.

By 2005 steady momentum aimed at doing away with capital punishment was building. The UN Human Rights Council (UNHRC) Resolution 2005/59 for example, called on all States to completely abolish the death penalty and for countries to accede to the Second Optional Protocol of the ICCPR. As a result of these developments, in 2007 the United Nations General Assembly (UNGA) passed a resolution (A/RES/62/149) calling on all States to "establish a moratorium on executions with a view to abolishing the death penalty." Sri Lanka was one of the States that voted in favor of this resolution.[10] Since this landmark resolution, the UNGA has repeatedly voted to re-affirm its commitment to establishing a moratorium on the death penalty in 2008,[11] 2010,[12] 2012,[13] and 2014.[14] Sri Lanka's voting record on these resolutions suggests that there has been a regression from the proactive position it adopted in 2007. This is because in 2008 and 2010 Sri Lanka voted in favor of these resolutions but chose to abstain from voting in 2012 and 2014. Significantly, as 2015 drew to a close as

[10] See - http://www.un.org/press/en/2007/ga10678.doc.htm
[11] A/RES/63/168
[12] A/RES/65/206
[13] A/RES/67/176
[14] A/RES/69/186

part of its mandate to advise and assist the government to formulate legislation, the Human Rights Commission of Sri Lanka (HRCSL) wrote to President Maithripala Sirisena calling for the abolishment of the death penalty in order to bring the country in line with International Human Rights norms.[15]

4. Sivaloganathan Vithiya and the Death Penalty Debate

The increasingly vociferous popular demand for the re-introduction of the death penalty and the expansion of the crimes that were punishable by death was possibly a critical factor in the HRCSL decision to write to the President. The early suggestion of the need for the re-instatement of capital punishment emanated from no less a person than the Minister of Justice, Wijedasa Rajapakshe. Minister Rajapakshe opined that the death penalty could prove to be an effective mechanism to combat the rising crime rate in the country.[16] Some cartoonists such as Gihan De Chickera of the *Daily Mirror* ironically poked fun at this assertion by the Minister of Justice. In Figure 1[17] for example, we find a seemingly gleeful Minister Rajapakshe replacing a portrait of Lady Justice with that of the Grim Reaper, a widely acknowledged symbol of death. The replacement of portraits can be read as an allusion to the exchange of Presidential portraits in government offices when a new President takes oaths. This framing can also be read as the cartoonist's ironic way of

[15] See a copy of this letter here - http://hrcsl.lk/english/wp-content/uploads/2016/01/RECOMMENDATION-TO-ABOLISH-THE-DEATH-PENALTY-IN-SRI-LANKA-E-1.pdf

[16] Minister Rajapaksa made these comments when he called on the Prelates of the Malwatte and Asgiriya Chapters. See news coverage of his statement here - http://www.divaina.com/2015/02/04/news01.html

[17] See Annexure to this chapter, p. 123

drawing attention to the regressive shift in the focus of punishment that seemed contrary to the platform of good governance and accountability promised by the newly elected President, Maithripala Sirisena and his allies.

Minister Rajapakshe's comments were only the opening statement in what would become a massive conversation about the necessity of the death penalty. This conversation started taking shape in May 2015 after the brutal gang rape and murder of seventeen-year-old school girl, Sivaloganathan Vithiya in Pungudutivu in Northern Sri Lanka. Her rape and murder sparked protests across the Northern Province with protests staged in Pungudutivu, Killinochchi, Mulaitivu, and at the University of Jaffna.[18] On the 20th of May a tense situation arose when the alleged perpetrators of the crime were produced in court. Protesters stoned the court premises and demanded that the perpetrators either be put to death or handed over to the crowd.[19] The upshot of this was that 127 of these protesters were arrested by the Police for disturbing the peace.[20] During a visit to the North, President Sirisena met Vithiya's parents and assured them that he would set up a special court, expedite the investigation into her death, and ensure that the perpetrators are given the "maximum punishment."[21]

[18] See coverage of these protests here - http://www.tamilguardian.com/content/anger-jaffna-over-murder-school-girl?articleid=14757

[19] See coverage of these demands here - http://www.dailymirror.lk/73185/protesters-stone-jaffna-court

[20] See - http://www.ft.lk/article/423285/Protestors-stone-Jaffna-Court—127-arrested

[21] See coverage of this meeting and the President's pledges here - http://www.colombopage.com/archive_15B/May26_1432649931CH.php

The discussion following the death of Vithiya was marked by questions about the function of justice in the country. As we have already seen, the protests in the North highlighted a sense of dissatisfaction with the existing mechanisms for ensuring justice.[22] In the absence of this faith, the demand that these perpetrators be handed over to the mob can be read as an indication that people had to take the law into their own hands to ensure that justice was served. In the South, there appeared to be two different responses to what had taken place. Prominent personalities such as the State Minister for Children's Affairs, Rosy Senanayake, along with a number of women's organizations in the South focused their attention on the safety of children and called for better law enforcement and that steps be taken to ensure the safety of women and children.[23] For others, the fact that the protests in the North coincided with the anniversary of the ending of the war was seen as an indication of increased "anti-State activism" in the North.[24] Supporters of former President Mahinda Rajapaksa read these protests and hartals over the incidents as a clandestine attempt to commemorate fallen LTTE cadres.[25] At stake here was the sense that the protesters in the North did not want to recognize the legal and judicial sovereignty of the South and were thereby laying

[22] See for example Shanthi Sachithanandan's comments on the issue here - http://www.sundayobserver.lk/2015/05/31/sec02.asp

[23] See - http://www.sundayobserver.lk/2015/05/24/fea05.asp

[24] For example, Additional Solicitor General, Yasantha Kodagoda suggested that the aftermath (i.e. the protests) was more disturbing than the incident itself since most countries have to deal with crimes such as child rape and murder - http://www.sundayobserver.lk/2015/05/31/sec02.asp

[25] See for example, MP Wimal Weerawansa's comments on the protests - http://wimalweerawansa.lk

the groundwork for the re-emergence of the LTTE.[26] In short, the aftermath of this incident brought into focus the fractured perspectives on justice in the North and South. Examining the aftermath of this incident through cartoons is therefore important because it reflects the first major conversation about the relationship between the death penalty and the function of justice in Sri Lanka.

The collapsing of the fate of children and young women in the North was prominent in the cartoons relating to this incident. The cartoons that appeared in the *Thinakkural* (Figure 2)[27] and at least one of the cartoons that appeared in the *Daily Mirror* (Figure 3)[28] sought to emphasize the child rights dimension of Vithiya's rape and murder. These cartoons particularly foregrounded the plight of young women from the North who have had to endure years of war and sexual violence. It might be argued that these cartoons are fairly stereotypical, as they construct a rather easy binary between the shivering schoolgirl and the adults who victimize them. This binary works to construct the girl child as passive and in need of protection from the predatory adult world. However, one possible reason for these stereotypical representations could be the desire to communicate as quickly as possible through the visuals as intimated to me during an interview with Artigala and de Chickera. This is not to

[26] This was perhaps most explicitly referenced in the rather troubling conversation between a senior Police Officer and an elderly Tamil woman during a protest demanding justice for Vithiya's death. The Police Officer is heard saying in a rather derogatory fashion that the responsibility for disciplining Tamil men lay with the Tamil community and not with the Police. See a video of the incident here - https://www.youtube.com/watch?v=AzRAd_MMgcQ

[27] See Annexure to this chapter, p. 123

[28] See Annexure to this chapter, p. 124

suggest that cartoonists did not attempt to communicate more nuanced messages. For example, Awantha Artigala's cartoon in the Sinhala newspaper, *Ada* (Figure 4)[29] presents a more nuanced cartoon on the killing of S. Vithiya. At first glance, this cartoon seems to suggest that in the absence of the Sri Lankan Army and the LTTE, ordinary citizens are now oppressing the girl child. However, an alternative way of reading this cartoon is to see it as a suggestion that while the old identities of LTTE cadre and Sri Lankan Army soldier are no longer prevalent, the individuals who were involved with both groups still continue to oppress the girl child in the North. The possibility of these multiple readings from a single image stems from Artigala's skillful use of symbolic reference points such as positioning (the two boots/feet on either side of the cartoon) and size (the size of the school girl in the cartoon) to emphasize a complex commentary on a political issue. On the other hand however, these images are marked by the way in which they chose to represent the girl child rather than the young woman. All these cartoons depict a young girl in school uniform (symbolically, what S. Vithiya was wearing when she was raped and murdered) and always at the mercy of the adults around her. Furthermore, it is only the girl child who is fully represented in these cartoons while the presence of adults is to be inferred from the presence of extra-large limbs or the suggested linking of guns and hands (Figure 3)[30]. In other words, these cartoons arguably seek to underscore the innocence and victimization of the girl child by privileging her identity as a school girl who is at the mercy of the darker impulses of the adult world (i.e. through the tattooed hands

[29] See Annexure to this chapter, p. 125

[30] See Annexure to this chapter, p. 124

of an adult who is having her for dinner like in Figure 2 or the oversized feet of the army and the LTTE in Figure 4)[31]. However, in doing so these images serve to infantilize the figure of S. Vithiya, masking her age (17) by representing her as a girl child rather than as a young woman. The patronizingly patriarchal framing of the girl child/ victim may also serve to divert the conversation away from the question of gender-based violence towards the problem of protecting children. Therefore, one of the major features of the way in which cartoonists chose to represent the debate about the rape and murder of Vithiya is the gendered representation of the girl child as a victim of adults.

The relationship between racism and the demands for justice was another aspect that was foregrounded in cartoons published during this period. Two of *Daily Mirror* cartoonist, Gihan de Chickera's cartoons, are useful illustrations of this tendency. Figure 5[32] for example uses the symbolism of the tombstone and the vulture, two strong symbols of death, to highlight how the problem of rape was being overshadowed by racism. By using the symbolism of the vulture, this cartoon appears to suggest that those using the rape of this young woman to heighten racial tensions were feeding off the incident for their own survival. Read in this way, this cartoon offers a rather simple yet powerful commentary on how the conversation about Vithiya's rape and murder was steadily being side-lined to stoke fears of the possible return of the LTTE. Similarly, in Figure 6[33] we find the cartoonist choosing to highlight the importance of seeing beyond rhetorical similarities to the underlying motivations that have resulted

[31] See Annexure to this chapter, p. 125
[32] See Annexure to this chapter, p. 125
[33] See Annexure to this chapter, p. 126

in the demand for the death penalty. Explaining this cartoon, De Chickera stated in an interview that he had wanted to draw attention to the fact that the very valid condemnation of the rape and murder of Vithiya was being used as a pretext for the introduction of a tighter (and more oppressive) legal system. What is significant therefore about De Chickera's cartoon then is that it offers us a commentary on the motivations behind the call for the death penalty. As Figure 6[34] suggests, paying attention to how cartoons depicted the calls for the death penalty afford an insight into the complex motivations that undergirded this popular demand. On the one hand, the calls for the death penalty recognized the urgent need for reform of the legal system to combat the increasing rate of violent crimes, particularly the rape and murder of children. On the other hand, as these cartoons suggest however, these calls for the death penalty could also lay the groundwork for a more oppressive legal and law enforcement system. Therefore, one of the major Human Rights concerns that became apparent was the question of how to balance the demand for the more effective application of the law to combat crime with the promotion and protection of the rights of all citizens in the country.

At the core of these representations of racism and young women was the question of the demand for justice, a theme that was also reflected in the cartoons. The aftermath of Vithiya's death highlighted the problem of justice in political discourse. This shift in discussion is visible when comparing some of the cartoons that emerged during this period with Figure 1,[35] a commentary on Justice Minister Wijedasa Rajapakshe's calls for the death penalty. Take for example

[34] See Annexure to this chapter, p. 126
[35] See Annexure to this chapter, p. 123

Figure 7[36] which represents the Lady Justice as coyly responding to and flirting with either a politician or businessman but choosing to remain aloof and distant to the common man's appeals to her. This cartoon can be contrasted with Figure 1[37] which depicts Lady Justice as merely an inanimate painting being replaced by another inanimate painting of the Angel of Death. However, in Figure 7[38] Lady Justice is no longer an inanimate painting but has been personified and brought to life. This commentary on Lady Justice is furthered by Figure 8[39] which does not stop with suggesting that she is helping the Police to turn a blind eye to demands for justice from the North. Instead, closer scrutiny of the cartoon also shows that she has given up her scales (the symbol of balance and fairness) in order to do this. Another perspective on Lady Justice was voiced in one of the few cartoons on the death of Vithiya to appear in the *Lankadeepa* newspaper. As Figure 9[40] suggests Lady Justice must determine between two contrasting perspectives on justice in the North and South. In the cartoon protesters from both the North and the South are making an appeal to Lady Justice but for completely opposite reasons – in the North the call is for Lady Justice to punish abusers, in the South the protesters demand she keep her hands off them. Lady Justice is strategically, and stoically, silent in the face of these two contrasting demands. In other words, Lady Justice has shifted from an inanimate ideal to an active participant in the debate over justice. However, in these cartoons her participation is problematized. In some cartoons she is represented as working in collusion with those in power to oppress the common man.

[36] See Annexure to this chapter, p. 126
[37] See Annexure to this chapter, p. 123
[38] See Annexure to this chapter, p. 126
[39] See Annexure to this chapter, p. 127
[40] See Annexure to this chapter, p. 127

In some other cartoons she is depicted as remaining stoically silent in the face of angry appeals to her for justice. Therefore, even though these cartoons locate her as an active participant in the debate about justice, they appear to articulate a serious dissatisfaction with the way that justice is functioning in Sri Lanka in 2015.

5. Seya Sadewmi and the Demand for the Death Penalty

The debate over the use of the death penalty reached fever pitch after the rape and murder of five-year-old Seya Sadewmi came to light in Septermber 2015. The body of this girl child who was abducted while asleep in her home in Kotadeniyawa on the 12th of September, 2015 was finally discovered the next day. The Kotadeniyawa Police quite comically botched investigations into her death, repeatedly producing alleged perpetrators before more thorough investigations and forensic testing forced them to admit that they had had produced the wrong individual.[41] Though they would eventually arrest someone whose DNA matched the DNA on Seya's body, the procedure raised more questions than answers since they managed to identify the wrong perpetrator on at least three occasions.

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[41] The Police announced that they had arrested a seventeen-year-old-youth and another thirty-three-year-old individual as suspects in the killing of Seya. However, the Police were forced to release these two individuals since they were unable to match the DNA found on Seya's body with the DNA of these two suspects. Following their release, the two individuals were admitted to hospital due to the torture they underwent at the Kotadeniyawa Police Station. In the meantime, the Police informed the media that a third suspect, Dinesh Priyashantha alias "kondaya," had been arrested in connection with Seya's murder. The Police soon announced that Priyashantha had confessed to the sexual assault and killing of Seya. A few days later however, the Minuwangoda magistrate was informed that the DNA on Seya's body did not match that of Priyashantha.

The comical incompetence of the Police investigation may have appeared to be a valuable argument against the death penalty. However, quite surprisingly popular calls for the death penalty grew louder even as the Police continued to spectacularly bungle the investigation. As the grisly details of the crime received increasing news coverage, the popular demand for the introduction of the death penalty started to grow increasingly louder. Children on their way to Sunday School held a protest in front of Temple Trees demanding that President Sirisena introduce the death penalty to protect "budding flowers" like themselves.[42] The media too weighed in heavily into this debate with many columnists and journalists expressing views for and against the re-introduction of the death penalty. What was common to these calls was that the focus of much of these conversations laid more emphasis on the crime itself rather than on the process through which justice was to be served.

