

**HUMAN RIGHTS COMMISSION
OF SRI LANKA**

ANNUAL REPORT
(01.01.2000 - 31.03.2001)

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2. Mrs. Manouri Muttetuwegama
3. Mr. Sarath Cooray
4. Mr. N. Selvakkumaran

Secretary

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Senior staff of the Commission

Legal Officers

1. Ms. T.D. Wimalasuriya
2. Mrs. T. Rajapakshé
3. Mrs. S. Thambydurai
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Annual Report of the Human Rights Commission of Sri Lanka

(01.01.2000- 31.03.2001)

Introduction

The Human Rights Commission of Sri Lanka commenced its work in 1997. The Human Rights Commission of Sri Lanka Act of August 1996 which established it gave it a mandate which combined the functions of two other institutions which preceded it – the Commission for Eliminating Discrimination and Monitoring of Human Rights (CEDMHR) and the Human Rights Task Force (HRTF). The mandate also vested it with additional powers and responsibilities.

The first annual report of the Commission which covered the period 1997-98 gives a brief account of the transition. The new Commission took over the cases that were pending in both the CEDMHR and the HRTF. The CEDMHR had been serviced by the Sri Lanka Foundation Institute and had not found it necessary to build up an administrative structure of its own. The HRTF on the other hand had its own office and staff including a network of regional offices. The new Commission took over most of the staff of the HRTF together with the vehicles and equipment. Some of the problems pertaining to the backlog of work, the shortage of professionally trained staff and heavily depreciated transport facilities which the Commission presently faces originate from the inception, when it had to take over from its two predecessors.

The CEDMHR had concerned itself with complaints of violations under Article 12 of the Constitution, while the HRTF dealt with arrests and detentions under the Prevention of Terrorism Act and the Emergency Regulations. Consequently the responsibilities of the new Commission cover two different categories of violations. On the one hand it has to protect the fundamental rights of citizens and ensure the observance of human rights norms in situations in which there has been a lawful derogation of the rights normally enjoyed by citizens. On the other hand it has to deal with the violations of any of the fundamental rights coming under Chapter 3 of the Constitution. Each of these categories has its own order of urgency and importance and determines the way in which the Commission organizes its work and sets its priorities. Therefore in the Sri Lankan context, the Commission has to conceive of its vision and mission in relation to the following objectives:

- protecting and promoting human rights to meet the challenges and constraints of a developing, multi-ethnic society ;
- coping with the consequences of a prolonged ethnic conflict that has led to violence and war.
- safeguarding human rights and minimizing their derogation in emergency conditions demanding high security.
- giving special attention to vulnerable groups which are deprived of the conditions needed for the full enjoyment of their human rights.

Later sections of this report examine the nature of the challenges that the Commission faces as a result of this combination and the initiatives that it has taken to deal with them.

The report that follows covers the period 1.1.2000 to 31.3.2001. It is presented in six parts. The first part describes the situation at the time the present Commission assumed office and presents the information and data on the work done by the Commission on the agenda on which it was already engaged. That agenda focused primarily on the inquiries and investigations into violations under the Emergency Regulations and PTA and complaints of infringements of fundamental rights mainly under Article 12 of the Constitution guaranteeing the citizens equal treatment and protection of the law. The second part of the report describes the new initiatives taken by the Commission to enhance its institutional capacity and fulfill its mandate more effectively. The third part provides brief reports on selected cases heard by the Commission illustrating the Commission's method of work and the guiding principles that are followed. The fourth part presents an overview of the human rights situation in Sri Lanka. It briefly evaluates the situation in Sri Lanka relating to human rights discusses some of the basic issues that have been raised by international and local observers and considers the measures that the Commission needs to take to respond to these issues. The fifth deals with some general issues relating to the work of the HRC its scope and authority. The last part deals with staff and finance.

Part I

The Work Programme on Inquiries and Investigations

The situation in March 2000

When the present Commission assumed office in March 2000, the work of the Commission was focused mainly on the parts of its mandate (*Annexure I*)¹ which dealt with investigations and inquiries into complaints of the violation of fundamental rights. The backlog of pending cases that had accumulated from the complaints during the period 1997- 2000 was estimated at around 11,000. From July 1997 to February 2000 the Commission had received a total of 14,746 complaints of all types and had been able to dispose of and close approximately 3600 cases. *Table I*² provides the details. A variety of reasons had contributed to the accumulation of work. Some of the backlog consisted of the cases handed over to the Commission by the CEDMHR and IIRTF. The establishment of the Commission with its enlarged mandate had presumably raised the expectations of the public who had responded with complaints which were not subject to any specific time limitation in respect of the violation. As a result the Commission received complaints on violations that dated back to a period preceding the enactment of the 1978 Constitution.

The average annual workload during the three-year period had been in the region of 4000 cases. With the staff and resources that were available to the Commission it had been able to clear only a fraction of the workload. About 60% of the complaints that the HRC has received related to violations of fundamental rights of public servants. The complaints of violations under the PTA and the Emergency Regulations were such that they demanded speedy attention and much of the time and effort of the field staff and investigating officers attached to the Head Office had to be devoted to this component of the work. Nevertheless even in this area of work, the system for reporting arrests by the Police and Armed forces and the monitoring of arrests and detentions by the Commission needed considerable strengthening. Given the limited staff and the initial tasks of a newly established institution, the Commission had not been able to pay adequate attention to some of its other functions such as the improvement of systems and procedures, review of legislation for compliance with fundamental rights and international norms and research and education.

Therefore the first task of the newly appointed Commission was to examine the backlog of work and assess the needs of the institution for undertaking the functions entrusted to it. In this initial assessment the Commission identified the backlog of work as the item that had to be given the highest priority.

Simultaneously, the Commission began work on the formulation of a Corporate Plan and a Three Year Work plan which would enable the Commission to cover its wide-ranging mandate in full. This programme included the task of restructuring the institution to undertake all the essential functions of the Commission in accordance with its mandate.

¹ Vide Page 45.

² Vide page 42.

The short-term programme

Given these two sets of challenges that faced the Commission, it formulated and implemented a programme of work which assigned priority to the activities which required urgent attention in each of these. This section of the report deals with the first set of challenges relating to the ongoing activities and the accumulation of work. In dealing with them the Commission focused its attention on the following:

- The systematization and speedy disposal of investigations and inquiries into complaints.
- The strengthening and improvement of the system of reporting and surveillance of violations under E.R. and PTA.

The Commission took urgent measures to reduce delays in dealing with the current flow of work. The available staff of legal officers, regional co-ordinators and investigating officers were deployed more intensively for the preliminary stages of investigation and mediation under the close supervision of the Commissioners. Short-term courses of training and orientation were provided to upgrade the skills of these officers. The Commissioners themselves undertook a substantial personal workload to resolve the cases as expeditiously as possible. A computerized case management system is in the process of being installed to monitor progress of all pending cases and ensure the speedy disposal of cases. As a result of these efforts the monthly disposal of cases arising out of complaints currently submitted to the Commission on violations of fundamental rights rose from an average of 50 cases a month during the year 1999, to approximately 100 cases during the year 2000. The present rate at which cases are heard and concluded is still insufficient to keep pace with the inflow of complaints. The Commission has examined its existing capacity with the present cadres and has already taken action to restructure the organization and enhance its capacity. A later section of the report describes the action taken in this regard.

Clearing the backlog

The more formidable task was that of clearing the backlog of work that had accumulated during the period 1997 to 2000. With the assistance of the Asia Foundation, the Commission organized a special effort to deal with the backlog so as to enable the existing staff to devote their full time to the current workload. This work was undertaken as a special project under a Director who was assisted by legal assistants and a team of mediators all of whom were recruited specifically for this work. The project was planned to ensure that all pending cases in the years 1997, 1998, 1999 would be concluded within a period of 18 months beginning from October 2000. The progress made from July 1997 to December 1999 is contained in *Table I³*. At the current rate of progress the project would be able complete the work well ahead of the due date. A Narrative Report on the clearing of the backlog is given in *Annexure II⁴*.

The Commission was also able to take advantage of the opportunity that this large accumulation of work provided for the analysis of the types of complaints that were being received. The project was organized to undertake this task as well. The analysis that is being undertaken reveals the deficiencies and weaknesses

³ Vide page 41.

⁴ Vide page 47.

in the existing systems and procedures that lead to the violations of fundamental rights. (Part III that deals with Selected Cases provides some relevant examples). This work enables the Commission to identify the systemic improvements and changes that are needed to prevent violations of fundamental rights. This would enable the Commission to fulfill the important function vested in it under 10(c) of the HRC Act which requires the Commission to “advise and assist the government in formulating legislation and administrative directives and procedures in furtherance of the promotion and protection of fundamental rights.”

The reporting system and the Central Register

In the prevailing situation in Sri Lanka, the Commission gave the highest priority to the protection of rights under ER and PTA and regarded it as one of its major responsibilities to minimize the derogation of rights that had occurred. One of the most essential safeguards under these conditions is the surveillance that the HRC has been empowered to exercise in regard to arrests and detentions. Under section 28 of the HRC Act, every arrest made under PTA and ER has to be reported to the HRC within 48 hours giving the date of arrest and place of detention.

By a direction issued on 31st July 1997, Her Excellency the President has mandated that in such cases a receipt should be issued to the next of kin. This is also a requirement under the Emergency Regulations issued in 13.05.2000. The Commission observed that there were lapses and delays in the submission of these reports even though the existing laws and regulations on this procedure were further re-enforced by a special directive from her Excellency the President. The HRC itself had not yet been able to prepare and maintain a central register of arrests and detentions. Regular and prompt reporting of arrests followed up by visits from HRC staff is one of the best deterrents of torture, unlawful arrest and disappearances. One of the first tasks of the present Commission was therefore to strengthen and intensify the Commission's surveillance over the violations under ER and PTA. This it did by

- continuing and increasing the frequency of visits to the police stations and improving the system of reporting;
- installing a hotline which was open 24 hours to receive and respond to inquiries and complaints made by citizens regarding arrests, torture, disappearances on which some form of immediate relief was needed;
- insisting on strict compliance and following up lapses in reporting;
- convening regular monthly meetings with the armed forces and the Police at which issues relating to the violation of rights occurring under the PTA and ER were discussed and decisions on corrective action taken. The IGP has followed up on these decisions and issued necessary directions to all Police Stations.

While lapses in reporting continue, they are less frequent and on the whole the Commission has received the co-operation of the armed forces and the police to prevent such lapses. The Commission has paid attention to some of the special problems that are causing hardship to citizens particularly Tamil persons as a result of the ER and PTA. One such example was the system of passes for persons who seek to move in and out of the Northern Province and their stay outside the Northern Province for short periods for a variety of personal reasons. The Commission inquired into this problem and had several discussions with the Ministry of Defence, the armed forces and the Police with a view to simplifying the procedures and minimizing the inconvenience while providing for the essential security that has necessitated this system. The Commission has also expressed its concern that the present system is based on administrative directions which have no legal validity and has impressed on the authorities the need to put in place a legal regime which defines the responsibilities of officials more clearly. At the time this report is being written the work has not yet been completed.