The growing calls for the death penalty led to the proposal of an adjournment motion in Parliament. MP Hirunika Premachandra who proposed the motion noted that the main reason that there were repeat offenders was because law enforcement agencies in the country did not punish perpetrators of these crimes correctly when they committed their first crime. She went on to note that the media had pointed out that the some in the media had advanced the "doctrine of cause and effect" to emphasize that punishment should address the cause rather than the effect of the rising crime rate in the country (October 06, 2015 Parliament Hansard, p.238). However, she rejected this notion outright

[42] See for example the clip of the protestors in this Derana news item - https://www.youtube.com/watch?v=-3xcp3VJpFs, see also - http://www.divaina.com/2015/09/20/feature13.html

to argue that Parliament should not waste its time debating the causes for the crime wave. Instead, MP Premachandra strongly advocated that the best and most effective solution to the rising crime rate in the country was to begin carrying out the death penalty immediately (October 06, 2015 Parliament Hansard, p.237-8). The counter-point to her speech was vocalized by the Minister of Wijedasa Rajapakshe who, notwithstanding his comments in February (highlighted above), explained why the Sri Lankan State should not reinstate the death penalty. He explained that under the previous system of punishment that was developed under Hamurabi's code, the focus of punishment was retributive. However, he pointed out that in the modern world, and particularly in democratic countries, the aim of punishment was not retribution but to correct and rehabilitate (October 06, 2015 Parliament Hansard, p.265-6). Therefore, he was of the opinion that Sri Lanka should vote in favor of the UN Resolution to establish a moratorium on capital punishment. A number of MPs who contributed to the debate advocated positions that fell somewhere between the position of either MP Premachandra or Minister Rajapakshe. However, some speakers such as MP Piyal Nishantha de Silva argued that there was a need for the kind of punishments meted out before Sri Lanka was colonized by the Europeans to combat the rising crime wave in the country. As these conversations suggest there was a wide range of opinions that highlighted a range of different perspectives on the utility of the death penalty in the months after the killing of Seya Sadewmi. These complex responses were also visible in the cartoons that discussed the pros and cons of the re-instatement of the death penalty.

Some cartoonists decided to take a stance against the death penalty, and in some cases decided to articulate a critique

of these calls for capital punishment. For example, the *Daily Mirror* cartoon team discussed the issue and decided that they would collectively stand against the death penalty. This stance was visible in a number of the cartoons that emerged from this team which highlighted the complicity of those advocating for the death penalty in the very crimes they were seeking to address. For example, Namal Amarasinghe's cartoon (Figure 10)[44] depicts what appears to be a politician fishing with a tiny hangman's noose atop a large fish called "crimes," suggesting that the death penalty is an inadequate response to the severity of the problem. Quite subtly, Amerasinghe chooses to depict the politician as sitting atop the fish (rather than on a pier for example), thereby also suggesting that the politician has a vested interest in ensuring that crimes are not effectively dealt with. By doing so, he also seems to suggest that political interest in the death penalty is aimed more at perception than at an effective solution to the crimes that were becoming increasingly prevalent. Awantha Artigala, another cartoonist at the *Daily Mirror,* also highlighted a similar commentary on the death penalty. Figure 11,[45] for example, depicts those calling for the death penalty as following in the same (bloody) footsteps of the perpetrators of violence. Thereby, Artigala suggests that those advocating for the death penalty are hardly different from the very criminals they hope to punish. These examples highlight how one group of cartoonists used their political art as a way of calling out the complicity and hypocrisy of those advocating for capital punishment. By doing so, these cartoonists actively aimed to oppose the re-instatement of capital punishment in Sri Lanka.

[44] See Annexure to this chapter, p. 128

[45] See Annexure to this chapter, p. 129

Paradoxically, cartoons advocating for the re-instatement of the death penalty interestingly also highlighted the complicity and hypocrisy of those in power. For example, Thalangama Jayasinghe's "Pala Malla" cartoon strip on the front page of the *Lankadeepa* pointedly called out the complicity of lawyers, academics, and politicians in resisting the introduction of the death penalty. In one memorable cartoon (Figure 12),[46] Jayasinghe depicts a conversation between a lawyer and a common man regarding the re-instatement of the death penalty. In response to the man's question as to why the lawyer is opposed to the death penalty, the lawyer opines that it is actually more financially beneficial for lawyers to oppose the death penalty. This character opines that since those who are imprisoned for their crimes are soon released and are able to kill again, the lawyer profits from filing more cases on their client's behalf. Thereby, Jayasinghe pointedly highlights the hypocrisy of the legal fraternity by implicating their resistance to capital punishment in their desire for financial gain. Another example of Jayasinghe's caustic wit is visible in Figure 13.[47] In this cartoon, Jayasinghe depicts a conversation between a politician and a criminal. Reflecting the stance espoused by politicians against the death penalty, the politician explains to the criminal that the death penalty has not resulted in the reduction of crime anywhere in the world. The criminal vehemently agrees with the politician. In a demonstration of *reduction ad absurdum,* the criminal goes on to note that since punishment has not reduced the crime rate in the world, it is better to do away with punishment all together. In fact, the criminal points out, the abolishment of punishment would be beneficial for both him as well as the politician. Like the commentary on the lawyer, this cartoon

[46] See Annexure to this chapter, p. 129

[47] See Annexure to this chapter, p. 130

also suggests that many politicians have a vested interest in resisting the re-instatement of the death penalty.[48] Jayasinghe also directs his ire to academics who, he suggests, have allowed their theoretical assumptions and normative values to get in the way of practical, day-to-day demands for justice. In Figure 14,[49] Jayasinghe's cartoon presents a conversation between an academic and a common man. The academic pontificates that the creation of a "decent society" and not the death penalty is the only effective solution to the rising crime rate. In response, the common man scolds the academic for his theorizations and pointedly asks whether the lack of the death penalty for the past 40 years has resulted in the creation of a "decent society." As a result, this cartoon suggested that there was a growing anger and disillusionment with high-flown theories emanating from academics among the average person. Taken together, Jayasinghe's cartoons suggest that the middle class, represented here by lawyers and academics, is at best, either ignorant of the problems of the lower class, or, at worst, capable of profiting from the danger faced by the working class.[50] Therefore, Jayasinghe's cartoons, unlike those drawn by the *Daily Mirror* team, foregrounded the complicity and hypocrisy of those who resisted the re-instatement of the death penalty in 2015.

The other major commentary on the incident to appear in these cartoons was the focus on how the Police kept bungling the investigation into the rape and murder of young Seya.

[48] As a corollary, it should also be noted that Jayasinghe's cartoon provides a more explicit link between the criminal and the politician than Amarasinghe's subtle suggestion in Figure 11.

[49] See Annexure to this chapter, p. 130

[50] There does however appear to be a shared distaste of the role that politicians have played in the debate when the English and Sinhala cartoons are compared.

The cartoons in both the Sinhala and English newspapers lampooned the way in which the Police were handling the investigation. For example, one of the "A-thuma" cartoons in the *Lankadeepa* (Figure 15)[51] depicted one character informing a politician that there had been no progress in the investigations into 15 murders that had taken place in Kotakethana. The politician quite humorously states that the best solution would be to transfer the Kotadeniyawa Police officers to Kotakethana as they would be able to produce 50-60 different perpetrators almost immediately. This cartoon quite explicitly notes the absurd rate at which the Police kept announcing that they had solved the crime without any real evidence. The problematic procedure adopted by the Police was also the focus of one of the "Hina Wassa" cartoon by Tissa Hewavissa (Figure 16).[52] In this cartoon, a meditating Police Officer seeking divine intervention to solve the crime in Kotadeniyawa is foregrounded as a commentary on how problematic the new regime's promise of good governance had become. The Police Officer's chants reference a torture chamber, an investigation, and the state of good governance in the country thereby commenting on the new regime's broken promise of better governance that followed proper procedures. Cartoonists also emphasized the unusual way in which scientific evidence repeatedly tripped up the claims made by the Police in the course of their investigations. For example, Awantha Artigala's *Ada* cartoon (Figure 17)[53] highlights a policeman entangled and tripping over DNA evidence. This depiction may have been aimed at highlighting how forensic medicine was proving more adept at investigation than the Police who kept

[51] See Annexure to this chapter, p. 131
[52] See Annexure to this chapter, p. 132
[53] See Annexure to this chapter, p. 132

producing suitable perpetrators and then changing their tune when the evidence pointed in a different direction. In some ways, the cartoon also suggests that forensic medicine is an unwelcome complication in the increasingly common trajectory for Police investigations in the country. These cartoons are good examples of the way in which the cartoonists sought to draw public attention to the procedural mistakes made by the Police in the course of the investigation. Significantly, even though these cartoons highlighted the incompetency of the police, this tendency was rarely explicitly extended into a larger argument against the death penalty.

If these cartoons poked fun at the procedures adopted by the Police, some cartoonists also sought to provoke careful reflection on the role that the Police should play in a society. A good example of this is Namal Amarasinghe's explicit commentary on the problematic procedure adopted by the Police in one of the "Banana Republic" cartoons. In this cartoon (Figure 18)[54] we find a comparison of the approach of local and a foreign Police Officers when the evidence does not align with what they find. Amarasinghe's cartoon highlights the use of torture by the Police in order to produce suspects quickly with a view to appeasing both public and government calls for justice for the rape and murder of Seya Sadewmi.[55] Another cartoon by Amarasinghe shed light on the increasingly close and problematic relationship between the Police and the media (Figure 19).[56] Amarasinghe's cartoon

[54] See Annexure to this chapter, p. 133

[55] This commentary is even more pressing since at least one of the 'suspects' produced by the Police, Seya's teenaged neighbor has filed a Fundamental Rights case alleging that he was tortured and arbitrarily arrested by the Kotadeniyawa Police. The case is currently before the Supreme Court.

[56] See Annexure to this chapter, p. 134

suggests that due to this relationship even Police mistakes could easily become fodder for news-hungry media corps. It is only in one cartoon (Figure 20)[57] however, that a cartoonist highlights how the focus on tightening laws and procedures is meaningless without a concomitant focus on addressing poverty and the lack of education in tackling crime against women and children. By symbolically linking the establishment of laws and procedures (the purview of legislators) with enforcement (by the Police), this *Ada* cartoon by Awantha Artigala underscored the need for a shift in the focus of both the Police and polity to ensure the safety and security of women and children in the country. As this discussion shows, much of these cartoons chose to highlight the need for paying closer attention to the function of the Police in promoting justice in the country. Therefore, these cartoons that emerged a few months after the killing of Vithiya foregrounded the importance of law enforcement procedures in ensuring that justice is served. What was unique about these cartoons is that unlike the cartoons that emerged after the rape and killing of Vithiya, these cartoons appeared to shift their focus away from abstract ideals of justice. Instead, as the debate on capital punishment gathered steam, the focus of these cartoons increasingly foregrounded the very specific, day-to-day concerns about justice, such as the role of the police and the media, in order to frame the conversation about the need for the death penalty.

Finally, the representation of the girl child was also a prominent aspect of the cartoons related to the death of Seya Sadewmi. There were at least two cartoons in the Sinhala

[57] See Annexure to this chapter, p. 134

press that highlighted the lack of protection for and concern about children in the country. For example, Figure 21[58] which is Awantha Artigala's cartoon on children's day (October 1st), depicts the failure of Sri Lanka's male politicians to ensure the safety of a girl child. Artigala's cartoon suggests that politicians from all political parties (note the variations in the sartorial markers of the men) do not have the capacity to provide a safety net for children. In a similar vein, Artigala's cartoon from a few days previously (Figure 22), also highlights how the political push for progress and development (signified by the speedboat piloted by the politician) is leaving the girl child behind. Like the cartoons relating to S. Vithiya, these cartoons construct a gendered narrative of the innocent girl child victim in need of the protection of male politicians. However, it is only in one other cartoon (again by Artigala) that an attempt is made to highlight the larger issue of violence against women in Sri Lanka. Figure 23[59] depicts a policeman scratching his head and staring at the chalk figure of a woman/child's body. The boundary of the crime scene reflects the map of Sri Lanka. In short, Artigala appears to be suggesting that the Police are quite clueless about how to solve crimes against (particularly murders of) women and girls. The titling of the cartoon (Women in Sri Lanka) furthers the suggestion that this is a commentary on the much larger issue of violence against women in the country. Of all the 23 cartoons analyzed for this chapter, this cartoon is the only one to explicitly highlight the dimension of violence against women in this significant conversation about the function of justice. However, even in this representation, the focus of the cartoonist is on the incapacity of the police to solve the crime rather than on the larger issue of violence against women.

[58] See Annexure to this chapter, p. 135

[59] See Annexure to this chapter, p. 136

Therefore, like the cartoons surrounding S. Vithiya, in the case of Seya Sadewmi too, cartoonists often tended to focus their attention on the girl child rather than on the larger issue of violence against women in the country.

As the above discussion demonstrates, an intense discussion on the role a death penalty should play in Sri Lanka emerged in the aftermath of the Seya Sadewmi rape and murder. However, unlike in the cartoons after Vithiya's killing, the issue of race was noticeably absent from the discourse in political cartoons after the death of Seya. Instead, the discourse in these cartoons mirrored public conversation and appeared to focus more on the effectiveness of capital punishment as a vehicle for ensuring the Rule of Law in the country. In other words, whereas the question of ethnicity inflected the discussion on the death penalty in the case of Vithiya, with Seya the focus of the conversation was on the rising crime rate and the Rule of Law. As a result, this discussion foregrounded concerns relating to the effectiveness of the death penalty, the complicity of both advocates and critiques in their respective positions on the death penalty, the function of the police in managing crime and protecting the public, as well as the concern about the girl child. Therefore, what is striking about these conversations in the aftermath of Seya's killing is that the recognition of the death penalty as a Human Rights issue was often secondary to the debate surrounding the nexus between punishment, justice, and the Rule of Law in the country.

6. Conclusion: Rule of Law Vs Respect for Human Rights

This chapter has attempted to demonstrate that cartoons can also reflect the many sides of a public debate, particularly

in the case of issues such as the death penalty. The analysis of cartoons enables a mapping of how public discussions on a Human Rights issues such as the re-instatement of the death penalty gained prominence and currency in Sri Lanka in 2015. At the outset, this chapter posed two inter-related research questions: Firstly, how was the capital punishment debate captured in the political cartoons of the newspapers? And secondly, what concerns about Human Rights and the Rule of Law were at stake in the conversation about the death penalty that emerged in 2015? In response, I have sought to argue that what is significant about the cartoons on the re-instatement of the death penalty is that they reflect an extensive examination of and commentary on the tensions between the application of law, the promotion of international Human Rights norms, and popular demands for addressing pressing social concerns. At stake in this nexus between the law, Human Rights and Rule of Law is an intense debate over the extent to which law and society are, or even should be, imbricated in each other, particularly in the context of the change of regime in 2015.

These cartoons also reflect how the question of death penalty was shot through with a much broader discussion about the function of justice in the country. As the discussion above indicates, the cartoons indicate a shift in the conversation about justice from an abstract ideal in Minister Rajapakshe's initial comments on the need for the death penalty, to an active, albeit oppressive participant in the debate on how best to address the rising crime wave against young women in the country during 2015. As more such crimes came to light, the cartoons analyzed in this paper suggest that discussions on justice increasingly focused on the every-day experience of justice among people who are often

marginalized from access to power. Therefore, one of the other major findings from this analysis could be that approaches to justice that emphasize procedural enforcement of the Rule of Law and rights are increasingly perceived as elite pursuits that functions to marginalize rather than empower the average citizen.

Finally, what does this analysis suggest about the function of Human Rights in Sri Lanka in 2015? As this chapter demonstrates whereas the international trend has been to move away from the death penalty due to considerations of Human Rights, in Sri Lanka in 2015 the opposite trend was visible. That is, the popular perception of the death penalty was that its implementation would be an effective deterrent to the pressing social issue of increasingly violent crimes against women and children. Within this understanding the death penalty was seen as a mechanism that could ensure the rights of women and children more effectively. This rather surprising turn away from more commonly accepted Human Rights standards requires a degree of considerable attention that may not be fully possible within this space. However, for the time being it could be suggested that during 2015 the respect for Human Rights and the Rule of Law were increasingly perceived as adversarial, rather than complementary aspects of social and political life in Sri Lanka. The framing of social values as a choice between respect for Human Rights or the promotion of the Rule of Law is even more surprising in the context of the election of a new regime that emphasized the need for more transparent governance, respect for Human Rights, and a more accountable public sector in 2015. In the absence of careful attempts to educate citizens on the importance of Human Rights within the country, the general public will be

increasingly likely to perceive justice as a mutually exclusive choice between the Rule of Law and the promotion of Human Rights. This trend should be a warning sign for the new government who would do well to focus on promoting Human Rights as a complementary aspect of its domestic policy rather than only resorting to Human Rights when advancing various foreign policy goals in 2016.

Annexure:

Figure 1 - *Daily Mirror* 06 February 2015

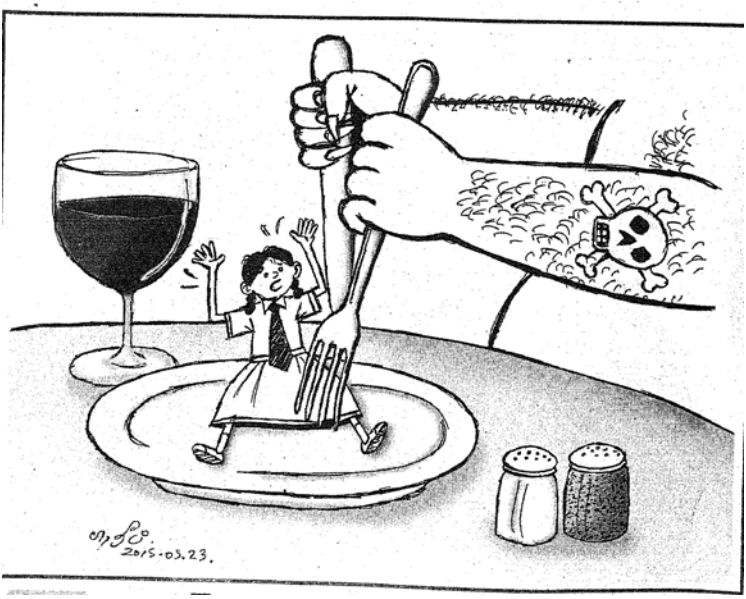

Figure 2 - *Thinakkural* 23 May 2015

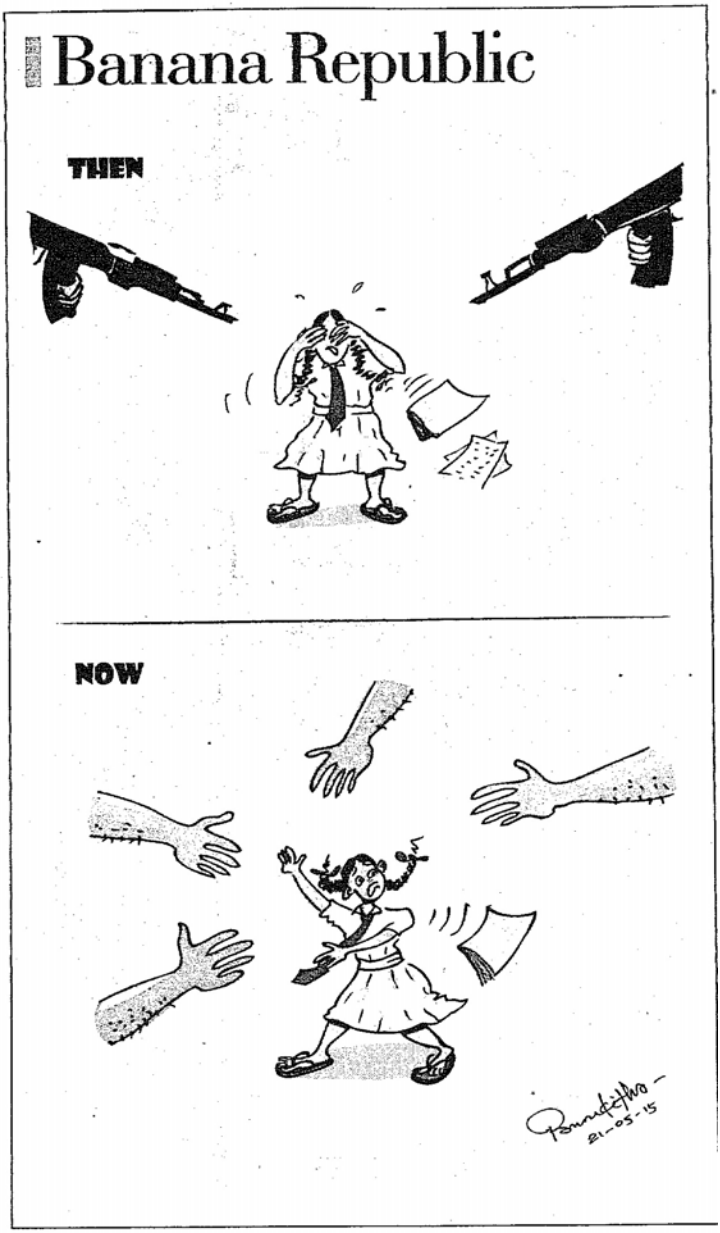

Figure 3 - *Daily Mirror* 21 May 2015

Figure 4 - *Ada* 21 May 2015

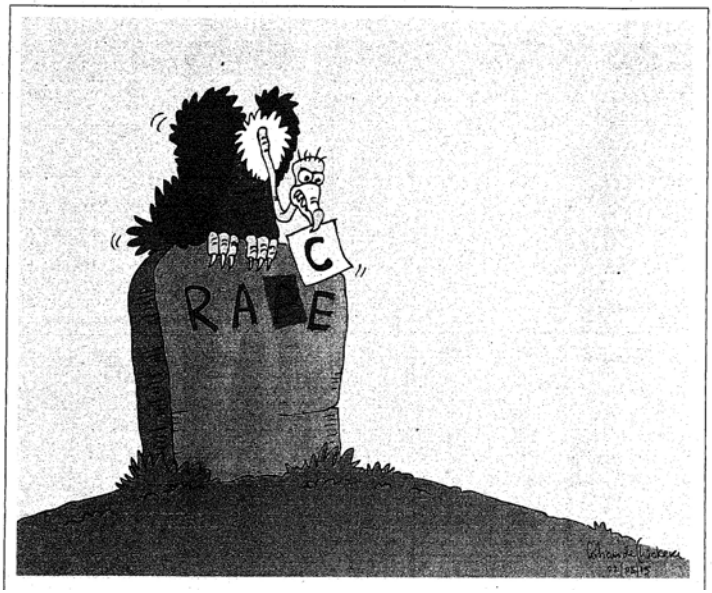

Figure 5 - *Daily Mirror* 22 May 2015

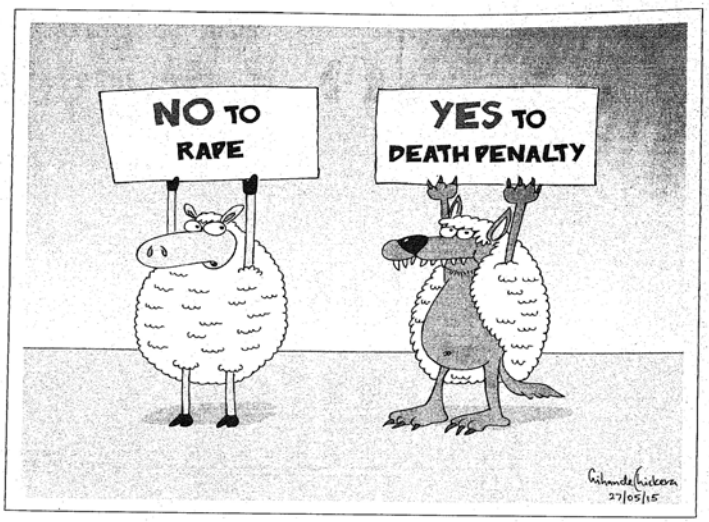

Figure 6 - *Daily Mirror* 27 May 2015

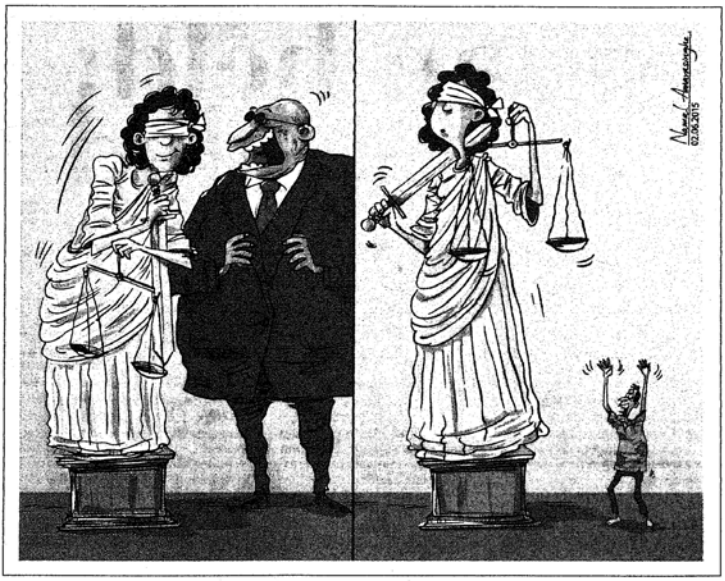

Figure 7 - *Daily Mirror* 02 June 2015

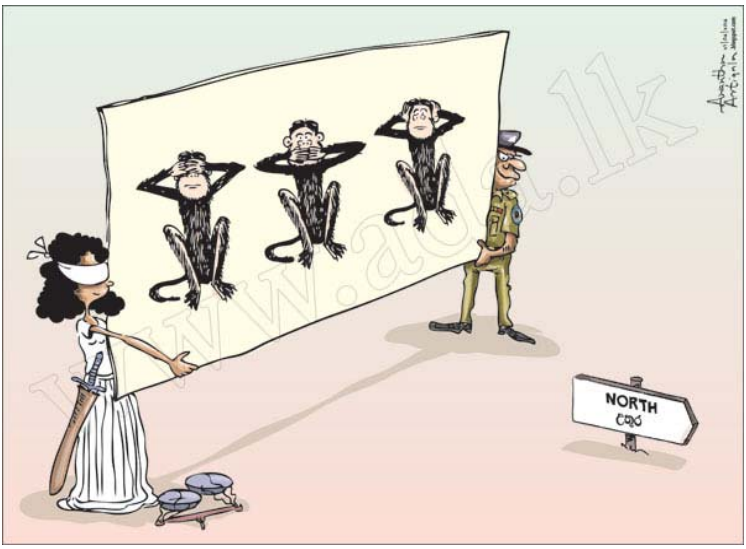

Figure 8 - *Ada* 27 May 2015

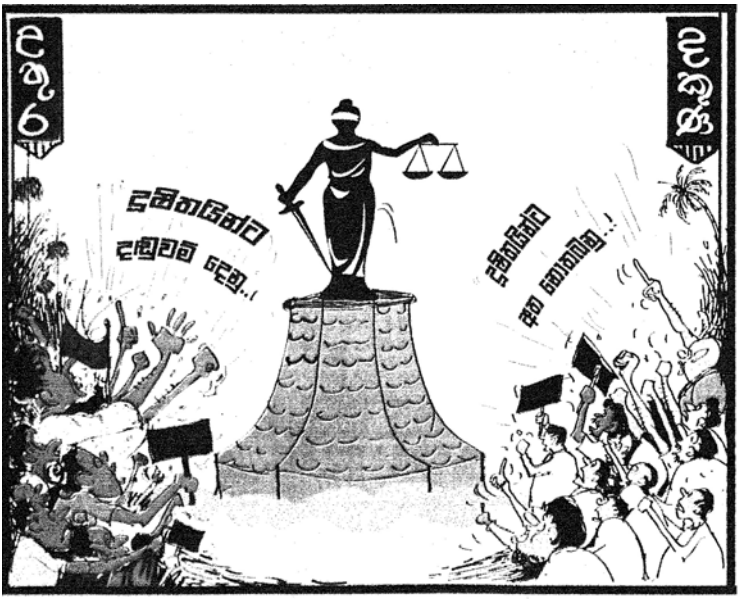

Figure 9 - *Lankadeepa* 28 May 2015

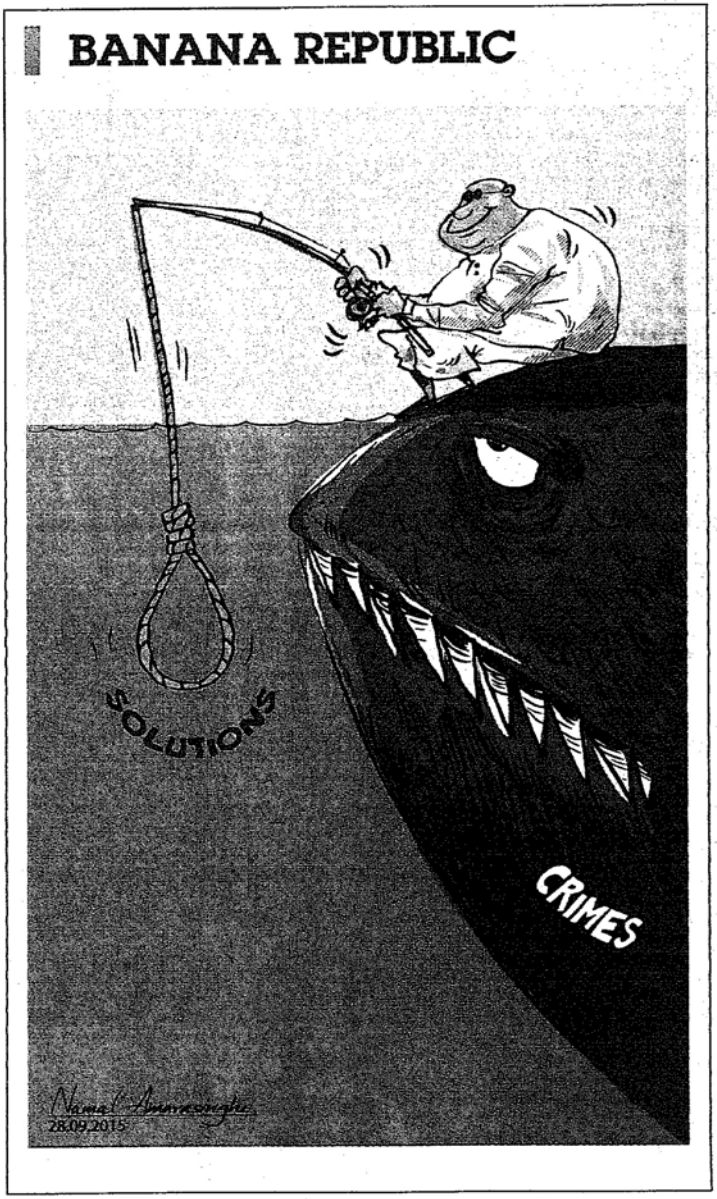

Figure 10 - *Daily Mirror* 28 September 2015

Figure 11 - *Daily Mirror* 17 September 2015

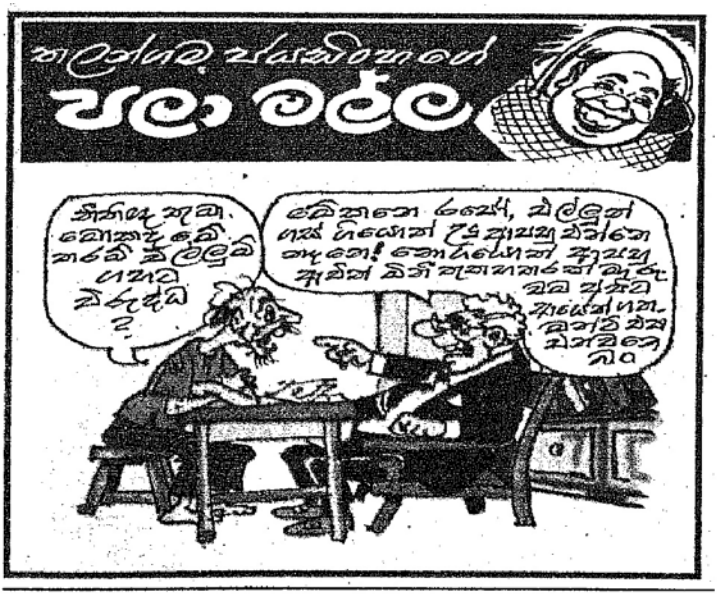

Figure 12 - *Lankadeepa* 01 October 2015

Figure 13 - *Lankadeepa* 15 October 2015

Figure 14 - *Lankadeepa* 28 August 2015

Figure 15 - *Lankadeepa* 17 October 2015

Figure 16 - *Lankadeepa* 19 October 2015

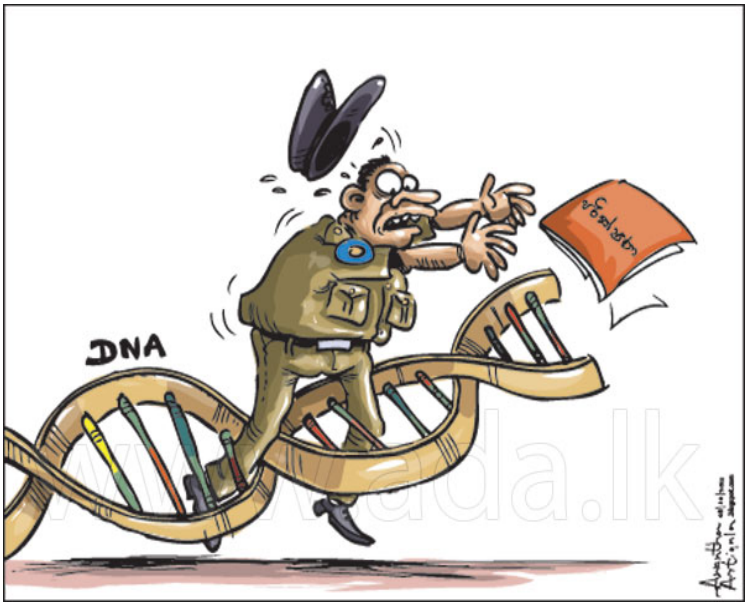

Figure 17 - *Ada* 08 October 2015

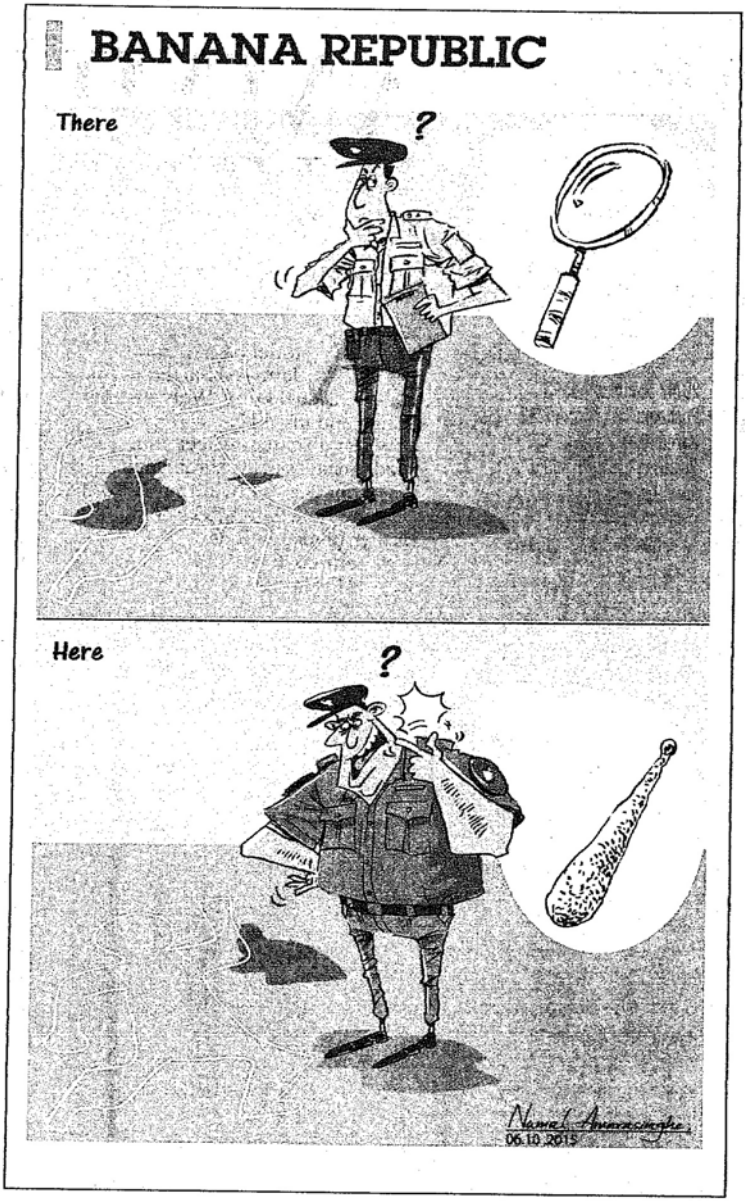

Figure 18 - Daily Mirror 06.10.15

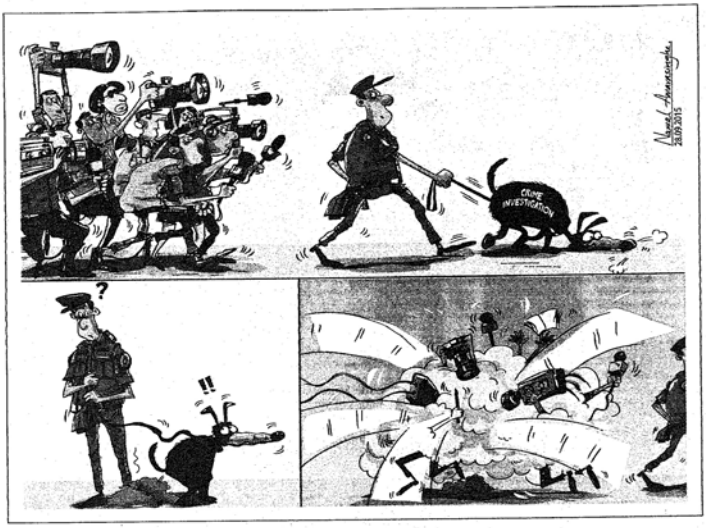

Figure 19 - *Daily Mirror* 28 August 2015

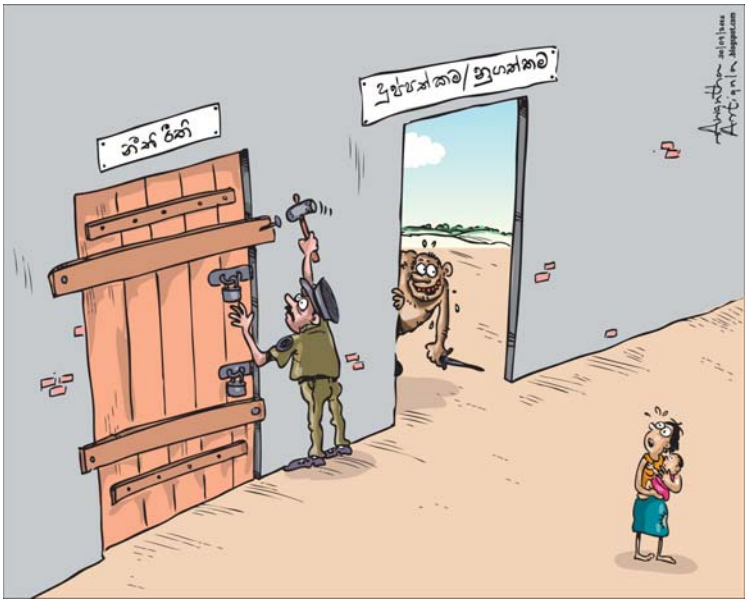

Figure 20 - *Daily Mirror* 30 September 2015

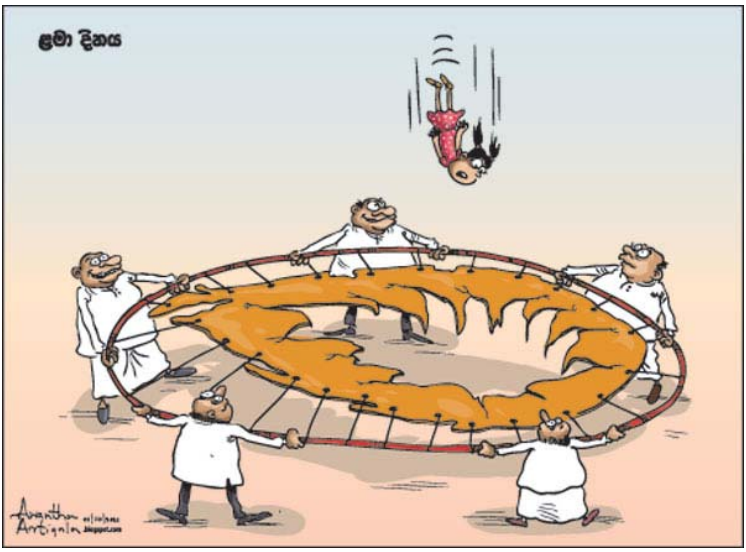

Figure 21 - *Ada* 10 January 2015

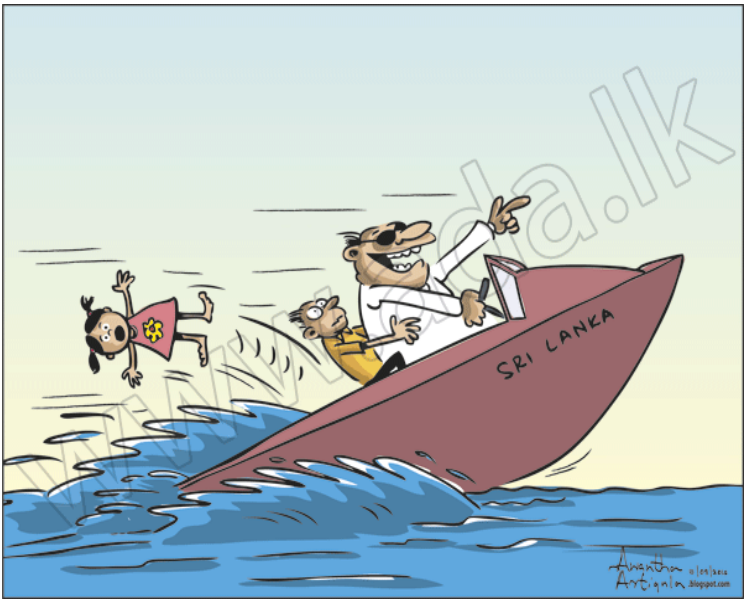

Figure 22 - *Ada* 15 September 2015

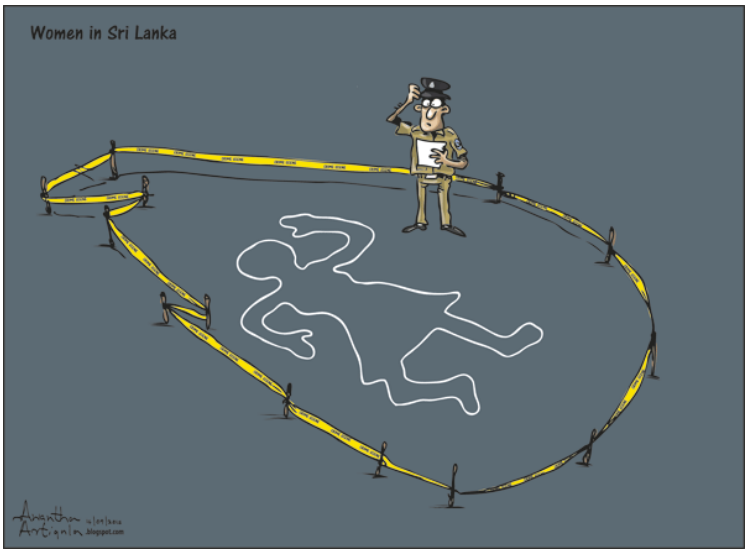

Figure 23 - *Ada* 14 September 2015

V

INTERNATIONAL MONITORING OF HUMAN RIGHTS

Dinushika Disssanayake [*]

1. Introduction

A chapter on the International Monitoring of Human Rights in Sri Lanka for the year 2015 requires navigation not only of the domestic 'state' of human rights and human rights discourse, but also some of the politics of international monitoring of Sri Lanka's human rights situation. In navigating the truly murky waters of international monitoring of human rights in Sri Lanka (or indeed, elsewhere), there is also a justifiable need to reflect on the reactions in Sri Lanka to the international scrutiny that this island nation, a speck in the Indian ocean, has historically been subjected to. In this connection, the changes brought about by a democratic change of regime in early 2015 is of great significance. It has changed the state's relation to and relationship with international monitoring; but at the same time, a study of the stance of the Government of Sri Lanka in international fora does appear to have taken a quantum leap, from defensive to far more collaborative.

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For this analysis then, I begin by grappling with some of the recent historical monitoring of the human rights situation in Sri Lanka, namely from 2009 (end of the armed conflict) to 2014 as a context to the international scrutiny of human rights developments in Sri Lanka in the year 2015. I do not intend to dwell too long on this analysis in a chapter dedicated to the state of human rights in Sri Lanka in the year under review, but do meander long enough to provide a context to the subsequent reactions of the state to international monitoring in the year 2016.

I then analyze the monitoring in 2015 itself and the nature of the scrutiny of Sri Lanka in the year under review. This will of course entail a noting of the domestic reactions to international monitoring in stark contrast to the reactions of the government pre-January 2015.

For this analysis to take place then the parameters within which the search was done, is within the context of the monitoring of Sri Lanka by the UN agencies and largely the state powerhouses in the global stage. This is because the larger monitoring of the human rights situation in Sri Lanka has largely been in the context of the armed conflict and is therefore the most obvious field where international monitoring of Sri Lanka's human rights diagnostics have taken place.

2. Contextualizing International Monitoring of the Human Rights Situation in Sri Lanka

The international monitoring of human rights in Sri Lanka has been close and microscopic in many ways in the last seven years- although unfortunately this did not translate to tangible results permeating our systems to prevent human rights abuses. It does mean however that a national rhetoric

also built up parallel to international pressure mounting; evidencing that there are serious geo-political imperatives which make Sri Lanka of strategic and geographical importance- and not in the same sense that the Rajapaksa regime painted all things human rights as western imperialism. The civil society of Sri Lanka therefore depended heavily on the larger supra state monitoring mechanisms, whether it be the Human Rights Council, the Office of the High Commissioner for Human Rights, or even the global super powers- America, the European Union, India, Australia and other states, in realizing democratization of the State. Harnessing the right allies led to a serious challenge to rising authoritarianism and human rights abuses in Sri Lanka, and the power of this alliance and convergence of global and local pressures was evident in the change of both a government that was increasingly showing authoritarian tendencies as well as the change of heart of government reactions to critiques of its human rights record. Unfortunately, the democratic change and the active citizenship displayed by the Sri Lanka majority community voter in early January 2015, may have had less to do with the dubious human rights record of the previous regime, and more to do with the blatant corruption. However, the minority vote, which played a significant role in the change of regime, would have had different imperatives that guided their choice; and this can be surmised to largely have stemmed from the increasing abuses of minority rights by a regime that was descending deeper and deeper into a well of authoritarianism.

Although this chapter deals with international monitoring of human rights in Sri Lanka in the year 2015, the context of the developments of that year is essential for the sake of clarity. For the context of this particular writing, we begin

with May 2009, with the end of the armed conflict as we knew it for 30 years.