The *Table 2⁵* provides information on the total number of complaints received by the Commission during the year 2000 and the action taken on these. The total number of complaints of infringements of fundamental rights of various types was 5441. Of this 2599 complaints or 47% were received and handled directly by head office. The balance complaints were received by the ten Regional offices. About 41% of the total, 2243, were complaints arising from arrests and detentions. Of these the Commission has inquired into and disposed of 1729 cases. The balance 59% of the cases were complaints against administrative and executive action of the state mostly under Article 12 of the Constitution. Two thirds of this category of complaints were received directly by the Head Office the balance was distributed in varying proportions among the Regional Offices with 639 cases or nearly half of the balance going to the Kandy Regional Office.

Table 3⁶ provides a summary analysis of the type of complaints received. 53% of the complaints were made by public servants on the ground that they had been victims of unequal treatment in respect of their terms and conditions of service. Their grievances covered such matters as recruitment, transfers, promotions, and extensions of service, disciplinary inquiries and pensions. These complaints normally require inquiries and investigations that can extend to several hearings. From *Table 2⁵* it can be seen that the Commission has been able to clear 1283 cases leaving a backlog of 1915 cases. Although the output has more than doubled over that of previous years the present situation indicates clearly that the existing capacity of the Commission is insufficient to dispose of the work efficiently and expeditiously. The restructuring that has been undertaken will help the Commission to deal with this problem.

HRC officers have made 2022 visits to police stations and 510 visits to detention camps in various parts of the island. The number of arrests that have been reported were 2387. The frequency of the visits that have been made by the HRC officers has enabled them to cover almost all of the arrests that were reported and also detect the detentions of persons who had not been reported. Some of these persons would have been released within a day after arrest and would not be included among those who are detained for investigation beyond 48 hours. Therefore they may not be included in the total number of arrests that are reported. However some of these cases of detention which are not included in the arrests that are reported are instances of failure to comply with the regulations. These are followed up by the Commission's officers and serious lapses are inquired into without delay.

⁵ Vide page 42.

⁶ Vide page 43.

From *Table 2*⁷ it can be seen that the incidence of arrests and detentions are the highest in the North East, accounting for 1387 or 56% of the total. Of these Vavuniya and Trinco have reported the largest number of arrests- 868. The arrests reported to Head Office which includes the Western Province come next – 474 or nearly one fifth of the total number. The largest number of detainees were Tamils – 2593 out of a total of 2849. In the prevailing conditions of an armed conflict between the state and a militant Tamil group the derogation of rights under the ER and the PTA falls heaviest on the Tamil community. Among the detainees there were 189 Sinhalese and 67 Muslims. This ethnic and geographical distribution of the incidence of arrests indicates the areas and population groups which are currently under heavy stress and where security operations are leading to a large number of arrests and detentions. It is these areas which need the closest attention of the Commission.

A list indicating the number and nature of the complaints received by the Commission and its Regional Offices is at *Table 3*⁸.

During the period under review, the Commissioners themselves visited the detainees at Anuradhapura, Kandy and Kalutara prisons.

Under the present system what is recorded in the Commission's documentation are the cases which have been reported directly to the Commission by a complainant. In some instances, the Commission comes to learn of the violations from local or international media reports and releases appearing in websites such as those of Tamil NGOs working abroad. However there has been no systematic regular process of obtaining such information. The HRC is in the process of remedying this shortcoming. *Table 3*⁸ provides the data relating to the categories of complaints received and investigated by the Commission. Brief comments on the situation relating to the more serious violations are given below.

Torture , deaths in custody and disappearances

The Commission received a total of 552 complaints of torture for the year 2000. These ranged from complaints of simple assault while in custody to more brutal forms of violence against victims. In all these cases, the HRC conducted its investigations, recorded statements and intervened appropriately within the Commission's mandate. The Commission ensured that victims were medically examined, in cases in which this became necessary. The Commission reported its findings to the authorities concerned and to the Attorney General where appropriate.

The complaints include both cases under the ER and PTA and the normal laws for arrest of suspects. The incidence of torture covers all regions of the country indicating that the use of unlawful physical force on persons taken into custody occurs in a wide variety of situations and includes Sinhalese, Tamils and Muslims. According to the reports from the regional offices some of these cases, particularly where the allegations are those of simple hurt, do not go beyond the complaint stage and are "settled" after the HRC makes its first intervention when the victim does not press his or her allegation and feels safe from any further

⁷ Vide page 42.

⁸ Vide page 43.

harassment. The presence of the HRC and the increasing awareness of rights appear to have enabled victims to become more assertive of their fundamental rights.

The Commission has noted that the present legislative framework and the system of surveillance by the HRC provides the means of minimizing and preventing the occurrence of torture by law enforcement authorities as well as taking deterrent punitive action. Citizens can have recourse to the Supreme Court in cases of torture and obtain relief in the form of compensation. During the period under review there were 719 cases that came before the Supreme Court. While these prosecutions and verdicts have a deterrent effect, they are not adequate as in most cases the compensation is borne by the State. Recently, the guilty officers have been held personally liable. However apart from compensation, further action has to be taken against the officers who have been found guilty as they are liable for criminal prosecution as well as disciplinary action. It would appear from the information available that such action has not been taken systematically as an invariable follow up to the verdicts of the Supreme Court. So far, the HRC has not been able to monitor the action taken in cases of torture in relation to all these aspects. The restructuring of the Commission, which is underway, will enable the Commission to assign more personnel and resources for undertaking a systematic monitoring of the incidence of torture and action taken in all such cases.

According to *Table 2⁹* there were 5 deaths in custody that came to the attention of the Commission during the period January 2000 to 31st December 2000. The report of the Commission on the complaint regarding the death of Mr. Ganesh Chandrakanthan is given in *Annexure III¹⁰*. In all these cases HRC has conducted its investigations. The most tragic and heinous of these was the killing of 26 of the 42 inmates of the Bindunuwewa Camp who were Tamil youth and who had surrendered to the security forces. The Commission held its own fact-finding inquiry into the killings at Bindunuwewa and made its recommendations to the Government. A summary of the Commission's report on Bindunuwewa is annexed (*Annexure IV¹¹*). The Commission also inquired into the circumstances of the killing of a prison inmate in the Kalutara prison. The Commission was satisfied that there was no involvement of state officials in the case of the detainee who is alleged to have been killed by other detainees. The Commission is also satisfied that steps are being taken to identify and deal with the assailants who were responsible for the murder.

The Commission received reports of 1112 disappearances during the period under review (*Table 2⁹*). These reports include cases where the allegations are of a general nature that would apply to persons missing for various reasons to complaints in which the police or armed forces, para military groups or the LTTE are alleged to have taken the person or persons away. All these cases are followed up by the HRC and investigated to the extent possible. The HRC is not equipped to conduct field investigations to trace the missing persons if the complaints reveal no evidence that the state agencies are involved. *Table 2⁹* provides the data on disappearances. The data indicate that most of the missing persons are subsequently traced. Of the 1112 reported to be missing 921 had been traced at the end of the year. *Annexure V¹⁰* gives a summary of an investigation into an allegation that the persons had been removed by the armed forces.

⁹ Vide page 42.

¹⁰ Vide page 50.

¹¹ Vide page 51.

The brief overview of the HRC's activities in relation to torture, disappearances, and deaths in custody indicates that several areas of HRC's monitoring surveillance and follow up have to be strengthened as well as co-ordinated with Government authorities and the Attorney General.

- The Commission commenced work on the maintenance of a central record of all information on arrests, detentions, disappearances and complaints of torture. Most of the relevant information has been computerized and is now readily available. Under a project financed by the Asia Foundation, the Commission is in the process of installing a reporting and information system which will enable regional offices to transmit the information to the computer network directly on a daily basis as they obtain the information. This will provide the Commission with an up-to-date system of information enabling it to track all cases of arrests, detentions, torture and disappearance from the initial report or complaint to the conclusion when a person is released or indicted. The system will be in operation by 01.06.2002.
- The improvement of the information and registration system would contribute significantly to effective monitoring of these violations and the follow up action. But this alone would not be sufficient. The surveillance of arrests and detentions has to be intensified by more frequent and regular visits to police stations and places of detention. Such surveillance must become the effective "front line" for protection of human rights and prevention of violations. The HRC is organizing a special effort to make this a reality.

References by the Supreme Court

During the last year the Supreme Court referred nine petitions to the Commission for investigation and report in terms of section 12 (1) of the HRC Act. The number of such references has dropped significantly during the year 2000 compared to the number in 1999 during which 33 petitions were referred to the HRC by the Supreme Court. With a few exceptions the petitions referred to the HRC deal with complaints of unequal treatment made by public servants regarding matters pertaining to their terms and conditions of service.

Part II

Plan of Work and Activities for Full Coverage of the Mandate.

Simultaneously with the work that has been reviewed in the preceding section, the Commission addressed itself to the other parts of its mandate.

The Commission had not yet been able to give adequate attention to its functions under 10(d) and (e) which required it to review national laws and administrative practices and "make recommendations to government regarding measures which should be taken to ensure that they are in accordance with international norms and standards." The Commission had not been able to undertake a systematic review of the national legislation for incompatibility and inconsistency with the Chapter of the Sri Lanka Constitution on Fundamental Rights. The Commission had sponsored and promoted programmes of human rights education but they did not form part of a well-designed national programme based on a countrywide assessment of the needs in the different sectors and population groups. The Commission also did not have the staff and resources to undertake studies and research on critical issues pertaining to human rights.

The Commission was acting in a situation in which several groups suffered from special disadvantages which often lead to the denial of their human rights.

- The war has resulted in the internal displacement of about a million people.
- About 5% of the population have gained citizenship rights recently and need supportive measures that enable them to realise their civic and other rights and concomitant responsibilities, in full measure.
- There is a outflow of temporary labour migrants who are finding it difficult to exercise their rights as permanent residents.
- The institutional and legal framework for the protection of the rights of women and children is in the process of being developed.
- The rights of the disabled and the aging demand greater attention, the former because of the casualties of the war and the latter as a result of the rise in life expectancy.

After the Commission had attended to the clearance of the backlog of cases and other urgent tasks relating to the " front line" for the protection of human rights, it prepared the Corporate Plan and Programme of Work to cover the mandate of the Commission as fully as possible. The Framework of the Corporate Plan is annexed (*Annexure VI*¹²). The main initiatives taken under this programme of work in order to cover the other parts of the mandate not covered by the activities described in Part I are the following:

¹² Vide page 61.

The restructuring of the institution.

The new structure of the HRC is given in the Chart annexed¹³. Under this new structure the Commission will have three substantive Divisions headed by a Director assisted by the necessary staff. As would be seen from the details given in the Chart, the new structure will be equipped to cover all the functions that have been assigned to the Commission under the Statute. The new structure also provides for the strengthening of the regional offices. One of the major constraints from which the Commission suffered was the inadequacy of resources, particularly trained and highly qualified staff in senior positions. At the time of writing the report the Commission has obtained Government's approval for the restructuring and expects to have the new structure operative from 1.04.2002

Review of legislation.

The Commission formulated a wide-ranging project to undertake the review of existing legislation and sought extra budgetary assistance through the UNDP for implementing the project. The project includes training and capacity building of HRC staff. The Sri Lankan legal system is based on written and unwritten law and is essentially a plural system of laws containing many laws, customs and practices applicable to different communities in the country. Certain laws that are contained in our legal system are in violation of the provisions of the fundamental rights chapter of the Constitution and our international human rights obligations. There is therefore a need to review the existing written and unwritten law of the land in order to determine whether they are consistent with the provisions of the fundamental rights chapter and international human rights norms and standards. The project will undertake this task over a period of two years selecting legislation for review on an order of priority, according to the importance and urgency of the legislation. The project has now received the required support and will commence work from 01.09.2001.