By September 2008, the Defense Secretary of Sri Lanka had ordered the United Nations and International humanitarian agencies to leave the Vanni[1], and the condition of suffering of civilians at the hands of the LTTE in the absence of UN and other agencies, has also been documented[2]. In February 2009, three months before the 'end of violent conflict' in May, the Under-Secretary-General for Humanitarian Affairs briefed the Security Council of the UN on the situation in Sri Lanka[3]. By 26th March, an informal dialogue was held with Sri Lanka, including the participation of the Under-Secretary General and the Sri Lankan Permanent Representative to the UN. Similar informal interactions took place again in April 2009. Although remarks were made to the Press, no formal resolutions were forthcoming. It is only on 13 May 2009, that the Security Council issued a press statement "expressing grave concern over the humanitarian

[1] Human Rights Watch, 23 December 2008, "Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka's Vanni Region", available at https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region, accessed on 25 November 2016.

[2] Human Rights Watch for example documents in December 2008 'preventing civilians fleeing combat zones, and the use of forced recruiting and abusive forced labor', Human Rights Watch, *Trapped and Mistreated: LTTE Abuses Against Civilians in the Vanni*, December 15, 2008, available at http://www.hrw.org/en/reports/2008/12/15/trapped-and-mistreated

[3] United Nations Security Council, 27 February 2009, available at http://www.securitycouncilreport.org/chronology/sri-lanka.php, accessed on 18.10.2016

crisis in northeast Sri Lanka and calling for urgent action by all parties to ensure the safety of civilians"[4].

In May 2009, the Human Rights Council passed what is now called a "deeply flawed" resolution on Sri Lanka, which did not take account of calls for an international investigation into alleged human rights abuses and alleged violations of international humanitarian law in the last stages of the war that very month in the North and East of Sri Lanka[5]. Largely commending the government of Sri Lanka, and failing to pay serious heed to allegations of crimes committed during the war by both sides, the resolution passed with strong favor (see Table 1). This was also despite the strong views for the necessity of an international investigation as expressed by UN High Commissioner for Human Rights, Navi Pillay. The Office of the High Commissioner called for an independent international investigation into alleged violations of human rights and humanitarian law.

In fact, watchdog organizations like Human Rights Watch alleged at the time that UN Secretary General Ban Ki- moon, was also culpable of congratulating the government for doing its utmost and for its tremendous efforts (HRW, 2009). The SG visited Sri Lanka on the 23rd of May 2009. This is in stark contrast to his visit to Colombo, Sri Lanka in 2016, where he stunned international and domestic audiences with a statement acknowledging that the United Nations failed

[4] United Nations Security Council, 13 May 2009, "Security Council Press Statement on Sri Lanka", available at http://www.un.org/press/en/2009/sc9659.doc.htm, accessed on 18.10.2016.

[5] Human Rights Watch, 26 May 2009, "Sri Lanka Human Rights Council Fails Victims", available at https://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims, accessed on 17.10.2016.

Sri Lanka[6]. He was only repeating the findings of the Petrie report in 2012[7], and in hindsight, this failure on the part of the UN was evident in May and June of 2009.

It is also necessary to refer to the Security Council resolution on Sri Lanka in May 2009, where the Council, "express[ed] grave concern over the worsening humanitarian crisis" in the North and East of Sri Lanka[8]. Around this time, the SG also visited Sri Lanka, and issued a joint statement with the then President, Mahinda Rajapaksa.

By the middle of 2010 (22nd of June 2010 to be exact), the United Nations leadership had begun to take more serious cognizance of the allegations against both the Government of Sri Lanka and the LTTE in the conduct of the last stages of the war. The Secretary General Ban Ki- moon appointed a 3 member panel of experts with the mandate of advising the SG on accountability for alleged violations of international law during the last stages of the war in May 2009. The panel was expressly an advisory panel and not an

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[6] AP, Krishan Francis, 2 September 2016, "UN chief says Sri Lanka killings prompted self-scrutiny", available at http://bigstory.ap.org/article/481ce83a6d104b14b1f401a3f66745d2/un-chief-says-sri-lanka-killings-prompted-self-scrutiny, accessed on 21.10.2016; Youtube, 4 September 2016, "Ban ki-moon - UN again admits it failed on Sri Lanka during the war", accessible at https://www.youtube.com/watch?v=yH75sFWOnEY, accessed on 21.10.2016.

[7] BBC News, Lycie Douset, 13 November 2012, "UN 'failed Sri Lanka civilians', says internal probe", available at http://www.bbc.com/news/world-asia-20308610, accessed on 21.10.2016.

[8] Security Council, 13 May 2009, "Security Council Press Statement on Sri Lanka", available at http://www.un.org/press/en/2009/sc9659.doc.htm, accessed on 17.10.2016.

investigative or fact finding body[9] and officially began their work in September 2010. The three experts, Marzuki Darusman, Steven Ratner and Yasmin Sooka were however rejected by the Government of Sri Lanka in June 2010 as an unnecessary and unwarranted interference into the affairs of a sovereign nation[10]. At the time of this writing, the full statement released by the Government of Sri Lanka was no longer accessible on any of the diplomatic websites or the Ministry of Foreign Affairs Website of the Government of Sri Lanka.

Almost immediately, Sri Lanka appointed its own Lessons Learnt and Reconciliation Commission[11]. Sri Lanka reacted defensively to the SG's panel of experts, denying them access to the country[12]. In fact the defensive stance of the Government of Sri Lanka, was evident in the statement of the then Minister of Foreign Affairs, G.L. Peiris, who stated "The position of the Sri Lanka government is abundantly

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[9] Term of Reference, SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA, 18 October 2010, available at http://www.un.org/en/rights/pdf/POE%20Notice%20%20Public%20Submissions%20(15%20Oct%202010)%20(Rev.1).pdf, accessed on 17.10.2016.

[10] Sri Lanka Embassy to the United States of America, based in Washington DC, 25 August 2010, "Statement On The Appointment Of The Sri Lanka – Panel Of Experts By The Secretary General Of The United Nations", available at http://slembassyusa.org/embassy_press_releases/statement-on-the-appointment-of-the-sri-lanka-panel-of-experts-by-the-secretary-general-of-the-united-nations/, accessed on 18.10.2016

[11] 17 May 2010,

[12] BBC News, 24 June 2010, "Sri Lanka says UN panel 'will not be allowed' to enter", available at http://www.bbc.com/news/10405996, accessed on 18.10.2016.

clear - we will not have them in this country,"[13]. The report of the Panel of Experts was published on 12 April 2011, and while calling the report fundamentally flawed[14], the report was leaked within days to a Sri Lankan newspaper, making it public before the UN formally released the report to the larger public. Needless to say, the panel of experts found credible allegations of serious violations of international humanitarian law and human rights law. If proven, the panel found that these allegations would amount to crimes against humanity and war crimes. Among the important findings of the expert panel, it also recommended a comprehensive review of the UN and its action (or inaction) in the last stages and aftermath of the armed conflict.

In reaction to the mounting international pressure and monitoring of the human rights situation in Sri Lanka, the government appointed the Lessons Learnt and Reconciliation Commission produced its own report in November 2011, 18 months after the start of their investigation. While the report has been criticized for various flaws in both the report itself and the investigations, it nevertheless deviated from the Government's own stance and recognized that civilian casualties did in fact take place; albeit without state culpability.

In March 2012, the UN Human Rights Council passed a resolution on Sri Lanka termed "Promoting Reconciliation

[13] BBC News*, id.*

[14] Ministry of Foreign Affairs Sri Lanka, 13 April 2011, "The Government of Sri Lanka states that the report of the UN Secretary General's Panel of Experts is fundamentally flawed in many respects", available at http://www.mfa.gov.lk/index.php?option=com_content&task=view&id=2730&Itemid=75, accessed on 18.10.2016.

and Accountability in Sri Lanka". The Resolution noted that the LLRC report did not adequately address the serious allegations of violations of international law, and called upon the government to implement the progressive recommendations in the LLRC report. While the resolution called for action and action plans to be formulated based on the LLRC recommendation, the international monitoring systems again failed Sri Lanka in not going beyond the flawed LLRC process, to demand greater justice for the people of Sri Lanka. The text of the Resolution, in calling for action, unfortunately limits its action steps to the LLRC recommendations.

As a response to the Resolution, the Government published a national action plan, for implementing the LLRC recommendations, which as we were to regretfully find, would amount to very little in terms of actually incorporating the LLRC recommendations[15]. Significant votes in favor of this Resolution include India and the United States of America. In possible reaction to the resolution, in May 2012, the Government also appointed a task force to implement the recommendations of the LLRC. It also invited Navi Pillay,

[15] "There are several instances where there is a mismatch between the LLRC recommendation and suggested activity contained in the LLRC Action Plan. These continue to persist even in the progress report on the implementation of the LLRC Action Plan, which renders the progress achieved meaningless.", Centre for Policy Alternatives, Commentary on the Progress Achieved in Implementing the National Plan of Action to Implement the Recommendations of the Lessons Learnt and Reconciliati on Commission, 12 February 2014, available at http://www.cpalanka.org/commentary-on-the-progress-achieved-in-implementing-the-national-plan-of-action-to-implement-the-recommendations-of-the-lessons-learnt-and-reconciliation-commission/#_ftn9, accessed on 27 October 2016.

then UN High Commissioner for Human Rights, to visit Sri Lanka. A delegation representing the High Commissioner visited Sri Lanka in September 2012.

In March 2012 other developments also took place; following the recommendations of the Expert Panel in early 2011, the Secretary General Ban Ki- moon, also thereafter appointed a panel headed by Charles Petrie to review the actions of the UN and its implementation of protection mandates in the last stages of the war in Sri Lanka. At the end of an eight month study, the panel presented the report to the Secretary General (SG) in November 2012. In the words of the SG himself, "The report concludes that the United Nations system failed to meet its responsibilities, highlighting, in particular, the roles played by the Secretariat, the agencies and programmes of the United Nations country team, and the members of the Security Council and Human Rights Council."[16].

By February 2013, the international monitoring of the domestic human rights situation in Sri Lanka was growing much more stringent. The report of the UN High Commissioner for Human Rights was released on 11 February 2013. The OHCHR made several recommendations to Sri Lanka in 2013, including the passage of legislation to protect victims and witnesses. As we know, this particular recommendation was only implemented three years later in 2015, after the change of government. While the law itself

[16] United Nations, 14th November 2012, "Secretary-General Says Internal Review Panel Report on Sri Lanka Will Be Made Public in Interests of Transparency, Accountability, Legitimacy, Credibility", available at http://www.un.org/press/en/2012/sgsm14639.doc.htm, accessed on 18.10.2016.

has several drawbacks, it is sufficient testimony to the effect of pressure from international quarters that Sri Lanka finally passed legislation to protect victims and witnesses. Setting up of the necessary infrastructure to support the implementation of the law however has proved much more illusory, and at the time of writing in 2016, we still await provisioning to effectively implement this law. Eleven years was the incubation period for laws to protect victims and witnesses in a country where intimidation of key witnesses is an everyday occurrence- and even more problematically, it is police officers themselves who will protect witnesses and victims, although officers of the police force are often implicated in the very intimidation itself[17]. The creating of safe houses and other infrastructure per the law is estimated to take at least one and a half years[18].

Following the report of the High Commissioner, a second US sponsored resolution was passed in March 2013 at the 22nd Session of the UN Human Rights Council. While the resolution was being passed, pro-government protestors took to the streets in front of the US Embassy in Colombo[19]. The Counselor for the Sri Lanka Permanent Mission in Geneva, issued a statement decrying the 'singling out' of Sri Lanka, saying she "strongly rejects any unfair, biased, unprincipled and unjust approach that may be adopted by this Council

[17] Sunday Times, Namini Wijedasa, 31 July 2016, "Victims and witnesses: No protection, but persecution" available at http://www.sundaytimes.lk/160731/news/victims-and-witnesses-no-protection-but-persecution-202919.html, accessed on 21.10.2016.

[18] Sunday Times, *Id.*

[19] BBC News, 21 March 2013, "UN passes resolution against Sri Lanka rights record", available at http://www.bbc.com/news/world-asia-21873551, accessed on 18.10.2016.

towards the protection and promotion of Human Rights of Sri Lanka"[20]. The 2013 resolution not only voiced concern regarding alleged violations during the last stages of the war, but also the escalating violations of human rights that was ongoing; from persecuting of human rights defenders, enforced disappearances and extra-judicial killings. Again, in possible placatory reaction to the Resolution, a Presidential Commission to Investigate Complaints Regarding Missing Persons was created on 15 August 2013. This commission was headed by Maxwell Paranagama, and was widely criticized for its lack of credibility for multiple reasons[21].

On 26th March 2014, a fourth resolution on Sri Lanka was passed by the Human Rights Council. Perhaps the most significant aspect of this resolution is that it finally called upon the Government "to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable; to hold accountable those responsible for such violations; to end continuing incidents of human rights violations and abuses in Sri Lanka; and to implement the recommendations made in the reports of the Office of the High Commissioner"[22]. As a part of this call for accountability, the March 2014 Resolution called for the Office of the High Commissioner for

[20] Daily News, 27 February 2013, "Counsellor of SL's permanent Mission in Geneva responds to Brimmer : Lanka Being 'Singled Out' Contrary To UNHRC Resolutions"

[21] Centre for Policy Analysis, 17 December 2014, "The Presidential Commission to Investigate into Complaints Regarding Missing Persons, Trends Practices and Implications; A Critique", available at http://www.cpalanka.org/the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons-trends-practices-and-implications/, accessed on 18.10.2016.

[22] Human Rights Council, 25th Session, 26 March 2014

Human Rights (OHCHR) to undertake a 'comprehensive investigation' into the serious allegations of human rights abuses by both parties in Sri Lanka. The time period was limited to that of the Lessons Learnt and Reconciliation Commission.

In further reaction perhaps to growing international isolation over failure to credibly address human rights abuses and rising authoritarianism domestically, the mandate of the Maxwell Paranagama Commission to investigate Complaints of Missing Persons was extended on 15th July 2014. The benefit of the advice of 3 international experts, all of whom had prosecutorial experience in international human rights law[23] was also provided by Presidential Proclamation in July 2014. While the original mandate was in relation to conducting investigations and inquiries into missing persons the mandate was extended in 2014 to civilian deaths in 2009, in exchanges of fire in the No Fire Zones in the last stages of the war. Critical wording included the following "adherence to or neglect of the principles of distinction, military necessity and proportionality under the laws of armed conflict and international humanitarian law, by the Sri Lankan armed forces"[24].

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[23] The three were "Sir Desmond Lorenz de Silva, QC, a prominent British lawyer and former United Nations Chief War Crimes and Prosecutor in Sierra Leone, Geoffrey Nice QC, a former Deputy Prosecutor with the International Criminal Tribunal for the former Yugoslavia who served at the trial of Slobodan Miloševiæ and American Chief Prosecutor for the Court of Sierra Leone Prof. David Crane who indicted, among others, the then-President of Liberia Charles Taylor, have been appointed as international advisors to the Commission". Jeyaraj, DBS, 17 July 2014, "Govt Widens Disappearances Commission Mandate to Probe Civilian Deaths During War Final Phase with Three International Prosecutors as advisers.", available at http://dbsjeyaraj.com/dbsj/archives/32105, accessed on 21.10.2016.

[24] Jeyaraj, DBS *Id.*

3. 2015- The year of Reckoning

With the ushering of the united coalition government in January 2015, not only domestically but also internationally, a mood of renewed hope for human rights accountability in Sri Lanka was palpable. In February 2015, the Human Rights Council decided to defer for one time only, its consideration of the comprehensive report of the OHCHR until the 30th session, i.e. till September 2015[25]. This was considered a win by the new coalition government which then had breathing space to take some steps towards ensuring credible accountability measures for alleged human rights violations. The scope of the mandate of the OHCHR is also significant- the time period covered by the LLRC- which was a time period essentially selected by the Government of Sri Lanka. The mandate of the LLRC was largely to 'inquire and report on' the 'facts and circumstances which led to the failure of the ceasefire agreement operationalised on 21st February 2002' and the events to follow up to 19th May 2009[26].