Special population groups.

The Commission has addressed the problems of the following groups: internally displaced persons (IDPs), migrant workers, persons with newly gained citizenship in plantation areas and disabled persons.

The first initiative taken by the Commission in regard to the IDPs was the hearing given to the IDPs of the Puttalam District on the hardships and deprivation of rights faced by them. These ranged from deprivations relating to conditions of service of public servants who had been displaced, admissions to schools, exercise of the franchise, to the rights to property from which they had been forcibly evicted by the LTTE. On the basis of this hearing, the Commission arranged a Conference with the government authorities dealing with these problems in order to mediate and resolve them. These hearings revealed that concerted and systematic action would be necessary to deal with the problems of the IDPs who constitute a significant group and would continue to need affirmative action long after the settlement of the present armed conflict. The Commission has taken two initiatives to deal with this situation. First it has commissioned a study of the prevailing conditions, types of violations and the capacity of the existing system to deal with them. Second in collaboration with the UNHCR it is examining the short term measures that can be taken by the regional offices to monitor the situation relating to the IDPs and deal with the violations that occur. As a result of

¹³ Vide page 44.

these initiatives which have been supported by the Asia Foundation and the UNHCR, the Commission expects to make a comprehensive set of recommendations to government with a view to observing the international norms on the human rights of IDPs. These will include a recommendation on the necessity to make amendments to the Prescription Ordinance to safeguard the property rights of the displaced persons.

The National Worker's Congress submitted an appeal to the commission to review the existing laws applicable to the voting rights of migrant workers in the context of the UN Convention 1990 and the prevailing election laws. There are about one million Sri Lankan migrant workers overseas and the NWC felt it was the responsibility of the Sri Lankan government to provide them facilities to elect their representatives as provided under the UN Convention 1990 which Sri Lanka ratified in 1996. At the first meeting with the Commission, the participants discussed the issue of exploring the possibility of introducing a postal voting system for migrant workers. The Commission is working in collaboration with this NGO and expects to submit recommendations to government. For this purpose the system and procedures that have been already adopted to give voting rights to migrant workers in countries such as the Philippines and Indonesia are being examined.

On the problems of new citizens in the plantation area the Commission has held consultations with the government authorities, trade unions and NGOs to inquire into the grievances of this group in regard to their fundamental and human rights. A meeting was organized by the Commission with the assistance of the regional offices in Kandy and Badulla for senior police officers stationed in the areas of Nuwara Eliya and Bandarawela to meet the members and other officers of the Commission and trade union leaders in the area. The meeting was held at the Nuwara Eliya Town Hall. Assistant Superintendents of Police in Nuwara Eliya, Hatton, Walapane and Bandarawela Police Stations together with O.I.C's of 21 police stations in the area attended the said meeting. The delegation of trade union members was led by Hon. Member of Parliament, Puthrasiri Gamini and the Commission was represented by three of the Commissioners, Ms. Manouri Muttetuwegama, Mr. Sarath Cooray and Mr. M. Selvakkumaran and Mr. S. Wijegoonawardana, the Secretary of the Commission.

The grievances of this group are wide ranging and include such matters as language rights, issue of national identification certificates and admission to schools. This is a area which will be kept under close surveillance by the Commission.

The Commission has also been concerned about the rights and the welfare of the disabled persons in the country as they form a most integral part of the population. The 1978 Constitution too emphasized the need to make special provision for the advancement of disabled persons.

The Commission in pursuance of its mandate intervened in support of the petitioner in the cases bearing numbers CA 602 \ 2000 and CA 603 \ 2000 filed in the Court of Appeal by seeking the permission of court to be added as a party to the said applications with the approval and the consent of the petitioner, which was The Public Interest Law Foundation. The two applications addressed some important issues with regard to the rights of disabled persons under the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996. They complained of the failure on the part of the respondents to provide facilities for the differently

abled persons to gain access to public buildings, to cross the roads and to ensure their safe movement within the city. The said inaction on the part of the Respondents is violative of the provisions of the Protection of the Rights of Persons with Disabilities Act and also violates the petitioner's fundamental right to equality under Article 12 of the Constitution.

The petitioner has sought a mandate in the nature of a writ of mandamus compelling the respondents to comply with the statutory obligations of the Respondents under the Protection of the Rights of Persons with Disabilities Act. The above-mentioned two applications are presently pending determination before the Court of Appeal.

On children and women the HRC noted that there are special institutions to monitor the implementation of the Charters and Conventions pertaining to the rights of these groups. The Commission proposes to work in close collaboration with these institutions and have institutionalized links for such collaboration when the restructuring of the institution is completed and the substantive Division responsible for this area is in place.

Human rights education.

From the inception, the Commission has undertaken programmes to promote awareness of human rights. During the last year the Commission with its ten regional offices launched several awareness programs targeting different groups ranging from school children and teachers to police personnel, the armed forces and public servants. The Commission officers and regional co-ordinators collaborated in several human rights education workshops and seminars organized by non-governmental human rights organizations and other agencies.

The Commission's preliminary survey of needs and existing capacity in the field of human rights education indicates that there is a great deal to be done in co-ordinating the activities of various agencies imparting human rights education, providing guidelines and developing curricula suited to the specific problems and contexts of Sri Lanka. Most state systems and practices have come into operation during a period when the human rights dimension in executive and administrative action was not specifically taken into account. The human rights education programme has therefore not only to impart the knowledge pertaining to the laws and procedures that have been put in place to protect the individual's fundamental rights; it has a far more important challenge to meet: it has to promote the far-reaching attitudinal changes and inculcate the value systems that are integral to the protection of human rights.

Taking these needs into consideration, the Commission has formulated a proposal for a national programme of human rights education and is in the process of negotiating extra budgetary assistance for this proposal. This programme has two broad objectives. First it is specially targeted to bring the state agencies and the public into a more informed and constructive relationship with the HRC and promote a human rights culture within the state and among the public. Second it is designed to develop partnerships with the NGOs who are already engaged in the field of human rights and enable them to extend their reach and complement the HRC more effectively in the protection and promotion of human rights. The Commission's programme

on human rights education will form part of the programme that is being initiated by the Ministry of Constitutional Affairs under the UN Decade for Human Rights Education.

Other areas of the Commission's mandate

During the year under review the Commission dealt with two other situations in which issues relating to infringement or imminent infringement of fundamental rights had arisen. These were

(a) *The censorship regulations under the Emergency Regulations of June 2000*

(b) *Infringements of Election Law in the Parliamentary Election of October 2000.*

The Commission assisted by a few external consultants reviewed the censorship regulations and recommended that the censorship should be governed by clearly formulated guidelines in order to ensure that the derogation of the fundamental right of free speech is specific and narrowly defined to the extent strictly required by the exigencies of the situation. The report went on to elaborate on how this principle might be applied in the context of Sri Lanka's public emergency. The Commission's report is annexed (*Annexure VII¹⁴*).

The Commission received several complaints relating to the administration of the 10th Parliamentary election of Sri Lanka held on 10.10.2000. These must be viewed in the background of developments in 1999. The Supreme Court in its judgment on the case brought against the Elections Commissioner for the postponement of the Provincial Elections by the Free Media Movement in March 1999 had ruled that the citizen's right to vote as provided for in the Constitution is an essential part of the fundamental right of freedom of speech and expression. This judgment brought the election-related matters bearing on the rights of voters within the mandate of the HRC.

Two of the petitions received by the Commission were submitted by non-governmental organizations and human rights activists, the others by concerned members of political parties. Three petitions complained of infringements or imminent infringements of the rights of voters. Two petitions complained against government action which interfered with the functions of the Elections Commissioner. One petition which was submitted by the Chairman UNP on the grounds of unequal treatment against the Independent Television Network for their telecast of election news was referred by the Supreme Court to HRC for investigation and report. All complaints were settled after the respondents had given appropriate undertakings.

Two petitions submitted by non governmental organizations and human rights activists complained of imminent infringements of voters' rights and requested a full disclosure of all steps taken by the Elections Commissioner and the IGP to prevent such violations. At a full hearing of the petitions, the circular instructions and other directions pertaining to the conduct of the elections were made available to the petitioners. The main issues raised by the petitioners were discussed and further precautionary measures agreed to. A summary of the meeting and the decisions taken are given in *Annexure VIII¹⁵*.

These decisions provide a basis for future follow-up by the HRC.

¹⁴ Vide page 65.

¹⁵ Vide page 67.

Part III

Violations of Fundamental Rights Under Article 12 of the Constitution - Selected Cases

The selected cases that are summarized below illustrate the types of complaints received by the Commission under Article 12 of the Constitution, the nature of the investigations that are conducted and some of the principles that guide its findings and recommendations.

Violations of the rights of public servants in the restructuring of their service

There are several cases which have come to the HRC deal with alleged violations of the fundamental rights of public servants in the restructuring of the service to which they belong.

The following case deals with a situation which illustrate the type of alleged violation.

The petitioners had been absorbed into the Principals service by Cabinet directive on the ground that they had acted in posts of Principals and Deputy Principals in difficult stations and had performed satisfactorily in these posts. These appointments were outside the normal scheme of recruitment to the service which was on the basis of competitive examinations and on seniority and merit from among officers who had certain stipulated educational qualifications and periods of service.

In 1996 the Ministry of Education restructured the Principals' Service under a new minute – The Minute of the Principals' Service of 31. 12 .96. Under this minute the Service had been restructured and the past service which had three grades of officers had been converted into a service with four grades with enhanced salary scales. The absorption of officers from the old service to the new service and the conversion of their salaries to the enhanced salary scales was done in terms of the instructions issued by the Ministry circular of 17.03 1997. According to the criteria stipulated in this circular, the petitioners were absorbed to grades lower than the grades to which the other officers had been absorbed. This was because the scheme of absorption distinguished between the principals who had come through the normal scheme of recruitment and the petitioners.

The effect of the restructuring has been to place those who had entered the Principal's service through the normal scheme of recruitment, possessing the required academic qualifications and the eligibility criteria specified in the Minute of the Principals' Service 1986, on one grade higher than the principals who had entered the service without sitting the competitive examination and without the eligibility criteria specified in the Minute of 1986.

It would appear that the restructuring of the Principals' Service has been undertaken as part of the national policy to improve the quality of education and to maintain and recruit a cadre of principals with the required qualifications and capability. The distinction that has been made between the petitioners and the other officers are based on clearly defined criteria and these criteria are directly related to the objective of the restructuring which is to improve the quality of the service. It is however important that in this process

those who are already in service do not suffer any diminution of the rights they may enjoy by way of salary and other benefits as well as any prospects of advancement.

- ☞ As a result of the restructuring of the Principals Service the petitioners have not lost in salary. The new salary structure has resulted in some enhancement of the salary although this was less than the increase received by their colleagues who had satisfied the eligibility criteria. They are also eligible for promotion to the next grade as before on seniority and merit.
- ☞ Under the restructuring the petitioners complain that their colleagues with less service and lower salaries had been promoted to the higher grade. As against this it has to be noted that even under the scheme that existed, the competitive examination provided the opportunity to their colleagues who were better qualified to advance in the service well ahead of them. What is at issue is whether the restructuring would have materially affected the prospects of the petitioners by denying them opportunities of advancement that they would have enjoyed under the old scheme. As 40% of promotions are reserved for seniority and merit, it is doubtful whether this would be the case.

The petitioners case raises some major issues on which the Commission needs to decide on some guiding principles. In the case that has been discussed, the petitioners base their claim on their right to be treated equally with their colleagues after they entered the service whatever be the basis on which they entered it. There is however a clear distinction between petitioners and their colleagues in regard to entry and this distinction has a bearing on the requirements of the service and the standards that have to be maintained. The absorption of the petitioners has been in recognition of the service they rendered as acting principals in difficult stations. After their absorption into the service their deployment and promotions will be based on criteria that apply to the service as a whole. If under such criteria, educational qualifications and merit that is proven through the competitive examination are given consideration in deployment and career advancement and consequently the colleagues of petitioners enjoy better opportunities than the petitioners, petitioners have no legitimate grounds to complain.

The scheme of recruitment is designed to maintain the standards and quality of the service so as to enable it to perform its functions efficiently. Where there are categories of employees absorbed into the service for special reasons, state institutions should be free to distinguish between such employees and the employees normally recruited in matters such as deployment and advancement, if such distinction is essential to the satisfactory performance of the functions of that service. It is best that these conditions be laid down and made known to the employees who benefit under the special actions taken to absorb them.

In the restructuring of a service the state institutions should be free to provide new avenues of advancement and other incentives to recruit or promote the personnel who satisfy the requirement of skill and capability needed to undertake new tasks and duties that become essential in the process of improvement and development. An example would be the need for computer literacy in the school system and a scheme for recruitment of teachers with computer skills. A restructuring of the teachers service may be designed to recruit and promote teachers with specified levels of computer skills. Under such a scheme the teachers already in service who have acquired these skills may gain advancement well ahead of their colleagues who do not acquire such skills. Teachers without computer skills may not be able to aspire to some of the

new positions and higher grades created by the restructuring. These situations cannot give rise to cases of unequal treatment. The changes that are introduced are in the best national interests. In such situations the officers should either be given the opportunity to retrain themselves or if they are not in a position to undergo such retraining, they should be given the opportunity to retire with some measure of compensation for early retirement.

A scheme of promotions in a state commercial bank

In a similar case five complainants who were employees of a state commercial Bank alleged that a scheme of promotions formulated and implemented by the Bank had violated their fundamental rights. Promotions in the Managerial Grade from Grade III (3) to Grades III (2) and III (1) had been governed by a Circular (referred to hereafter as Circular 1) which laid down certain criteria. These criteria included the successful completion of a written examination. Applications for promotion had been invited in November 1993 from employees who satisfied the criteria of eligibility. The five employees who were complainants in this case had applied in November 1993 to sit for the examination prescribed by Circular 1. However, the Bank had not been able to hold the prescribed examination for a considerable period as the Bank employees had filed actions in court against the scheme of promotion. Consequently the complainants were unable to fulfill this condition due to circumstances beyond their control.

While these cases were pending the Board of Directors approved the promotion of officers in Grade III (3) to Grade III (2) subject to the officers having a minimum of 5 years service in Grade III (3) and a satisfactory service record. The decision to make these promotion was taken in December 1995 but the effective date of promotion was back-dated on criteria based seniority. The Petitioners were amongst those who were promoted to Grade III (2) under this scheme.

It was also specifically stated that the envisaged promotions were not cadre-based and would be awarded on a once and for all basis. The Board also stated that once these promotions were effected the then existing promotion scheme relating to Grade III (2) would cease to be operative and the Bank would formulate a fresh promotion scheme to be implemented in the future. It was also stated that a seniority list would be issued in due course.

In September 1996 the Board of Directors of the Bank decided amongst other things to promote 368 Assistant/Deputy Managers in Grade III (2) to the Manager Grade-Grade III (1). This decision was made on the recommendations of a Committee appointed to study and report on the demands made by the trade unions on the promotions to the Assistant Manager's Grade and the Manager's Grade. According to the existing procedures 30% were to be promoted on seniority and 70% was to be from officers who had passed the written competitive examination which had been held in 1982 and 1988. This means that of the 368 vacancies for Grade III (1), 110 employees were to be promoted on the basis of seniority and 258 on the basis of a written examination. However, the Board Paper reported that there were only 198 Deputy Managers and Assistant Managers who had passed the written competitive examinations and as such the balance 60 in that category would also have to be promoted on the seniority basis. The Bank in pursuance of this decision filled the 368 vacancies in Grade III (1) by promoting the following officers:

1. All the 200 officers who had passed the written competitive examination held in 1982 and 1988
 2. Officers in Grade III (3) since 1972- 57 Officers
 3. Officers in Grade III (3) since 1973 -01 Officer
 4. Officers in Grade III (3) since 1975 -60 Officers
 5. Officers in Grade III (3) since 1978 -50 Officers. As there were more than 50 officers in this category the senior most officers in the Bank's service had been selected.
- The five complainants did not become eligible for promotion on the criteria that had been adopted. The complainants do not contest this position.

The five complaints submitted that their fundamental rights had been violated on the following grounds:

- (i) No new scheme of promotion was adopted by the Bank to replace the Circular I governing promotions though the Bank had invited employees to submit their views for a proposed scheme of promotion to Grade III (2) from Grade III (3) and to Grade III (1) from Grade III (2) by a communication addressed to them in 1996.
- (ii) The examination prescribed under Circular I was never held though applications were called.
- (iii) In the absence of any new scheme of promotions, the scheme under Circular I continued to be operative and the petitioners were eligible for promotion to Grade III (1) under that scheme of promotion.
- (iv) The decision of the Board of Directors of the Bank to effect promotions on the new criteria that had been adopted in September 1996 was designed to override the Circular I and to favour selected employees.
- (v) No prior notice of the criteria adopted by the Respondent, Bank in September 1996 for promotion to Grade III (1) was given.
- (vi) The decision taken by the Board of Directors to promote officers to Grade III was contrary to the existing scheme of promotion prescribed under Circular I.
- (vii) The decision also amounted to an unreasonable classification that excluded the petitioners and the other officers on behalf of whom the petitioners have sought relief.
- (viii) That the category who had completed the written examination consisted of employees who had passed the examination in terms of a Circular issued in 1988 which was to apply for one round of promotions only.
- (ix) Only those who are in Grade III(2) and have applied to sit for the examination prescribed by Circular No.252/91 are eligible for promotion to Grade III(1) and that complainants as well as other officers in this category should all be promoted to Grade III(1).

The Bank argued that there was no violation of the right of the Petitioners as the scheme of promotion adopted by the Bank was the most reasonable and justifiable scheme any body could have adopted in the prevailing circumstances. They made the following submissions in support of their contention:

- (i) Circular 1 which provided for a scheme of promotion to Grades III (3), III (2) and III (1) was meant to formulate and regularize a systematic and rational promotion scheme. However, the Bank was prevented from holding any examination and effecting any promotion under the said Circular due to court cases filed by some employees.
- (ii) When the need to promote officers to Grade III (1) arose, the Bank based their decision on the recommendations of the Committee which had studied the schemes of promotions and the demands of the trade unions.
- (iii) The 168 officers promoted on the basis of seniority were already placed in Grade III (2) consequent to the decision taken on 7.12.1995. In calculating the seniority of officers the Bank took into consideration the length of period they served in the Bank in the officer grade as well as in previous grades in clerical service of the Bank.
- (v) The Petitioners had not challenged the promotions of 200 officers on the results of competitive examinations. They only challenged the promotion of the balance 168 officers on the basis of seniority.
- (vi) With regard to three categories based on seniority, the petitioners cannot complain as these officers reached Grade III(3) in 1972, 1973 and 1975 respectively and that they were all promoted to Grade III (2) with effect from 7.12.1995. None of the five Petitioners reached Grade III (3) before these years.
- (vii) But with regard to the fourth category of officers promoted to Grade III (1) on the basis of seniority, the criterion was that they should have been promoted to Grade III(3) in 1978 and thereafter to Grade III (2) on 7.12.1995. Although there were 50 vacancies for this category, there were 529 officers who satisfied this requirement including three complainants. As only 50 could be promoted from this 529, the Bank decided to promote the senior most 50 officers in the bank service. The Bank claimed that the following criteria were adopted to achieve this objective:
 - a) an officer must have served at least 33 years in the bank and
 - b) he or she must have been promoted to Grade III (3) in 1978.

The Bank contends that none of the five complainants satisfies these criteria.

On the evidence that was led before the Commission, it was established that the Bank was confronted with a situation that could not be resolved within the scheme of promotion under Circular 1 which the Bank claimed was designed to provide for systematic and rational promotions. The Bank was not able to hold the examinations prescribed under the said Circular 1 on account of the cases filed in the District Court and Supreme Court. As such, no promotion was effected under this circular. The Bank claims that the Circular 1 became inoperative after a judgment delivered by the Supreme Court in favour of the employees who had petitioned against certain promotions made by the Bank. The Bank further states that the scheme of promotion

under Circular 1 was replaced by the decision of the Board of Directors taken in September 1996. However, this position taken by the Bank is not tenable. The decision made by the Board of Directors in September 1996 applied to a specific set of promotions and did not constitute a new scheme of promotions that was to be operative in the future. When the impugned decision of the Board of Directors of the Respondent Bank was made in September 1996, it was the Circular 1 which continued to govern the Scheme of Promotion for Grade IV, Grade III (3), Grade III (2) and Grade III (1) in the main service of the Bank. The submission of the Respondent Bank that they were precluded from acting under Circular 1 due to court cases does not entitle them to act in a manner which infringes the fundamental rights of some of its employees. Given the circumstances of the case it was the responsibility of the management to replace the scheme of promotion under Circular 1 with another scheme which gave adequate notice to the employees. Furthermore, when the Bank promoted a large number of employees from Grade III(3) to Grade III (2) in 1995, it undertook to formulate a fresh promotion scheme to be implemented in the future, but no such scheme was introduced in its place. Similarly the Bank did not issue any seniority list though the Circular Letter relating to these promotions stated that a seniority list would be issued in due course. The decision taken in September 1996 was therefore in violation of the existing Staff Circular.

The complainants enjoyed a legitimate expectation, if not a legal right, emanating from Circular 1 and the application for promotions that had been invited under that Circular. They were not given the opportunity to pass the written examination that had been prescribed. When the management failed to fulfill the conditions required under the circular and adopted another set of criteria without giving prior notice to employees and making the complainants ineligible, the complainants had a legitimate cause to complain that they were not extended the constitutional guarantee of the equal protection of the law.

It was the view of this Commission that the most logical remedy in the circumstances of this case would have been to annul the 368 appointments made under the impugned decision to deem those who have been appointed to have been on an acting basis until fresh appointments are to be made to those positions following valid procedures and rules. Such a scheme would then give equal opportunity to the complainants and the officers who were in similar circumstances. However, the Commission refrains from recommending that the impugned decision of the Board of Directors be declared null and void as no opportunity had been afforded to those 368 officers who would be adversely affected by such a recommendation to present their case. Even the complainants have not prayed for such a declaration.