At the same session in February 2015 though, the Asian Forum for Human Rights (hereinafter FORUM-ASIA) submitted a written statement on persecution of human rights defenders in Sri Lanka in the year 2014, especially those who co-operated with UN mechanisms and

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[25] OHCHR, 27 February 2015, "Promoting reconciliation, accountability and human rights in Sri Lanka", available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/036/98/PDF/G1503698.pdf?OpenElement, accessed on 18.10.2016.

[26] Lessons Learnt and Reconciliation Commission, November 2011," Report of the Commission Of Inquiry On Lessons Learnt And Reconciliation " available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf, accessed on 19.10.2016.

international monitoring of human rights[27]. Just as overtures were being made on the international front, up-until January 2015, the persecution of human rights activists, particularly those who assisted international monitoring of the human rights situation in Sri Lanka, were particularly targeted, publicly denigrated[28], and in every measure coerced into silence from such information being provided. The harassment of especially media and journalists did not completely cease upon the election of the new government in early 2015, as is clear from the written statement by FORUM-ASIA submitted to the Human Rights Council sessions in June 2015[29]. The continued operation of the Prevention of Terrorism Act as well as the NGO Circular, were both points of concern that remained in 2015. The draft Prevention of Terrorism Act that was to be later produced in October 2016, lends some understanding as to why the PTA continued in force despite years of critique of this piece of legislation as lending itself to extra judicial detention of persons. The new PTA draft unveiled and approved by the Cabinet in October 2016, shows further signs of recession from democratic notions of preventing terrorism through means that meet international human rights standards.

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[27] Written statement* submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, 28th February 2015, "Challenges to Human Rights Defenders (HRDs) in Sri Lanka in 2014", available at https://documents-dds ny.un.org/doc/UNDOC/GEN/G15/035/33/PDF/G1503533.pdf? OpenElement, accessed on 19.10.2016.

[28] See Written Statement by FORUM-ASIA, *id.*

[29] Written statement* submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, 10 June 2015 "Freedom of Expression in Sri Lanka (June 2014-May 2015)", A/HRC/29/NGO/94, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/119/07/PDF/G1511907.pdf? OpenElement, accessed on 19.10.2016.

At this point it is also important to note two important developments in the domestic political front that provided a historic incubation opportunity for real commitment for accountability by the Government. One was the passing of the 19th Amendment to the Constitution in April 2015, significantly re-introducing Constitutional safeguards to ensure the independence of key oversight commissions including the Human Rights Commission and the National Police Commission. The impact that both these commissions have on the protection of human rights across the board cannot be understated. The second is the general elections, held in August 2015. The democratic change of January held sway once again; as Ahilan Kadirgamar puts it, 'the Lankan voters rejected divisive politics for a second time' and on the back of significant election wins, the United National Party formed a unity government[30]. Other stakeholders in the new government include the Sri Lanka Freedom Party (SLFP), the Tamil National Alliance (TNA). Significantly the Rajapaksa led coalition which rode on the war victory, failed dismally in convincing the voter of a UPFA come back in any form. The significance of the minority vote in both elections in 2015 is also important in terms of their confidence in the new regime to address the human rights violations for which Sri Lanka had come under intense scrutiny by 2014.

[30] Collective for Economic Democratization in Sri Lanka, Ahilan Kadirgamar, 19 August 2015, "Defeat of Divisive Politics", available at http://www.economicdemocratisation.org/?q=content/defeat-divisive-politics, accessed on 27.10.2016.

On 16th September 2015, the OHCHR released its "Report of the OHCHR Investigation on Sri Lanka (OISL)"[31]. The OHCHR did not limit its mandate to May 2009, but extended the period of the Report from February 2002 to November 2011. In its report the OHCHR called for an independent hybrid *mechanism* to investigate the credible allegations of violations outlined in the report, along with international involvement. These are key phrases in an environment where both the Prime Minister Ranil Wickremasinghe and the President Maithripala Sirisena were assuring domestic audiences that the war heroes will not be "scapegoats"[32]. Within a month of the OHCHR report release and the passing of the resolution that Sri Lanka co-sponsored, the President said that while responding to alleged human rights violations, the government was duty bound to protect the dignity of the tri-forces, speaking to a largely a military audience at the Colours Awarding Night of the Sri Lanka Army[33].

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[31] OHCHR, 16 September 2016, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwibiuzTiPvPAhWCq48KHTmLAzUQFggeMAA&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession30%2FDocuments%2FA.HRC.30.CRP.2_E.docx&usg=AFQjCNGYmkpXMBjNTpDVmTkx2qqnLzElA&sig2=lICMZ4lkMyC-3B3cEWNW_A&cad=rja, accessed on 27.10.2016.

[32] "Wickremesinghe stressed that government's agreement in the UNHRC was not intended to make security forces members or anyone else scapegoats.", Colombo Telegraph, 28 September 2015, "No Scapegoats; We Will Establish A Truth Commission And A Compassionate Council: Ranil Wickremesinghe", available at https://www.colombotelegraph.com/index.php/no-scapegoats-we-will-establish-a-truth-commission-and-a-compassionate-council-ranil-wickremesinghe/, accessed on 27.10.2016.

[33] Euroasia Review, 27 October 2015, "Sirisena Says Sri Lanka Govt Bound To Protect Dignity Of Military While Facing International Allegations", available at http://www.eurasiareview.com/27102015-sirisena-says-sri-lanka-govt-bound-to-protect-dignity-of-military-while-facing-international-allegations/, accessed on 19.10.2016.

Not an year later, in August 2016, the President Maithripala Sirisena, was again assuring the people of Sri Lanka that 'unsuitable provisions' from the Office of Missing Persons were removed and that the war heroes were protected[34]. The OMP Bill was passed in August 2016, and the President made these assurances to an audience of military officers at the 9th Defense Services Games Closing Ceremony held at the Panagoda Army Indoor Stadium.

Generalizing the applicability of the title of war heroes is always a sticky business- there are those who genuinely carried out their duties both within domestic and international law, in order to protect their country and their peoples and are truly deserving of the title of a hero, war or otherwise. There are also others who both ordered and carried out gross abuses of human rights in the name of war- and this is true in every conflict in every part of the world. The irresponsibility with which this type of generous application of impunity is publicly offered domestically, contrasts sharply with the international commitments made on behalf of the Sri Lankan government outside of the country. The contrast is evident in the following findings of the OHCHR report, in relation to the killing of Joseph Pararajasingham in Batticaloa;

> "245. OISL considers that, based on the information obtained, there are reasonable grounds to believe that the Karuna Group killed Joseph Pararajasingham, and that it was aided and abetted

[34] Ceylon News, 23 August 2016, "President Sirisena reassures impunity for 'war heroes', available at http://www.ceylonews.com/2016/08/president-sirisena-reassures-impunity-for-war-heroes/, accessed on 19.10.2016.

> by security and army personnel. Initial police investigations identified and detained two suspects from the armed forces. However, the suspects were released due to the lack of testimony from witnesses, despite the many eye-witnesses to the killing. The killing was one of the incidents which were to be investigated by the Udalagama Commission. The Commission stated in its report that Pararajasingham's murder was not investigated by the Commission due to 'non availability of witnesses and time constraints.'"[35]

The OISL findings are clear- the need to investigate specific actions and inactions by the Sri Lanka government security forces is explicit. By co-sponsoring a Resolution the Government made an international commitment; the Resolution at paragraph 17 welcomes 'the commitment of the Government of Sri Lanka to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished, and encourages the Government to address all reports of sexual and gender-based violence and torture"[36]. The resolution was adopted without a vote. Needless to say, the United States of America continued to play a lead role in the international monitoring of human rights in September 2015 as well, at the level of the UN Human Rights Council.

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[35] OHCHR Report, *ibid.*

[36] OHCHR Report, *ibid.* para 17.

Meanwhile domestic political opponents, long before the OHCHR report was released, seized the moment to call the kettle black, and alleged that the new Government was now going to 'arrest the war heroes that oversaw the war' while releasing LTTE prisoners[37]. The centrality of the war heroes in any conversation of accountability for human rights violations is an interesting indicator also of the domestic discourse built by largely public figures and politicians, of the hiatus and gulf between protecting the motherland, protecting war heroes and protecting human rights. It is also evocative of the demonization of human rights over a decade, which cannot be dispelled by democratic change of state power. That in achieving one (human rights), the other will be 'sacrificed', is the dominant discourse.

Soon after the release of the OHCHR report, the Prime Minister also began to initiate talks with Tamil political parties on a political solution, talks which we can now in hindsight, estimate will lead to inconclusive efforts for a political solution even one year later[38]. Interestingly, at a time when the Government of Sri Lanka was strongly mooting the promulgation of a new Constitution for Sri Lanka coupled with historic means of public consultation for the same, the UN Resolution as well as our closest neighbour, India was still harking back to the 13th amendment and power sharing

[37]Adaderana.lk, National Freedom Front Spokesperson, Mohomed Muzammil, 12 March 2015, "Government releases Tamil activists, but conspiring to arrest war heroes: NFF", available at http://www.adaderana.lk/news/30105/government-releases-tamil-activists-but-conspiring-to-arrest-war-heroes-nff, accessed on 19.10.2016.

[38] Adaderana.lk, 8 October 2015, "Talks on with Tamil parties: Ranil", available at http://adaderana.lk/news.php?nid=32626, accessed on 19.10.2016.

arrangements contained therein. Soon after the passing of the UNHRC resolution in September 2015, the Indian Envoy to the UNHRC, Ajit Kumar is quoted as saying "We reiterate our firm belief that the meaningful devolution of political authority through the implementation of the 13th Amendment of the Constitution of Sri Lanka [adopted in 1987 as a sequel to an agreement between India and Sri Lanka] and building upon it would greatly help the process of national reconciliation."[39] The UNHRC resolution of September 2015 also refers to ensuring ability of Provincial Councils to operate in accordance with the 13th Amendment[40]. In fact, Indian's lack of optimism for a power sharing arrangement that goes beyond the 13th Amendment may be justified, as a year later we see little signs of a political appetite to go beyond the previous arrangement. The Public Representations Committee that undertook island-wide public consultations, recommended in mid-2016, retaining the unitary character of the State[41] although the lack of consensus within the Committee must also be noted.

Subsequent to the tabling of the OHCHR report, a resolution was also passed on Sri Lanka in the 30th session of the Human Rights Council. Historically, this was the first time in the five years under intense international scrutiny, that Sri Lanka co-sponsored a resolution on itself, signaling to the

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[39] The Hindu, T. Ramakrishnan, 1 October 2015, "U.N. body asks Sri Lanka to probe 'rights abuses', available at http://www.thehindu.com/news/international/unhrc-adopts-consensus-resolution-on-sri-lanka/article7712259.ece, accessed on 21.10.2016.

[40] UNHRC Resolution September 2015, *ibid*, at para 16.

[41] Ceylon News, 01 June 2016, "Constitutional Committee recommends Sri Lanka to retain 'unitary state' – VIDEO", available at http://www.ceylonews.com/2016/06/constitutional-committee-recommends-sri-lanka-to-retain-unitary-state-video/, accessed on 21.10.2016.

international community for the first time, some measure of acknowledgment of credible allegations of human rights abuses in the last stages of the war.

In December 2015, the Sri Lankan Government also issued a standing invitation to all UN Special Procedures, a significant departure from the hostile stance taken by the previous regime[42]. On 28th June 2016, in its oral update to the Human Rights Commission, the Office of the High Commission for Human Rights expressed appreciation of the full co-operation of the Government[43].

In this context Sri Lanka appears to have taken great strides in accountability, at least before the less microscopic lens of international scrutiny of the human rights record of Sri Lanka. In the next few paragraphs I take two significant issues as case studies to assess the impact of such international scrutiny on domestic developments.

3.1 Enforced Disappearances

Soon after the appointment of the new President in January 2015, the mandate of the Paranagama Commission was extended from 5th February to August 2015. In October 2015,

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[42] Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 28th June 2016, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwiYipKIvTPAhVjh1QKHZnDDs4QFggmMAE&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession32%2FDocuments%2FA_HRC_32_CRP._4_AV.docx&usg=AFQjCNGwkDJG3NyU9CDKvGqc-kodTxFSpA&sig2=29RCk3KcrX73dKWRP_tPtA, accessed on 18.10.2016.

[43] OHCHR, 28 June 2016, A/HRC/32/CRP.4, "Promoting reconciliation, accountability and human rights in Sri Lanka", accessed on 18.10.2016.

(dated August 2015), the Maxwell Paranagama Commission finally released its report. Soon thereafter, on 19th October 2015, the Prime Minister Ranil Wickremasinghe tabled the Udalagama Commission Report as well as the Paranagama Commission Report in Parliament, along with the OHCHR Report on its investigation on Sri Lanka[44].

The mandate of the Udalagama Commission was to investigate serious cases of human rights violations from 1st August 2005. The killing of 5 youth in Trincomalee as well as the 17 aid workers in Mutur, were both significant incidents within the mandate of the Udalagama Commission. The Udalagama Commission made recommendations for further investigations of some cases, a new Commission to investigate pending cases before the Commission, and appropriate measures of reparations for victims of human rights violations that had testified before the Commission. There are interesting dimensions in the self imposed temporal scope of the Paranagama Commission which merits mention. In limiting its second extended mandate to the final stages of the war in 2009, the Commission refers not only to the domestic call for "concern to address issues of accountability arising from the final stages of the conflict in Sri Lanka", but also to international concern for accountability, specifically referring to the statement of the German Foreign Minister, Frank-Walter Steinmeier, on 13 May 2015. The success of international pressure to thus influencing in a somewhat ad hoc fashion, the mandate of a

[44] Colombo Telegraph, "Govt Releases Udalagama And Paranagama Commission Reports ", 20 October 2015, available at https://www.colombotelegraph.com/index.php/govt-releases-udalagama-and-paranagama-commission-reports/, accessed on 18.10.2016.

widely criticized commission, is in some way of some relief for those who had little hope of accountability measures from this Commission.

The Paranagama Commission advised the creation of a domestic court to try war crimes (a High Court), creation of a Truth and Reconciliation Commission, and that the Attorney General be allowed to place before Court any person who is liable for war crimes. Controversially, the Commission also recommended the grant of amnesties under national law for those who plead guilty and subject themselves to a proposed Truth Commission proceedings. The Commission controversially recommends that "The application of international law within the national system in Sri Lanka would not prevent the use of amnesties in accordance with Sri Lanka's national laws."[45]. Where amnesties are illegal under international law, the Commission refers to South Africa and Uganda as examples were Amnesties were successful with sparse reflection on the controversies surrounding Amnesties and the specific conditions and context under which Amnesties were granted even in those countries.

What is of most concern to human rights advocates is the fact that despite the removal of an increasingly authoritarian political force from the state, the Commissions that were tasked with investigating human rights abuses and disappearances, nevertheless recommended watered down accountability measures which would largely fail to comprehend the gravity of the alleged crimes against humanity and war crimes. The recommendation of amnesties

[45] Parangama Commission Report, August 2015, available at https://www.colombotelegraph.com/wp-content/uploads/2015/10/Paranagama-Report-.pdf, para 618, accessed on 18.10.2016.

as a plausible escape valve for state accountability is hugely problematic in this context.