On the other hand, the sequence of events in this case had created a situation in which the complainants themselves were not eligible for promotion under the scheme of promotion according to Circular 1 at the time promotions were made. This was for the reason that they had not had the opportunity to sit and pass the written examination. Therefore, the most that can be said is that their rights have been violated in that they have been denied the opportunity to compete for promotion on the terms laid down in the scheme of promotion that was in operation. After this is granted, it should be noted that the complainants would have had to pass the written examination to qualify for promotion. Any relief granted to the complainants would need to take all these circumstances into consideration. The Commission therefore refrained from recommending that the complainants be promoted to Grade I as requested by them. Instead the Commission decided that what might be considered in their case was adequate compensation and solatium.

Violation of rights relating to school admissions.

Each year the Commission deals with a large number of complaints regarding admissions to the first year of schooling. A review of the cases indicated that the Commission needed to decide on a set of principles and criteria that had to be applied uniformly in all these cases.

In several cases of mediation that had been undertaken, the mediator had acted on the basis that if a student had been admitted in violation of the rules governing distance, then complainants who reside at a distance closer to the school should be admitted even if they do not have a right to admission on the distance criterion that has been correctly used for school admissions. For example if the limit for the distance from the school is 35 meters and if the principal of the school has improperly admitted a child who lives at a distance of 50 meters in violation of the rule for distance, then complainants who live outside the 35 meter limit but who are closer than 50 meters have a "right" to be admitted.

At present the cases heard are decided on the complainant's rights in terms of the rules and criteria that have been correctly applied in accordance with the Ministry circular governing school admissions. The applicants fall into several categories. In most schools there are three main categories; quotas are assigned by the Ministry of Education for each of the them. The three are chief occupants, non- chief occupants, and old pupils. The assisted schools taken over in 1962 have religious quotas as well.

The applicants must produce documentary proof of residence for a specified period. The qualifying distance from the school is determined as the distance of the applicant who qualifies last within the quota in terms of distance. If for example the quota for the chief occupant category is 35, the distance will be calculated by taking the 35 closest to the school. The calculation is done by drawing a line or radius on a map for the area. The distance will therefore vary from year to year, giving rise to complaints that while one child from a family has been admitted another from the same family has not been considered eligible. These situations are inevitable with the strict application of the existing rules.

Many complaints are based on the argument that other students who do not qualify on the distance criteria have been admitted and that the complainant resides closer to the school than students so admitted, although the complainant himself does not satisfy the distance criteria that are applicable for correct admission. In these cases the HRC has informed these complainants that there has been no violation of their fundamental rights as they were not entitled for admission on the rules that were stipulated. The Commission has taken the position that violations of the rules in individual cases have to be inquired into independently and dealt with administratively as separate offences. What may be necessary is to examine whether other applicants who were next in line according to distance had been denied admission as a result of the improper admission of a student or students who did not qualify. It is only if the complainant can establish that he was next closest to the school and that a place that was rightly his has been filled by the improper admission that he would be entitled to redress. Legal officers have therefore been instructed to obtain full details of the admissions, and ascertain how the distance criteria have been applied and the effect which the violations, if any, would have had on the admissions. If students have been admitted in clear violation of these rules, whatever evidence is forthcoming is recorded with a view to reporting these violations to the Ministry and recommending appropriate action. Here it should be noted that there would have been other parents who

would not have been able to admit their children under the distance rule, who may be living closer to the school than the complainant but who had not appealed for the reason that they had accepted the fact that they were not entitled according to the rules that had been stipulated. Had they known that an admission made in violation of the distance rule would have made them eligible they too would have appealed and would have had better claims than the complainant.

Other appeals to the HRC deal with the evidence relating to the category to which applicants are assigned – chief occupant and non-chief occupant – and evidence of residence. There have been many instances where complainants have produced the necessary evidence before the HRC but had failed to produce the evidence as required at the time when they were interviewed by the school authorities. In these cases the HRC has refused to intervene. The rules regarding documentary proof clearly specify that they should be produced at the time of interview and that no new documents can be introduced after the interview. No new documents are entertained by the appeal Board. These rules are required to ensure that the admissions are completed within a given time. Parents have to bear the consequences of any omission on their part.

The cases that have been heard indicate that the rules regulating school admissions are being violated with impunity. HRC would have to take such action as is necessary to prevent these abuses. A list of the violations that have come to the notice of the HRC will be compiled and a full report on the circumstances in which these violations have taken place sent to the Minister of Education with our recommendations.

There is more to be done to make the system more transparent. The applicants need to be informed more fully of the conditions that have to be fulfilled, for example through application forms which leave no room for ambiguity. The appeal boards should be independent of the schools responsible for admission. The criteria themselves and the way they might be applied may have to be reviewed. For example it has been noted that in the case of admissions to Kingswood College the quota system for chief occupants and non-chief occupants had led to the anomalous situation where a “non-chief occupant” residing further away from the school than a chief occupant became eligible.

The HRC has decided to select a location with a high incidence of violations of the rules governing school admission and hold a public hearing. Such a public hearing would throw more light on the nature and the extent of the irregularities and would also educate the public on both their rights and duties and help to reform the system.

Violation of rights during secondment and conversion of service.

One of the cases that came before the Commission illustrates the serious grievances that are caused in situations when disciplinary action is taken against officers who are seconded or who belong to a service which is transferred from one authority to another. In most of these cases, the victim finds it difficult to obtain relief. The responsibility for dealing with the case is divided between the department in which the officer held his substantive appointment and the department to which he was seconded. As a result no single authority takes full responsibility to ensure that the case is dealt with expeditiously and fairly.

In the case that has been selected to illustrate these problems, the petitioner was serving as a Cultivation Officer in the Ministry of Agriculture since September 1984. With the amalgamation of several services in

1989, he became a Grama Sevaka in January 1989. He was released on secondment for two years to the Ceylon Fertilizer Corporation (CFC), (the predecessor of the present Ceylon Fertilizer Co Ltd.), through the Secretary to the Ministry of Agriculture, Colombo. The CFC appointed him as a District Marketing Officer in Jaffna with effect from 1st June 1990 for a period of two years and thereafter he was detailed to serve the Trincomalee District 10 days a month under the supervision of the Regional Manager, Polonnaruwa. Meanwhile, the petitioner's period of secondment had expired but neither the petitioner nor the CFC had taken any action to regularize the position by either an extension of the petitioner's secondment or by the petitioner's retirement and absorption to the CFC's service.

In September 1995 the petitioner was arrested and remanded on charges of fraud and misappropriation and indicted before the High Court. The Chairman CFC thereupon interdicted the petitioner. His monthly salary and other payments were stopped during the period of interdiction.

In May 1999 he was acquitted by the High Court. A revision application against the judgment of the High Court was filed by the Attorney-General and was listed for support in September 1999. This application for revision was dismissed by the Court of Appeal in November 2000.

After interdicting the petitioner in September 1995 the respondent had served charges on him and obtained his explanation. However no inquiry was held. Two years later in September 1997 the respondent has sent a letter to the Government Agent, Jaffna under whom the petitioner had served in his substantive capacity as Grama Sevaka with a copy to the petitioner. By this letter, the respondent informed the Government Agent that CFC Ltd. was reverting the petitioner 'to his substantive position in Jaffna Kachcheri with immediate effect.' It also requested the Government Agent to take appropriate action against the petitioner in terms of the Establishment Code with regard to the charge sheet and the explanation given by the petitioner.

The letter informing the Jaffna Government Agent of the fact that the petitioner was being reverted to his substantive position in the Jaffna Kachcheri was not sent through the Ministry of Agriculture, Colombo. Nor was it copied to the Ministry. It should be noted that the petitioner joined the CFC on secondment through the Ministry of Agriculture.

The petitioner's request that he be reinstated by the respondent as District Marketing Officer in CFC Ltd was turned down by the respondent. Similarly, the attempts at reverting to his substantive position as Grama Sevaka Niladhari under the North East Provincial Public Service too did not receive a positive response as Grama Sevaka Niladharies were brought under the Central Government with effect from 01.01.1995. The Provincial Public Service Commission regretted its inability to take the petitioner back as this category of officers did not belong to them.

The Secretary to the Ministry of Agriculture through whom the petitioner was seconded to the respondent wrote to the Ministry of Public Administration reverting the petitioner to his substantive post. However, the Ministry of Public Administration had informed the Secretary to the Ministry of Agriculture that the petitioner could not be reverted to his substantive post as he had been employed by CFC Ltd beyond 31.12.1993.

Thereafter, the petitioner sought the intervention of the Human Rights Commission by a complaint dated 04.11.1999. He alleged that his fundamental right guaranteed under Article 12 (1) of the Constitution has been violated by the respondent by not reinstating the petitioner to his position held in CFC Ltd. He sought the following relief:

- 1. reinstatement in the post of district marketing officer;*
- 2. payment of arrears of salary from September 1995; and*
- 3. placement on grade IV of the DMO service.*

The petitioner contended that once an employee is acquitted or discharged from any criminal case, the respondent should reinstate the employee and his refusal to do so is in violation of Article 12 in that it infringes the right to equal protection of the law as well as becoming arbitrary and capricious. He also claims that since the secondment of the petitioner was on the request of the respondent, it was the duty of the respondent to have reverted him to his substantive post in the Jaffna Kachcheri when the period of secondment came to an end. It was also claimed that the then Chairman of the respondent gave a verbal assurance that the petitioner would be absorbed in CFC Ltd. The petitioner's Counsel further argued that the respondent's failure to obtain the necessary extension of secondment as well as the action of the respondent in granting the petitioner an open ended extension of service in June 1992 amounted to his being absorbed into the service of CFC Ltd. He also argued that the respondent continued to pay the petitioner beyond the secondment period as an employee of CFC Ltd. It was only when the arrests followed by the criminal prosecution of the petitioner took place that the respondent interdicted the petitioner and thereafter decided to revert him to the previous post in the Jaffna Kachcheri.

The respondent argued that the petitioner was never a permanent employee of CFC Ltd and that the respondent had all the authority to decline to take the petitioner back and revert him to his substantive post in the Jaffna Kachcheri. It was also contended on behalf of the respondent that the petitioner was at fault in not getting his secondment properly extended when the approved period expired. It was also suggested that the verbal undertaking given by the former Chairman of CFC Ltd was not adequate and it should be the petitioner who should be blamed for not getting himself properly absorbed into the permanent service of CFC Ltd if any such promise had ever been given. The respondent further argued that under the rules of the Establishment Code (vide section 19 of Chapter XLVIII), the respondent could take suitable action against an employee who is convicted by a court of law and also against an employee who was acquitted or discharged or found not guilty by a court of law. The respondent pointed out that he could not take any disciplinary action against the petitioner as he was on secondment and that the legal authority to take disciplinary action against the petitioner was with the Government Agent of Jaffna. It was for that purpose that he was reverted to the former post and the Government Agent of Jaffna was requested to take disciplinary action against the petitioner.

It was also argued that even if there was a wrongful termination, CFC Ltd would be willing to pay compensation to the employee instead of reinstating him – a course of action that is normally open to the employer in a case before the Labour Tribunal. It was also adverted by the respondent that the petitioner did not take any steps to report to the Jaffna Kachcheri when he was sent a letter reverting him to his substantive post.