November 2015 marked a significant change in the stance of the Government in relation to forced and involuntary disappearances with the visit of the Working Group from 9-18 November 2015[46]. It is notable that Sri Lanka has a dubious and horrific track record of excelling in enforced disappearances; not only during the presidency of Mahinda Rajapaksa, but also in milestone events like the youth insurrections in 1971 and 1989 when both the major political parties, the Sri Lanka Freedom Party and the United National Party were respectively in power. The crushing of political dissent, youth insurrections, terrorism and all manner of opponents, on many significant occasions, and too many times, was through the effective tool of threat of enforced disappearances and extra judicial killings. The Government of Sri Lanka acknowledged numbers of the disappeared from 1994, stands at 65,000 at the time of writing[47]. Sri Lanka has a rich history of appointing all manner of mechanics to investigate these complaints:- 11 Presidential Commissions, 2 investigative mechanisms, 2 Presidential Commissions of Inquiry and 2 Departmental Units, all mandated with investigating complaints of unlawful arbitrary enforced disappearances[48].

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[46] OHCHR, 18 November 2015, "Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015)", available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E, accessed on 18.10.2016.

[47] IMADR, Statement, 12 September 2016, "Enforced and Involuntary Disappearances in Sri Lanka", available at http://imadr.org/enforced-and-involuntary-disappearances-in-srilanka-hrc33-2016-ws/, accessed on 18.10.2016.

[48] OHCHR, 18 November 2015, *id.*

In its preliminary observations, the Working Group noted the "massive and systemic" use of disappearances in Sri Lanka to stifle political dissent, in the internal armed conflict and in countering terrorism. The Working Group also noted the "almost complete lack of judicial accountability"[49]. The harassments, threats, vigilance and sexual and other forms of coercion especially from the Criminal Investigation Division (CID) is particularly noted by the Working Group in its preliminary observations. Of the over 12000 cases submitted to the Government by the Working Group, 5,750 were still outstanding as at November 2015. Around this time, the Government also proposed a public policy to deal with all aspects of prevention, investigation and justice for victims of enforced disappearances. One can surmise that these developments from a State which for over 30 years failed the victims of enforced disappearances, are salutary, and is due in some measure to the greater degree of international pressure subsequent to the events of May 2009. The fact that the incidents and numbers of enforced disappeared had been mentioned in succeeding Human Rights Council Resolutions in my view played no mean task in this herculean effort to bring accountability to the state. A month later, on 10th December 2015 the Government signed the International Convention on the Protection of All Persons from Enforced Disappearances and went on to ratify the Convention in May 2016[50]. The Working Group also recommended the passing of domestic legislation in parallel to ratifying the International Convention. The Office of Missing Persons Act was passed in August 2016, and

[49] OHCHR, *id.*

[50] OHCHR, Committee on Enforced Disappearances, available at http://www.ohchr.org/EN/HRBodies/CED/Pages/RecentSignaturesRatifications.aspx, accessed on 27.10.2016.

despite controversies surrounding the manner of passing the law as well as statements by the President which have been referred to earlier, the definition of a missing person includes an enforced disappearance in terms of the Convention[51]. The Office itself is now planned to be established in early 2017. In September 2016, Ravinath Ariyasinghe (Ambassador/ Permanent Representative of Sri Lanka) asserted before the UN HRC 33rd session that the budget 2017 will include allocations for the Office of Missing Persons[52]. The Ambassador further confirmed that the operation of the Office will benefit from the recommendations of the Working Group on Enforced Disappearances and will have power to enter into agreements with organizations 'including international organizations'[53].

3.2 The Vishwamaduwa Case and its Implications for Accountability

Dozens of cases of rape and sexual abuse of women replete the courts and criminal justice system of Sri Lanka. Multitudes never even reach the system. The story of Vishwamadu is as heartrending as any other story of violence against women and children; and here I borrow extensively from the statement issued by the Women's Action Network

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[51] Section 27, Office On Missing Persons (Establishment, Administration And Discharge Of Functions) Act, No. 14 OF 2016, available at http://imadr.org/wordpress/wpcontent/uploads/2016/09/Sri-Lanka_OMP-Act-No.-14_2016.pdf, accessed on 27.10.2016.

[52] Sri Lanka Brief, 15th September 2016, "In Establishing TJ Mechanisms Sri Lanka Is Working Closely With UN institutions, OHCHR, & Experts", available at http://srilankabrief.org/2016/09/in-establishing-tj-mechanisms-sri-lanka-is-working-closely-with-un-institutions-ohchr-experts/, accessed on 15.09.2016.

[53] Sri Lanka Brief, *id.*

(WAN) in October 2015, which is one the few available resources that document the case and its repercussions[54]. In June 2010, two women, both refugees returning from Menik Farm to Vishwamadu, Killinochchi, were clearing their land when four soldiers of the Sri Lanka Army visited the site. Realizing that the women and children were without male members of the family, they returned in the night; they raped one woman, and sexually assaulted the other. The treatment of their complaint by the police was also a horrifying indictment of the attitude of the larger state machinery to sexual violence perpetrated by the military. The police asked the women to first complain to the military, where the victim of rape was offered money for her silence. Upon refusal, she was kept in military custody until the police arrived to take her statement. All of the four men were identified by the women in an identification parade. They were all released on bail by November 2010. Despite continuing threats, harassment and intimidation the women continued their struggle, and in October 2015, the Jaffna High Court convicted all four accused of rape and sexual assault. The case is currently on appeal; however the case is still of great significance when one speaks of the international monitoring of human rights in Sri Lanka.

The discussion of the Vishwamadu case however is necessary, among all the multitudes of cases of sexual violence committed against men and women in Sri Lanka, for the two reasons; the first reason is that the accused were military officers. The second is that the Jaffna High Court

[54] Colombo Telegraph, 9th October 2015, "Military Rape Cases: No Judgment On 2001 Mannar Gang Rape: WAN", available at https://www.colombotelegraph.com/index.php/military-rape-cases-no-judgement-on-2001-mannar-gang-rape-wan/, accessed on 27.10.2015.

convicted four army officers, including one who was tried and sentenced in absentia for the rape and sexual abuse of two women in Vishwamadu, Killinochchi. The Jaffna High Court in a landmark judgment sentenced the soldiers to 20 years rigorous imprisonment (the highest sentence for the crime of rape), and also compensation of Rs. 500,000 and a fine of Rs.25,000. The case of sexual assault carried a sentence of 5 years Rigorous Imprisonment and payment of compensation to the victim of Rs. 100,000. The two sentences would not run parallel, putting these men behind bars for 25 years.

The significance of the case is also twofold from the point of view of international monitoring of human rights. The first is that internationally, the use of structural and systemic rape and torture of men and women had been raised, in the OISL report released in September 2015[55]. Quite apart from sexual violence on women and men (inclusive of rape), the report also referred to sexual desecration and mutilation of bodies in the context of the conflict[56]. In fact, the OISL goes so far as to say that if proven, the video footage available of desecration of the bodies of deceased men and women, would amount to the war crime of outrages to personal dignity[57].

The OISL in its report also refers to the refusal of the Government of Sri Lanka to accept the structural and systemic manner of sexual violence in the context of the conflict. In the report, a separate section deals with

[55] OHCHR Report, September 2015, *ibid.*
[56] Para 323-325, OHCHR Report, September 2015, *ibid.*
[57] Para 325, OHCHR Report, September 2015, *ibid.*

"Government Responses to Allegations of Sexual Violence", and the report goes on to allege as follows:- "the Government has consistently sought to deny or play down the gravity of the allegations of rape and other forms of sexual violence by its security forces."[58]. The report also notes the light manner in which allegations have also been dismissed by the Government, especially given the gravity of the alleged crimes[59]. Again, in December 2013, on an Al Jazeera interview, Major General Hathurusinghe (Commander of the Security Forces in Jaffna at the time) is quoted as having laughed off allegations calling them all lies; "They are all fabricated, no base at all, all stories. Because they just want to stay in UK. They want to continue in other countries. These are all lies. These are all lies."[60]. Even as of 2014, the Government was denying the culpability of the security forces in relation to sexual violence in the North, even before the Human Rights Council. In fact, responding to the comments of the Special Rapporteur on Human Rights of IDPs, the Government of Sri Lanka reacted as follows "There have been no allegations of gross violations of human rights of Internally Displaced women"[61].

In this context, just an year later, the conviction of four soldiers of the Sri Lanka army for rape and sexual assault of

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[58] Para 581, OHCHR Report, September 2015, *ibid.*

[59] See the discussion on the response of Rajiva Wijesinha (Permanent Secretary to the Ministry of Disaster Management and Human Rights in 2009), for example at para 521 where he is quoted as follows:-" We received a report that a soldier went into a tent at 11 p.m. and came out at 3 a.m. It could have been sex for pleasure, it could have been sex for favours, or it could have been a discussion on Ancient Greek philosophy, we don't know."

[60] Para 583, OHCHR Report, September 2015, *ibid.*

[61] Para 585, OHCHR Report, September 2015, *ibid.*

two Tamil women, in the North of Sri Lanka, both of whom were recent returnees from an IDP camp, is significant.

4. Conclusions

This analysis of international monitoring of human rights in Sri Lanka had two objectives; one was to assess to some extent the ways in which the pressure from external quarters, influenced and/or improved accountability for human rights abuses in the context of the war in Sri Lanka. 2015 was an important year for the country in that respect. One can conclude that the intensification of international pressure on the human rights accountability, combined with domestic pressure on points of rampant corruption, nepotism, and authoritarianism, including within the party hierarchies of the UPFA, led to immense changes, both in relation to democracy and in relation to accountability. The pressure led to Sri Lanka ratifying the international convention to end enforced disappearances among many other progressive steps, which is significant not only from the domestic perspective, but also for the South Asia region.

A second objective was to assess the changes in domestic reactions to human rights monitoring internationally. Here too, we see stark differences between 2015 and pre-2015. From the defending of itself before the UN Human Rights Commission in years 2009 to 2014, to then co-sponsoring a resolution on itself in September 2015, the manner of reaction of the Government of Sri Lanka to international scrutiny shows remarkable progress. In addition, making good its election promises, accountability measures within Sri Lanka improved remarkably- the passing of the 19th Amendment, the appointment of key independent commissions especially the Constitutional Council, the remarkably progressive filling of positions both within the Human Rights Commission and

other Commissions with qualified and respected individuals, all bode well for the human rights track record of this beleaguered country. While a few setbacks are present (for example allegations of nepotism and cronyism that emerged from time to time), the changes are quite immense when compared with the same period the year before, in 2014.

On both these counts it is my view that the Sri Lankan government, amidst several set-backs, and some disturbing signs of lack of commitment to human rights in ideology by some of the political leadership, still managed to accomplish a significant number of achievements on the human rights front. Many of these achievements are traceable to international pressure. The real results of these developments materialized in times beyond of 2015- in 2016, the Consultative Task Force on Reconciliation was established with the task force comprising of well respected civil society activists and human rights advocates. The Task Force conducted wide consultations across Sri Lanka in mid 2016, producing among other significant achievements, a specific recommendation on the proposed Office of Missing Persons Bill. While challenges persisted in 2016 (that is beyond the analysis in this chapter), the fact that several institutions dedicated to accountability for human rights abuses emerged following the commitments by GOSL in 2015 is also testimony to the importance of continuing international and regional scrutiny of the human rights situation in Sri Lanka. While an inquiry of progress in the year to follow in 2016, certainly would surface some of the challenges that will be faced by a new government faced with the task of dismantling a hugely sophisticated infrastructure of impunity, the year 2015 showed great promise for the people of Sri Lanka.

Annex 1

Table 1

Forum	Title of Resolution	Sponsors	Dates	Voting Record
Human Rights Council	Assistance to Sri Lanka in the promotion and protection of human rights	co-sponsored by Bahrain, Bolivia (Plurinational State of), China, Cuba, Egypt, India, Indonesia, Malaysia, Nicaragua, Pakistan, the Philippines and Saudi Arabia. Subsequently, Algeria, Bangladesh, Belarus, Bhutan, Brazil, Cambodia, Côte d'Ivoire, the Democratic People's Republic of Korea, the Islamic Republic of Iran, the Lao People's Democratic Republic, Lebanon, Maldives, Myanmar, Nepal, Oman, Qatar, the Russian Federation, Singapore, the Sudan, the Syrian Arab Republic, Thailand, the United Arab Emirates, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam joined the sponsors.	26-27 May 2009	29 For 12 Against 6 abstentions
Human Rights Council	Promoting Accountability and Reconciliation in Sri Lanka	Austria, Belgium, Benin, Cameroon, Chile, Costa Rica, Czech Republic, Guatemala, Hungary, India, Italy, Libya, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Republic of Moldova, Romania, Spain, Switzerland, United States of America, Uruguay	22 March 2012	24 For 15 against 8 abstentions
Human Rights Council	Promoting reconciliation and accountability in Sri Lanka	The resolution tabled by the US was co-sponsored by Austria, Canada, Croatia, Belgium, Denmark, Estonia, France, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein,	21 March 2013	25 For13 against 8 abstentions

Human Rights Council	Promoting reconciliation, accountability and human rights in Sri Lanka	Lithuania, Malta, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, St. Kitts and Nevis, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland. Nine more co-sponsors to the resolution were inserted on the floor.Along with the United States of America 42 Countries sponsored the resolution.	26 March 2014	23 For12 against12 abstentions
Human Rights Council	Promoting reconciliation, accountability and human rights in Sri Lanka	Albania,* Austria, Belgium,* Bulgaria,* Canada,* Croatia,* Cyprus,* Denmark,* Estonia, Finland,* France, Georgia,* Germany, Greece,* Hungary,* Iceland,* Ireland, Italy, Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Mauritius,* Montenegro, Netherlands,* Norway,* Poland,* Portugal,* Romania, Saint Kitts and Nevis,* Sierra Leone, Slovakia,* Spain,* Sweden,* Switzerland,* the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution Albania, Australia,* Germany, Greece,*Latvia,Montenegro, Poland,* Romania,* Sri Lanka,* the former Yugoslav Republic of Macedonia,United Kingdom of Great Britain and Northern Ireland, United States of America	September 2015	Adopted without a vote.

SCHEDULE I

UN Conventions on Human Rights & International Conventions on Terrorism signed, ratified or acceded to by Sri Lanka as at 31st December 2015

(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

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 6th 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 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 II

ILO Conventions Ratified by Sri Lanka as at 31 December 2015

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	Workmen's Compensation (Occupational Diseases) Convention, 1925	17.05.1952	
C26	Minimum Wage Fixing Machinery Convention, 1928	09.06.1961	
C29	Forced Labour Convention, 1930	05.04.1950	
C41	Night Work (Women) Convention (Revised), 1934	02.09.1950	Denounced
C45	Underground Work (Women) Convention, 1935	20.12.1950	
C58	Minimum Age (Sea) Convention (Revised), 1936	18.05.1959	
C63	Convention concerning Statistics of Wages and Hours of Work, 1938	25.08.1952	Denounced
C80	Final Articles Revision Convention, 1946	00.09.1950	
C81	Labour Inspection Convention, 1947	03.04.1950	
C87	Freedom of Association and Protection of the Right to Organise Convention, 1948	15.11.1995	

No	Convention Name	Ratified Date	Present Status
C89	*Night Work (Women) Convention (Revised), 1948*	*31.03.1966.*	*Denounced*
C90	*Night Work of Young Persons (Industry) Convention (Revised), 1948*	*18.05.1959*	
C95	*Protection of 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*	

No	Convention Name	Ratified Date	Present Status
C108	Seafarers' Identity Documents Convention, 1958	24.04.1995	
C110	Conditions of Employment of Plantation Workers Convention, 1958	24.04.1995	
C111	Discrimination (Employment and Occupation) Convention, 1958	27.11.1998	
C115	Radiation Protection Convention, 1960	18.06.1986	
C116	Final Articles Revision Convention, 1961	26.04.1974	
C131	Minimum Wage Fixing Convention, 1970	17.03.1975	
C135	Worker's Representatives Convention, 1971	16.11.1976	
C138	Minimum Age for Admission to Employment, 1973	11.02.2000	
C144	Tripartite Consultations to Promote the Implementation of ILO Convention, 1976		
C160	Labour Statistics Convention, 1985	01.04.1993	
C182	Worst Forms of Child Labour Convention, 1999	01.03.2001	

SCHEDULE III

Humanitarian Law Conventions Ratified by Sri Lanka as at 31st December 2015

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 2015

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), 11July 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 11)- 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 2015

Kumarasinghe (on behalf of 13 detainees) v. *Additional Secy Ministry of Defence* SC (FR) 108/ 2010 SC Minutes 28 July 2015

ACME Lanka Distillers v. *Ministry of* Finance SC (FR) 64/ 2015, 71/ 2015, 72/ 2015, 81/ 2015 SC Minutes 24 June 2015

Sakir v. *Principal, Holy Family Convent* SC (FR) 39/ 2013 SC Minutes 23 March 2015

Sampath v. Principal, Vishaka Vidyalaya 1 SC (FR) 31/ 2014 SC Minutes 26 March 2015

Safra Travels and Tours v. Zameel 2 SC (FR) 230/ 2015 SC Minutes 23 July 2015

Chandraratne v. Governor of the North Western Province 3 SC (FR) 204/ 2011 SC Minutes 20 May 2015

Alles v Inspector General of Police 4 SC (FR) 171/ 2015 SC Minutes 2 September 2015

Coral Sands Hotel v. Ministry of Finance SC (FR) 170/ 2015 SC Minutes 8 December 2015

Dissanayake v. Secy Ministry of Public Administrative and Home Affairs SC (FR) 611/ 2012 SC Minutes 10 September 2015.