Having considered the facts and legal issues involved in this matter, attempts made by the Commission to bring about an acceptable settlement proved unsuccessful. The respondent was prepared to make a payment of two years' salary to the petitioner in lieu of reinstatement. Later on he was prepared to increase the payment of compensation to four years' salary in lieu of reinstatement. The respondent, however, was not willing to reinstate the petitioner. The petitioner, on the other hand, wanted to be re-instated as he had not been found guilty of any offence. The petitioner argued that his future and his chances of getting other jobs if he was not reinstated or reverted to his earlier position would be jeopardized. He stated that the reversion had been virtually ruled out by the Ministry of Public Administration, though his client was ready to accept and go back to the former post.

It was suggested by the Commission that the petitioner be taken back as the District Marketing Officer and be given back wages. The respondent could then give advance notice to the petitioner that the respondent would not need the services of the petitioner after twelve months and that he should revert to his substantive position. This notice can be given no sooner than the petitioner is reinstated in the post of District Marketing Officer. To facilitate the petitioner to obtain a reversion, the respondents could write to the relevant authorities about the administrative lapses which had occurred in dealing with the petitioner's case and request them to receive back the petitioner. The Commission also suggested that if before the end of twelve months, (by which time the petitioner ceases to be in service of CFC Ltd), the petitioner is unable to secure the reversion, he could seek the assistance of the Human Rights Commission. Although the petitioner agreed to this suggestion and even suggested that during that period he could find some other employment and would leave if CFC Ltd did not want to continue him in service, the respondent did not agree to the proposed settlement.

In its findings on the case, the Commission emphasized the following facts. The petitioner was seconded to the CFC through the Ministry of Agriculture and Lands for a period of two years with effect from 01.06.1990. This was done on the request of the CFC. According to the original letter of secondment, the petitioner's period expired on 31st May 1992. Although there was no formal extension of the secondment period either sought by the petitioner or by the respondent from the relevant authorities at that time, the respondent continued the petitioner in employment. In 1993, the then Chairman of the CFC sent a letter to the Regional Manager, Polonnaruwa informing him that the petitioner then serving as the District Marketing Officer, Jaffna, was being detailed to look after the fertilizer distribution in Trincomalee in addition to his normal duties. Copies of this letter were sent to the Provincial Director of Agriculture, Northern & Eastern Province, the Marketing Manager, CFC, the Regional Manager, Anuradhapura and the petitioner. The respondent continued to employ the petitioner in the post of District Marketing Officer of CFC Ltd and paid him salaries and other payments without any break even after the expiry of the period of secondment until he was interdicted in September 1995. The petitioner had therefore good reason to expect that he would continue in service in the CFC.

Both the respondent and the petitioner are to blame for not regularizing the position after the term of secondment had expired. The petitioner had to either formally retire or resign from his substantive post or seek a further extension. The respondent on his part had to ensure this was done.

The respondent has accepted that the CFC did not have the legal authority to take disciplinary action against the petitioner as he was on secondment and not one of their regularly employees. This being the position CFC should have taken immediate action to revert the petitioner to his substantive position and requested the Government Agent to initiate necessary disciplinary action while assisting him in the process. Instead The CFC had interdicted the petitioner served a charge sheet and received the petitioner's explanation in 1995. The respondent failed to pursue action of any sort till two years later when he writes to the Government Agent reverting petitioner to his substantive post. By that time all the avenues for the petitioner to revert to the former post were closed. The Provincial Public Service Commission of the North-East Provincial Council has informed the Ministry of Agriculture and Lands that the petitioner's former service viz., the Grama Sevaka Niladhari service did not belong to the Provincial Public Service with effect from 01.01.1995 and consequently they could not take any action on the matter. Furthermore, the Ministry of Public Administration has instructed the Ministry of Agriculture that an employee could not be reverted to his former post after the lapse of four years of secondment.

In this case, all the agencies which had some role in the employment of the petitioner disclaimed responsibility for taking the necessary action to deal with his complaint. After considering all the evidence led before it the Commission concluded that the CFC which had continued to employ the petitioner for a considerable period after the term of secondment expired must assume the main responsibility to deal with his case. Having been treated as a CFC employee upto the time of his interdiction, the petitioner has a right to be treated as an employee of CFC in regard to the cause of his complaint and the redress that is sought by him. The petitioner has been acquitted by High Court in the case instituted against him. Although the CFC had framed charges against him no disciplinary inquiry has been held. The failure to hold a disciplinary inquiry has been due to the refusal of the different agencies involved to assume responsibility for the petitioner's case.

The Commission therefore held that the failure on the part of the CFC to re-instate the petitioner in the post he held at the time of interdiction, after his acquittal was a violation of the petitioner's fundamental rights. Here the Commission took into account the fact that no disciplinary inquiry had been held into the charges that had been brought against the petitioner. The CFC had pleaded that the offences which the petitioner is alleged to have committed were very serious and that the management had lost confidence in him and could not retain him in service. If that had been the case, the CFC should have taken action to substantiate the charges against the petitioner at a formal inquiry which they have failed to do. In the absence of such proof, the acquittal of the petitioner in a court of law stands and it must be presumed that he is innocent. The Commission also recommended that the petitioner be paid the arrears of salary from the date of the petitioner's interdiction viz., 14th September 1995 until the date of reinstatement. The Commission further stipulated that when the petitioner is reinstated in the post of District Marketing Officer, the Commission is free to take action, with due and proper notice, to revert the petitioner to his substantive post.

The petitioner's case taken together with several similar cases demonstrates the need for improving the systems and procedures to deal with the type of grievances that arise from secondment and the transfer of entire services from one authority to another. Many of the problems are due to the lack of clarity in the definition and division of responsibility among the different agencies who have to deal with disciplinary

matters and other conditions of service of the officers concerned. The Commission is compiling a portfolio of such cases to pursue further action in terms of its mandate for improvement of procedures and systems to ensure compliance with the provisions of the Constitution relating to fundamental rights and to promote respect for and observance of fundamental rights.

Violations of fundamental rights caused by schemes of retrenchment and voluntary retirement

The HRC has received numerous complaints of alleged violations of fundamental rights arising out of the abolition of services and schemes of retrenchment and separation for dealing with redundant staff. One category of such complaints relate to the retrenchment of employees in the Mahaweli Authority. A large number of employees of the Mahaweli Authority of Sri Lanka have made complaints of discrimination in the implementation of a voluntary retrenchment programme that was designed to reduce the workforce which had become redundant on the completion of the major part of the Mahaweli Project. Several of these employees have filed applications before the Supreme Court alleging that their fundamental rights were violated by being denied benefits under this voluntary retrenchment programme. Some of these applications have been referred to the Commission for inquiry and report. The issues involved in most of these cases are identical. This report relates to one such case.

The earliest piece of legislation relating to the Mahaweli Project was the Mahaweli Development Board Act No.14 of 1970 for the purpose of development of resources of the Mahaweli Ganga. Under section 2 thereof the Board was a corporate body. Section 11 empowered the Board to establish departments or agencies for the purpose of its work. There followed the Mahaweli Authority of Sri Lanka Act No.23 of 1979 for the purpose of the Mahaweli Ganga development. Under section 2 thereof the Mahaweli Authority of Sri Lanka (MASL) is a corporate body with the usual powers, which are more particularly set out in section 13, including the appointment of employees. Section 14 empowered the Authority to establish departments and agencies for the purpose of its work. Section 35 also enabled the establishment of corporations as adjuncts to the Authority.

The next statute was the Mahaweli Development Board Repeal Act No.38 of 1983. Section 3 repealed Act No.14 of 1970. By section 2 (a) all officers and employees of the Board were deemed to be officers and employees of the Authority on terms and conditions not less favorable than those attaching to their employment under the Board. Under section 2 (b) and (c) inter alia, all contracts and agreements and all property of the Board were deemed to be contracts, agreements and property of the Authority.

According to the material made available to this Commission, the Respondent Authority consisted of the following departments and agencies:

1. Mahaweli Engineering and Construction Agency (MECA).
2. Mahaweli Economic Agency (MEA)
3. Mahaweli Headwork Administration and Maintenance Division.
4. Employees Investment Development Division.
5. Water Management Secretariat.
6. Progressive Monitoring Unit.
7. Mahaweli Security Organisation.

8. Mahaweli Central Training Unit.
9. Environmental and Training Unit.
10. Livestock Development Division. (formerly Draught Animal and Dairy Development Programme)
11. Architectural Unit.

According to the evidence submitted in this case and connected cases, the voluntary early separation scheme and the reorganisation and privatisation of the Mahaweli Authority was implemented on the advice of the World Bank. The Mahaweli Authority decided to reduce the employees of the Authority from 10,786 to 4,542. This exercise commenced in about 1992. Although the primary activities of the Authority had been completed by this time, the authority continued to retain staff which was far in excess of its requirements e.g. there were 8-10 drivers per vehicle, there were 5-6 clerks per unit of work. Around 1995 a consultancy team from the Tennessee Valley Authority (commissioned for this purpose) studied the relevant problems and made a report containing several recommendations for reorganisation and retrenchment. The Mahaweli Authority adopted a scheme of retirement with compensation which was based on the recommendations made by the consultants. Each employee who agreed to leave the service was to be paid compensation which on the average amounted to a sum between Rs. 350,000 and Rs. 450,000 in addition to the E.P.F. benefits to which they were normally entitled. There was also a scheme to give them allotments of Mahaweli Land to construct houses. The Minister had stated that employees would be allowed retrenchment on the basis of seniority i.e. the usual basis of retrenchment, namely, on a "first-in first-out" basis.

The Mahaweli Authority laid down the criteria, eligibility and procedure for retrenchment and the rates of compensation. It also conferred a discretion on the Director General of the Authority to retain employees for the restructured Mahaweli Authority. Employees whose services were essential were not permitted to retire under the voluntary retirement scheme. The employees who were dissatisfied with any decision taken by the Authority to retain them in service and not allow them the option to be retrenched could appeal against such decisions.

The recommendation of the Tennessee Valley Authority included proposals for converting some of the departments and agencies of the Authority into commercial ventures and the restructuring of the Mahaweli Authority itself into a new organisation called the Mahaweli River Basin Agency with separate departments and agencies.

According to a newspaper advertisement of the MASL in 1999, four of the agencies were earmarked for conversion as companies. They were: -

1. Mahaweli Economic Construction and Engineering Agency (MECA).
2. Mahaweli Economic Agency (MEA)
3. Employees Investment Development Division.
4. Live Stock Development Division.

One Unit of MECA has since been incorporated as a company and another company is to be established out of the balance. MBA is also earmarked for such incorporation. The Livestock Development Division has also been registered as a company. These companies have been formed in terms of the provisions of the

Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No.23/1987. Section 3 (2)(e) of that Act states as follows:

"All officers and servants of the corporation or the business undertaking on the day immediately preceding the relevant date, who are not offered employment with the company shall be entitled to the payment of such compensation as may be determined by the Cabinet of Ministers."

The petitioners in the present case complained of discrimination, in the sense that they have been refused retrenchment against their consent and retained in service which is being privatised without granting them retiral benefits which they are entitled to in such a situation while giving more favourable treatment to so called excess employees.

The complainants in this case were two employees of the MASL who have been employed in the capacity of security guards. One of the complainants had joined the Authority as a security guard on 21 October 1985. The other had joined the Respondent Authority as a security guard on 15 September 1983.