Kumara v. Secy Ministry of Youth Affairs and Skills SC(FR) 451/ 2011 SC Minutes 17 September 2015.

Mangala v. Inspector General of Police SC(FR) 273/ 2014 SC Minutes 4 June 2015.

Nimalasiri v. Commanding Officer, Panagoda Army Camp SC(FR) 256/ 2010, SC Minutes 17 September 2015.

Sriikith v. National Water Supply & Drainage Board SC (FR) 498/ 2011 SC Minutes 25 March 2015

Banneheka v. Principal, Maliyadeva Boys College SC (FR) 46B/ 2014, SC Minutes 25 March 2015

Jagath Perera v. Inspector of Police, Mirigama Police Station SC*(FR) 1006/ 2009 SC Minutes 15 December 2015*.

Wahalathanthri v. Inspector General of Police SC (FR) 768/ 2009 SC Minutes 5 November 2015.

Sampath v. Principal, Vishaka Vidyalaya SC (FR) 31/ 2014 SC Minutes 26 March 2015

Chandraratne v. Governor of the North Western Province SC(FR) 204/ 2011 SC Minutes 20 May 2015

Kumara v. Secy Ministry of Youth Affairs and Skills SC (FR) 451/ 2011 SC Minutes 17 September 2015

Dissanayake v. Secy Ministry of Public Administrative and Home Affairs SC (FR) 611/ 2012 SC Minutes 10 September 2015

Nimalasiri v. Commanding Officer, Panagoda Army Camp SC(FR) 256/ 2010, SC Minutes 17 September 2015.

Kumarasinghe (on behalf of 13 detainees) v Additional Secy Ministry of Defence SC (FR) 108/ 2010 SC Minutes 28 July 2015

Alles v. Inspector General of Police SC (FR) 171/ 2015 SC Minutes 2 September 2015

Jagath Perera v. Inspector of Police, Mirigama Police Station SC(FR) 1006/ 2009 SC Minutes 15 December 2015

Wahalathanthri v. Inspector General of Police SC (FR) 768/ 2009 SC Minutes 5 November 2015.

Wahalathanthri v. Inspector General of Police SC (FR) 768/ 2009 SC Minutes 5 November 2015, 11.

ACME Lanka Distillers v. Ministry of Finance SC (FR) 64/ 2015, 71/ 2015, 72/ 2015, 81/ 2015 SC Minutes 24 June 2015.

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Coral Sands Hotel v. Ministry of Finance SC(FR) 170/ 2015 SC Minutes 8 December 2015, 4

BIBLIOGRAPHY

Books, Articles, Journals, Statements and Reports

Center for Policy Alternatives, "A Brief Guide to the Nineteenth Amendment to the Constitution", CPA, May 2015.

Center for Policy Alternatives, "Democracy in Post War Sri Lanka in 2016", CPA, April 2016.

Chulani Kodikara. "The Quota for Women in Local Government: A Pledge for Parity and a Parody in Parliament?", Women and Media Collective, 14 March 2016. Human Rights Watch. "We Live in Constant Fear", 23 October 2015.

Women and Media Collective, "Parliament's Representation of Women: A Selective Review of Sri Lanka's Hansards from 2005-2014". January 2016.

Sajeewa Chamakara. The Panama Land Grab and Destruction of Village Life, Environmental Conservation Trust. 2014.

Sri Lanka Prisons, 2016. *Prison Statistics of Sri Lanka,* Colombo: Statistics Division, Prisons Headquarters

Gehan Gunatilleke, "Overview of the State of Human Rights in 2014", State of Human Rights 2015.

Euroasia Review, 27 October 2015, "Sirisena Says Sri Lanka Govt Bound To Protect Dignity Of Military While Facing

International Allegations", available at http://www.eurasiareview.com/27102015-sirisena-says-sri-lanka-govt-bound-to-protect-dignity-of-military-while-facing-international-allegations / , a ccessed on 19.10.2016

Greenberg, J., 2002. Framing and Temporality in Political Cartoons: A Critical Analysis of Visual News Discourse. *Canadian Review of Sociology & Anthropology,* 39(2), pp. 181-198.

Kotzé, D., 1988. Cartoons as a Medium of Political Communication. *Communicatio,* 14(2), pp. 60-70.

Medhurst, M. J. & Desousa, M. A., 1981. Political Cartoons as Rhetorical Form: A Taxonomy of Graphic Discourse. *Communication Monographs,* 48(3), pp. 197-236.

Refaie, E. E., 2009. Multiliteracies: How Readers Interpret Political Cartoons. *Visual Communication,* May, 8(2), pp. 181-205.

Sani, I., Abdullah, M. H., Abdullah, F. S. & Ali, A. M., 2012. Political Cartoons as a Vehicle of Setting Social Agenda: The Newspaper Example. *Asian Social Science,* 8(6), pp. 156-164

Human Rights Watch for example documents in December 2008 'preventing civilians fleeing combat zones, and the use of forced recruiting and abusive forced labor', Human Rights Watch, *Trapped and Mistreated: LTTE Abuses Against Civilians in the Vanni*, December 15, 2008, available at http://www.hrw.org/en/reports/2008/12/15/trapped-and-mistreated

Human Rights Watch, 23 December 2008, "Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka's Vanni Region", available at https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/

plight-civilians-sri-lankas-vanni-region, accessed on 25 November 2016

Human Rights Watch, 26 May 2009, "Sri Lanka Human Rights Council Fails Victims", available at https://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims, accessed on 17.10.2016.

Lessons Learnt and Reconciliation Commission, November 2011,"Report of the Commission Of Inquiry On Lessons Learnt And Reconciliation " available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf, accessed on 19.10.2016.

Parangama Commission Report, August 2015, available at https://www.colombotelegraph.com/wp-content/uploads/2015/10/Paranagama-Report-.pdf, para 618, accessed on 18.10.2016

Report of the Leader of the Opposition on the Prevention of Violence against Women and the Girl Child, December 2014.

8th Periodic Report by the Government of Sri Lanka to CEDAW, 30 April 2015.

IMADR, Statement, 12 September 2016, "Enforced and Involuntary Disappearances in Sri Lanka", available at http://imadr.org/enforced-and-involuntary-disappearances-in-srilanka-hrc33-2016-ws/, accessed on 18.10.2016

Ministry of Foreign Affairs Sri Lanka, 13 April 2011, "The Government of Sri Lanka states that the report of the UN Secretary General's Panel of Experts is fundamentally flawed in many respects", available at http://www.mfa.gov.lk/

index.php?option=com_content&task=view&id=2730&Itemid=75, accessed on 18.10.2016.

Sri Lanka Embassy to the United States of America, based in Washington DC, 25 August 2010, "Statement On The Appointment Of The Sri Lanka – Panel Of Experts By The Secretary General Of The United Nations", available at http://slembassyusa.org/embassy_press_releases/statement-on-the-appointment-of-the-sri-lanka-panel-of-experts-by-the-secretary-general-of-the-united-nations/, accessed on 18.10.2016

Written statement* submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, 28th February 2015, "Challenges to Human Rights Defenders (HRDs) in Sri Lanka in 2014", available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/035/33/PDF/G1503533.pdf?OpenElement, accessed on 19.10.2016.

United Nations Resolutions , Statements, Documents and Reports

United Nations Security Council, 27 February 2009, available at http://www.securitycouncilreport.org/chronology/sri-lanka.php, accessed on 18.10.2016

United Nations Security Council, 13 May 2009, "Security Council Press Statement on Sri Lanka", available at http://www.un.org/press/en/2009/sc9659.doc.htm, accessed on 18.10.2016.

Security Council, 13 May 2009, "Security Council Press Statement on Sri Lanka", available at http://www.un.org/press/en/2009/sc9659.doc.htm, accessed on 17.10.2016.
Term of Reference, SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA, 18 October 2010, available at http://www.un.org/en/rights/pdf/POE%20Notice%20%20Public%20Submissions%20(15%20Oct%202010)%20(Rev.1).pdf, accessed on 17.10.2016.

United Nations, 14th November 2012, "Secretary-General Says Internal Review Panel Report on Sri Lanka Will Be Made Public in Interests of Transparency, Accountability, Legitimacy, Credibility", available at http://www.un.org/press/en/2012/sgsm14639.doc.htm, accessed on 18.10.2016

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 28th June 2016, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwiYipKI v-TPAhVjh1QKHZnDDs4QFggmMAE& =url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession32%2FDocuments%2FA_HRC_32_CRP._4_AV.docx&usg=AFQjCNGwkDJG3NyU9CDKvGqc-kodTxFSpA&sig2=29RCk3KcrX73dKWRP_tPtA, accessed on 18.10.2016.

OHCHR, 28 June 2016, A/HRC/32/CRP.4, "Promoting reconciliation, accountability and human rights in Sri Lanka", accessed on 18.10.2016.

OHCHR, 27 February 2015, "Promoting reconciliation, accountability and human rights in Sri Lanka", available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/036/98/PDF/G1503698.pdf?OpenElement, accessed on 18.10.2016.

OHCHR, Committee on Enforced Disappearances, available at http://www.ohchr.org/EN/HRBodies/CED/Pages/RecentSignaturesRatifications.aspx, accessed on 27.10.2016.

Universal Declaration of Human Rights (UDHR), 10 August 1948.

Newspapers and News Websites

BBC News, Lycie Douset, 13 November 2012, "UN 'failed Sri Lanka civilians', says internal probe", available at http://www.bbc.com/news/world-asia-20308610, accessed on 21.10.2016.

BBC News, 24 June 2010, "Sri Lanka says UN panel 'will not be allowed' to enter", available at http://www.bbc.com/news/10405996, accessed on 18.10.2016.

Ceylon News, 23 August 2016, "President Sirisena reassures impunity for 'war heroes'", available at http://www.ceylonews.com/2016/08/president-sirisena-reassures-impunity-for-war-heroes/, accessed on 19.10.2016

BBC News, 21 March 2013, "UN passes resolution against Sri Lanka rights record", available at http://www.bbc.com/news/world-asia-21873551, accessed on 18.10.2016.

Daily News, 27 February 2013, "Counsellor of SL's permanent Mission in Geneva responds to Brimmer : Lanka Being 'Singled Out' Contrary To UNHRC Resolutions"

Adaderana.lk, National Freedom Front Spokesperson, Mohomed Muzammil, 12 March 2015, "Government releases Tamil activists, but conspiring to arrest war heroes: NFF", available at http://www.adaderana.lk/news/30105/government-releases-tamil-activists-but-conspiring-to-arrest-war-heroes-nff, accessed on 19.10.2016.

Adaderana.lk, 8 October 2015, "Talks on with Tamil parties: Ranil", available at http://adaderana.lk/news.php?nid=32626, accessed on 19.10.2016.

The Hindu, T. Ramakrishnan, 1 October 2015, "U.N. body asks Sri Lanka to probe 'rights abuses'", available at http://www.thehindu.com/news/international/unhrc-adopts-consensus-resolution-on-sri-lanka/article7712259.ece, accessed on 21.10.2016.

Ceylon News, 01 June 2016, "Constitutional Committee recommends Sri Lanka to retain 'unitary state' – VIDEO", available at http://www.ceylonews.com/2016/06/constitutional-committee-recommends-sri-lanka-to-retain-unitary-state-video/, accessed on 21.10.2016.

Colombo Telegraph, "Govt Releases Udalagama And Paranagama Commission Reports ", 20 October 2015, available at https://www.colombotelegraph.com/index.php/govt-releases-udalagama-and-paranagama-commission-reports/, accessed on 18.10.2016.

Sri Lanka Brief, 15th September 2016, "In Establishing TJ Mechanisms Sri Lanka Is Working Closely With UN institutions, OHCHR, & Experts", available at http://srilankabrief.org/2016/09/in-establishing-tj-mechanisms-sri-lanka-is-working-closely-with-un-institutions-ohchr-experts/, accessed on 15.09.2016.

Colombo Telegraph, 9th October 2015, "Military Rape Cases: No Judgment On 2001 Mannar Gang Rape: WAN", available at https://www.colombotelegraph.com/index.php/military-rape-cases-no-judgement-on-2001-mannar-gang-rape-wan/, accessed on 27.10.2015.

Colombo Telegraph. "Infamous Perpetual Treasuries Makes Over 5 Billion Profit After Bond Scam", 27 September 2016.

Colombo Telegraph. "Sri Lanka in Global Affairs: The Journey Since January 2015", Prof. Jayadeva Uyangoda, 15 June 2016.

ColomboPage News Desk. "Sri Lanka urged to enforce Human Rights Commission's directives on terror detainees, revoke PTA", 13 June 2016.

Daily News. "Challenges of reconstruction in 2016", Ahilan Kadirgamar, 11 December 2015.

Pradeep Ramanayake, "Sri Lankan police crackdown on protesting students", World Socialist Web Site, International Committee of the Fourth International (ICFI), 3 April 2015.
Sri Lanka Brief. "Election Violence"

Sri Lanka Brief. "19th Amendment and the Future of Sri Lanka", Prof. Savitri Goonesekere, 29 June 2015.

Sri Lanka Brief. "Democracy in Sri Lanka will soon confront its second moment of truth", Prof. Jayadeva Uyangoda, 27 July 2015.

The Guardian. Associated Press, "Sri Lanka's new president reverses 'revenge politics' of Rajapaksa regime", 29 January 2015.

The Island. "'Panama Land Grab': Environmentalists castigate Gamage", M.Mudugamuwa, 23 June 2016.

The Island. "Celebrating the idea of democracy in a year of elections", Prof. Jayadeva Uyangoda, 20 September 2015.

The Island. "Rebuilding Institutions in the Transition from Soft Authoritarianism", Prof. Jayadeva Uyangoda, 9 February 2015.

The Island. "To Laugh or Cry", Prof. Jayadeva Uyangoda, March 2015.

The Sunday Leader. "PTA to be Repealed", Easwaran Rutnam, 24 September 2016.

The Sunday Times. "After rape and murder, fear and tension in Jaffna over covert menace to public safety", Chrishanthi Christopher, 24 May 2015.

The Sunday Times. "Finally Loosening the Grip of that 'Satakaya'?", Kishali Pinto Jayawardena, 23 August 2015.
The Sunday Times. "Houses at Rs. 2m. each for North-East displaced", Namini Wijedasa, 17 January 2016.

The Sunday Times. "Police brutality in the dock", Don Manu, Sunday Punch, 8 November 2015.
The Sunday Times. Cartoon by M.Munaf. 27 December 2015.

Laws

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