The petitioners' complaint is that the retention of the petitioners is arbitrary and discriminatory. The petitioners contend that all employees of the Mahaweli Authority notwithstanding their attachment to different divisions of MASL are all, by their appointment, employees of the Authority. The petitioners contend that the rejection of their application for retrenchment with compensation is discriminatory, firstly because all applicants (1213) in MECA have been allowed to leave with compensation including employees who were junior to the petitioners, secondly in MEA itself some employees were allowed retrenchment with compensation but they were retained for further service in the restructured organisation.

The Mahaweli Authority who was the Respondent in this case relied on the provision in the circular governing retrenchment which gives it the discretion to retain employees who are required for the restructured Mahaweli. It is the position of the management that the petitioners do not fall within the category of excess employees and that no security guards have been allowed to retire under the voluntary retrenchment scheme.

Having regard to the fact that the petitioners were employed as security guards the Commission was satisfied that the petitioners possessed special skills and experience which necessitated their retention in service. Additionally, the petitioners have not been able to establish to the satisfaction of the Commission that any other security guards in the same service as the petitioners had been selected for retrenchment and compensation.

The Commission was mindful of the fact that in the prevailing context the provision of adequate security services was imperative and that persons entrusted with such tasks must be sufficiently skilled so as to discharge their obligations. The Commission therefore held that the rejection of the petitioners application for voluntary separation with compensation is not arbitrary, unlawful and violative of Article 12(1).

The Commission wishes to draw attention to certain features that exacerbate the problems that arise on abolition of service and retrenchments with compensation. Where the scheme provides for

continuation of employment of a section or for re-employment of any section of employees, the rules governing such action should be designed in a manner that is transparent and ensures that the fundamental right to equal treatment of all employees are not violated. In principle the compensation paid should be of a nature and magnitude that would equate it with income foregone on loss of employment so that employees would have been equally satisfied with either option. In fact, in a choice between the two, continuation in employment must come out as the preferred option. In these circumstances the employer must enjoy the discretion to retain employees in the interests of the organization. In the case of the Mahaweli retirement scheme the benefits on retirement appear to have been so attractive that most officers preferred to retire and felt discriminated against, if they were retained in service. This regrettably was a shortcoming inherent in the design of the scheme and provides a lesson that should guide future action in similar situations.

Part IV

An Overview of the Human Rights Situation in Sri Lanka

The work of the HRC during the period under review has to be placed in the larger context of the human rights situation that prevailed in the country. At present, the HRC is not adequately equipped to undertake a comprehensive and authoritative assessment of the entire human rights situation in the country. Its resources and efforts have been devoted primarily to the activities directly related to the complaints of violations. It is currently taking action to build up the required capacity for such an assessment. For the present report, the Commission has selected some of the main developments and events in the period under review that have had an important bearing on the functions of the HRC.

Human rights in the context of the armed conflict and the emergency

The military conflict between the government and the LTTE with its periodic abatement and intensification of combat has become the main determinant of the human rights situation in Sri Lanka. During the period under review the large majority of human rights violations occurred in the conditions caused by the conflict and acts of violence committed by the main actors – the security forces, the police and the LTTE. The period under review witnessed a sharp escalation of the North East conflict which had far reaching consequences for the security situation and the derogation of human rights.

However in the first quarter of the year there were indications that an effort was being made to start a process of negotiations for a peaceful settlement of the conflict. The Norwegian government was attempting to promote this process and the efforts at facilitating negotiations had commenced. This was accompanied by another positive development in February 2000, when the United National Party agreed to enter into negotiations to enact a new constitution.

Soon thereafter, the peace process suffered a serious setback. The LTTE decided to launch a major military offensive to capture Jaffna. Its forces attacked and destroyed the Elephant Pass Camp and advanced close to the Jaffna city. These operations resulted in heavy casualties on both sides. The fighting resulted in the displacement of about 100,000 citizens.

With the escalation of the war and the deterioration of the security situation, new emergency regulations were gazetted in June 2000. These led to further derogation of human rights. The changes relating to arrests and detentions were the following:

- ☞ Under the new regulations the period a person arrested under Regulation 18 could be detained in police custody, has been increased from 60 days to 90 days.
- ☞ The distinction made in the previous regulations between persons arrested in the North- East (detention upto 60 days) and those arrested in the rest of the country (detention upto 21 days) has been removed. The detention period of 90 days is applicable countrywide.

- ☞ The powers of discretion exercised by the Defence Secretary for the issue of preventive detention orders under regulation 17 have been increased. Regulation 17 (10) states that the detention order issued by the Defence Secretary “ shall not be called in question in any court on any ground whatsoever”.
- ☞ The Presidential directive regarding the issue of receipts to a relative of the arrested person has been incorporated in the new regulations However the directive that the person arrested should be informed of the reason for the arrest and that the arrest must be reported to the HRC within 48 hours has not been incorporated.
- ☞ The provisions of the previous regulations relating to the role of the magistrates in supervision of persons held in detention have been dropped from the new regulations.
- ☞ Under the old regulations the power of search arrest without warrant and detention was given only to police officers and the members of the armed forces. The new regulations added to this list “any other person authorized by the President.”

The HRC's work on the review of legislation has given the first priority to the review of the emergency regulations and the PTA. It will focus on the recommendations that have been made by several international and local organizations and examine how best the derogation of rights could be mitigated in the prevailing security situation.

Violations by the State

The complaints of arrests, detentions and disappearances received by the HRC in the period under review increased by a significant number. There were 2387 arrests and 1146 cases of missing persons reported in 2000 compared to 1728 and 827 respectively for the year 1999.

The high incidence of violence both as a result of the ongoing conflict as well as the rise in organized crime continued to increase the vulnerability of citizens to the violation of human rights. The incidence of extra judicial killings by the state authorities is the strongest indicator of the deterioration of the human rights situation in the country. During the year there were several complaints of such killings against the armed forces and the police. Among them, the most serious was the arrest torture and killing of 8 civilians by the army in Murusavil in December 2000. The soldiers who had committed the crime confessed and are currently undergoing trial along with several other army personnel who were implicated in the crime. In two other cases the STF and the army were involved in the killing of three young Tamil civilians. One person arrested for terrorist activity in Kantalai in June died in police custody.

Of the violations that occurred in 2000 by far the worst was the massacre of the youths detained in the rehabilitation camp in Bindunuwewa. This occurred on the 25th of October 2000 leaving 27 dead and another 14 injured. It recalled the atrocity committed in 1983 when Tamil prisoners were killed by fellow prisoners but the brutality of the Bindunuwewa killings had certain features which were even worse. The victims were all very young, some of them children. Apart from the human tragedy and the shock and trauma for the survivors and surviving relations, the massacre was a serious setback for the country's

efforts to improve the human rights situation. In expressing its deep concerns, the Commission stated "one of the disturbing conclusions emerging from the Bindunuwewa incidents is that our society is still not free from racial violence and that it can express itself in very brutal forms" (see *Annexure IV*¹⁶). One redeeming feature has been the prompt action taken by the State. The investigations by an independent police team sent from Colombo, the arrest of the officers who at the least had to be charged with grave negligence and inaction and the appointment of a Presidential Commission which will inquire into all aspects of the incident set a welcome precedent for future action.

Apart from these documented cases there have been allegations of killings that have been made against the security forces by citizen groups and non-governmental organizations. The most serious of these is the bomb explosion in Batticaloa which killed 4 policemen and 17 civilians including 10 children. The official version of this incident attributed it to the LTTE and reported that all the deaths were due to the bomb explosion. Other reports from citizens in Batticaloa contradicted this version and alleged that the bomb explosion had killed only three policemen and that STF personnel had later arrived on the scene and had shot indiscriminately causing the deaths of the children and a police sergeant who was on the scene. The JMO had certified that the victims had died of a bomb explosion while NGOs and citizens maintained that the telecast which showed the victims and their wounds suggested that the wounds were from bullets. Some of the principal witnesses, who now give the version of the deaths caused by the army, had earlier given testimony confirming that all deaths were caused by the bomb blast. They state that they had been scared to testify to what had happened after the explosion. Those who support the official version claim that the LTTE exerts pressure on witnesses to achieve their own purposes and discredit the army in the eyes of the international community. However there has been no full-scale public investigation into these allegations and any investigations that have been made have not been given adequate publicity.

The Batticaloa incident and the contradictory versions of what occurred illustrate the complexity of the prevailing situation. They are in a category of violations or alleged violations that do not receive thorough and transparent inquiry and investigation. In some of these cases doubts have been raised about the reliability of the medical reports. This has drawn attention to the need to strengthen and improve procedures during all stages of a case in obtaining all the evidence relating to the violation. In the past the HRC, given its limited resources, has had to concentrate on complaints of violations that were submitted to it. It was shortly after the Batticaloa incident, that the present Commission took office and began its work. The initial reports had attributed the explosion to the LTTE and the Commission had not received any formal complaints contesting this version. The Commission's officers had therefore not conducted any further inquiries. The present Commission has decided that the HRC needs to make an initial fact finding investigation into all incidents such as the incident in Batticaloa and make its presence felt to ensure that the due process of the law is set in motion. Accordingly, the full Commission has visited locations where violations have occurred as at Bindunuwewa, gathered first hand information and issued reports.

¹⁶ Vide page 51.

Violations by the LTTE

During the year 2000, there were several acts of violence alleged to have been committed by LTTE which resulted in approximately 174 civilian deaths. Many of these occurred in locations outside the areas directly affected by the armed conflict. Several of these acts of violence have been perpetrated by suicide killers. There are no accurate estimates of the population living in areas which are designated as "uncleared" and are under the effective control of the LTTE. The provisional estimates that are based on past census data adjusted for movements of population indicate that the population might be in the region of 300,000. The human rights situation in these areas can be assessed only on the basis of reports issued by NGOs and informal accounts of persons who have first hand knowledge of the conditions. These indicate that the existing conditions do not enable citizens to enjoy the normal civil liberties and protection of the law that prevail in the rest of the country. One NGO, the University Teachers for Human Rights(J), has been consistently forthright in its reporting. It has provided detailed accounts of the conscription of children both male and female as soldiers, summary forms of trial and execution, torture, unlawful confinement in degrading conditions in bunkers. The LTTE is alleged to be imposing severe restrictions and exorbitant levies on citizens who seek to come out of the uncleared areas and travel through to Colombo. Access to education is made conditional on participation in military training. In Madhu in June 2000 participants in military training were issued yellow cards and required to report for training three times a week. NGOs report that most people are apprehensive that they would be denied permission to travel out of the uncleared areas unless they produce a valid updated training card.

The institutional framework for the protection of fundamental rights

The present institutional framework for the protection of fundamental rights contains several elements besides the judiciary and the Human Rights Commission. The Committee to Inquire into Undue Arrest and Harassment (CIUAH) continues to receive complaints and perform a mediating function. In the latter part of 2000 the government established an Interministerial Permanent Standing Committee on Human Rights to inquire into human rights abuses that are referred to it by UN bodies and international institutions concerned with human rights.

Under the present Constitution, the Supreme Court has exclusive jurisdiction in regard to fundamental rights. During the year 2000 the Supreme Court received 719 petitions concerning violations of fundamental rights of which the large majority were by public servants and other petitions were against the police and armed forces. Recent action taken by the Supreme Court indicates that priority is being given to cases of unlawful arrest and torture. However, one cause for concern to the HRC has been the problems relating to the speedy and effective enforcement of the existing laws for the protection of human rights and the prosecution and punishment of offenders. There has been some effort to remedy the situation in certain areas. For example the Attorney General's Department now gives special attention to the prosecution of cases of torture through the Prosecution of Torture Perpetrator's Unit. Reports of international agencies and foreign governments on the human rights situation have drawn attention to cases where there have been long delays in prosecutions and hearings. A similar situation exists in the case of many detainees. With the information system which the HRC is installing it will undertake the monitoring and follow up of cases of human rights violations as one of its primary responsibilities.

The internally displaced

The escalation of the war temporarily increased the number of the internally displaced in the Jaffna peninsular. Since then the situation has stabilized. The total number of the internally displaced for the entire country was approximately 800,000 of whom about 160,000 lived in welfare centres established by the state. The section on the IDPs has already referred to the HIRC's role and the action taken by the Commission. The government continued to maintain the supply of free dry rations to the IDPs and other supplies with the exception of a few items which were controlled for security reasons. Nevertheless there were complaints that the supplies were not adequate. Shortages and consequent complaints are bound to be a feature of the present situation. A regular and more transparent monitoring of supplies with information made available to the public in the uncleared areas as well as the rest of the country would have helped both in dealing with complaints and correcting wrong perceptions. The conditions of the IDPs by the very nature of displacement have resulted in a serious derogation of their rights as citizens in every area - their freedom of movement; their access to many basic services such as health care, education and housing; their right to the property they have left behind; employment; voting. The HRC is examining the feasibility of coordinating the action of the various state agencies that deal with IDPs to minimize the derogation of their rights until their problems are more effectively resolved through rehabilitation. For a considerable period even after peace is achieved, this segment of the population will need special attention in regard to their human rights.

Election related violence

The hopes that were generated by the PA-UNP dialogue on the enactment of the new constitution during March- July 2000 were shattered when the negotiations broke down and the UNP withdrew their support to the draft constitution. The general Election that was held in October 2000 was held amidst allegations of serious malpractices and widespread use of violence. The Police received more than 2000 election-related complaints. These included 16 homicides that were linked to the election. The LTTE violence aimed at the PA resulted in 34 deaths. The HRC considers the orderly democratic holding of elections to state assemblies as one important indicator of the human rights situation in a country. *Annexure VIII¹⁷* gives the summary of decisions taken on the representations made by the Center for Policy Alternatives regarding the Parliamentary Elections of October 2001. Judged in terms of this indicator there are grave shortcomings in the prevailing system and considerable progress has to be made to guarantee the full enjoyment of the civil liberties of citizens.

The death penalty

Towards the end of the year the government announced its intention of reverting to the imposition of the death penalty in certain cases of homicide. This was a response to several gruesome murders and contract killings that had shocked the public. Commenting on the decision to impose the death penalty, one long standing human rights organization, the Civil Rights Movement placed the government decision in the

¹⁷ Vide page 67.

context of “the change in the nature of crime in recent times, the alarming growth of underworld and organized crime including large scale drug trafficking and contract killings “ but went on to campaign against it stating that “executions are no answer to the problem ... and will only serve to make the national scene more brutal than as it is .” Although the death penalty has not been carried out in Sri Lanka since 1976, it remains in the statutes as a penalty for a number of crimes. Under the Emergency Regulations it covers a wide range of offences.

Constitutional reform and social and economic rights

Another important development in the field of fundamental and human rights during the period under review is the draft constitution for Sri Lanka which was presented in Parliament in August 2000. The political parties gave unanimous approval to many parts that had a direct bearing on fundamental rights. An important addition is the inclusion of social and economic rights in the chapter on fundamental rights. Although the constitution was not enacted there is little doubt that these articles will soon become part of any constitution that is enacted. They will provide a new dimension to the work of the HRC for which it must prepare itself. Other significant changes that are introduced are the institutions to strengthen the independence of the Judiciary, the Public Service and the agency that conducts elections. These changes will contribute to the improvement of the human rights situation.

Part V

Some General Issues on the Scope and Functions of the Commission

The public service and the HRC

The major share of the complaints received under the article on the fundamental right of citizens for equal treatment and equal protection of the law comes from public servants. These complaints cover decisions taken on all aspects of their terms and conditions of service ranging from recruitment and promotions to increments, transfers, retirements, pensions etc. The IIRC's mandate relating to matters concerning public servants and their employment have raised several fundamental and complex issues. The Commission is presently engaged in studying these issues and examining ways of resolving them.

Many of the problems that come before the Commission have their origin in the present system. Under Article 55 of the Constitution, all matters relating to the appointment, transfer, dismissal and disciplinary control of public servants come under the exclusive jurisdiction of the Cabinet and the bodies to which it delegates its authority. Under the present system there is no appellate authority other than the PSC to adjudicate on grievances of public servants. The PSC itself derives its authority from the Cabinet. Consequently there is no appellate authority wholly independent of the employer as in the case of the employees in the private sector. The sole exception is the jurisdiction conferred on the Supreme Court to adjudicate on violations of fundamental rights. These provisions have enabled public servants to petition the Supreme Court on any violation of their fundamental rights. In these circumstances, the public servants and other state employees have had recourse to the provisions of Chapter 3 of the Constitution under the article on unequal treatment. The Commission is of the opinion that the provision relating to unequal treatment lends itself to an interpretation which covers even such administrative and executive acts as may be properly addressed by the PSC or like bodies. However many public servants who have come before the Commission have submitted that the PSC as it is presently constituted and deriving its authority from the Cabinet is unable to grant them the redress they seek.

In most other countries, independent administrative tribunals deal with the grievances of public servants and they do not come within the purview of the Human Rights Commissions. The present system leads to the anomalous situation in which one class of citizens who happen to be employees of the state enjoy fundamental rights in respect of their employment while others who are employed outside the state sector are governed by normal legislation while enjoying the benefit of independent tribunals and separate legislation covering their employment. The constitutional changes that are envisaged for the administration and disciplinary control of the public service are likely to remedy many of these shortcomings. The Commission expects to make its recommendations on these issues after consultation with the Public Service Commission and the Parliamentary Ombudsman and after examining appropriate systems that are in operation in other countries.

This having been said the Commission notes that most grievances that are brought before the Commission arise from the fact that the state as employer is not adequately sensitive to the norms of equal treatment that must govern all procedures and administrative practice. The traditional concept of public officers "holding

office at pleasure" (in this case the pleasure of the political authority) has been inimical to the cultivation of the right attitudes and practices in conformity with the standards and norms relating to the rights of public servants. The Human Rights Education programme that is planned by the Commission will contribute to correcting some of these deficiencies. One of the initiatives that the Commission has explored is the establishment of human rights cells under the provincial administration which would be able to improve administrative practices and personnel management systems to be adequately sensitive to human rights issues both in the transactions that public servants have with the public as well as in the treatment of personnel and disciplinary control within the public service. The Commission has already had consultations to form such a unit in the Western Province as a pilot project that could be soon replicated in other provinces.

Amendments to the Act and Regulations

In operating under the present Act, the Commission has encountered a few ambiguities of interpretation and omissions which tend to impair the Commission's speed of execution and constrain its scope and effectiveness. The absence of any explicit provision specifying a quorum raised certain issues regarding the arrangements for dealing with cases referred to it by the Supreme Court. The provisions relating to mediation and inquiry need clearer definition. The powers vested in the Commission to refer matters to appropriate courts need to be made enforceable through regulations of the relevant courts.

Implementation of HRC recommendations

The effectiveness and credibility of the HRC finally depends on the extent to which its recommendations are implemented. The present procedure and practice does not provide adequate sanctions that ensure that HRC's recommendations are fully implemented. It is essential that government lays down clear guidelines and directions to public servants regarding their relationship with the HRC such as the attendance at hearings and implementation of recommendations. Section 14 (8) of the HRC Act stipulates the procedure to be followed where recommendations are not implemented. These procedures need to be strictly observed and the final action taken after the matter is submitted to the President need to be recorded for future guidance. These matters too are receiving the urgent attention of the Commission.

Part VI

Administration & Finance

The staff of the Commission

As at 31.12.2000, the Commission had a total number of 108 employees in the head office and its regional offices. Some of these employees were recruited on a permanent basis while some others were recruited on contract basis.

Finances.

The government makes annual provision in its budget to provide funds that are needed by the Commission. The Government approved a budget of Rs.23.65 million for the year 2000. This was reduced by 10% as part of the government's economy drive. The expenditure incurred by the Commission for the year 2000 was Rs. 23.7 million. However provisional cash flow summary for year 2000 is set out in *Annexure IX*¹⁸.

There has been a delay in finalizing the accounts of the Commission. This has been due to certain accounting problems that had arisen in obtaining a final valuation for the assets that had been taken over by the HRC from the Human Rights Task Force, at the time the Commission was established. These problems have now been resolved and the final accounts are under preparation.

After examining the current and expanding workload, the Commission finds that the budgetary provision that is being made is not adequate for the Commission to perform all its functions efficiently and expeditiously. The protection of human rights and prevention of violations particularly in the existing conflict situation requires much more intensive surveillance and monitoring than what the Commission is able to undertake with its limited resources. The Commission has been successful in mobilizing extra – budgetary resources for some of its activities. These activities however have to be carried out on a sustained basis after completion of the projects that are financed with external resources. Government's commitment to the continued financing of these activities through the regular budget is essential if the Commission is to fulfill its mandate effectively.

International assistance.

The Commission gratefully acknowledges the financial and technical assistance it received during the year from several sources. The Commission would not have been able to commence its work on restructuring the organization and enhancing its capacity to fulfill its mandate had it not received

¹⁸ Vide page 70.

such assistance from USAID and Asia Foundation. During the year under review the main donor was the Asia Foundation which financed the backlog project, the computerized information and monitoring system and funded short-term consultancies. The Foundation made available the services of a foreign expert to advise the Commission on the monitoring system. At the time this report is being finalized NORAD had agreed to support the Commission's Human Rights Education Programme and SIDA had undertaken to finance the UNDP sponsored project on the Review of Legislation. These projects will begin work in the last quarter of 2001. Several other governments and international organizations have expressed interest in supporting the Commission in selected activities which have high priority in the Commission's agenda and which are in urgent need of supplementary financing. The Commission's general policy in seeking foreign aid has been to ensure that such aid will be capable of building up sustainable capacity within the Commission as well in the national system as a whole, including civil society organizations working in the field of human rights. An example of this is the assistance that has been received for the information system and the project on the internally displaced.

Table : 1

DISPOSAL OF COMPLAINTS - HRC

(July 1997 - December 1999)

	Number Received	Number Concluded
A. Complaints received from the earlier Commission	1623	39
I. FR Complaints against <u>Civil Authorities</u>		
a. Received by the HRC - <u>Head Office</u>		
1997	1829	135
1998	2475	143
* 1999	1485	11
(* Probable number, after scrutiny of total No. of 2230 complaints received and rejection of non FR matters by Legal Officers).		
Total	5789	289
b. Received by <u>Regional Centres</u>		
1997 June - Dec.	205	-
1998 Jan. - Dec	837	535
1999 Jan. - Dec	1425	590
Total	2467	1125
II. FR complaints against <u>Armed Forces & the Police</u>		
a. Received by <u>Head Office</u>		
1997	203	-
1998	550	255
1999	554	356
Total	1307	611
b. Received by <u>Regional Centres</u>		
1997	382	-
1998	922	700
1999	1174	783
Total	2478	1483
Total (of I & II) received by the HRC	12041	3547
Grand Total of all complaints received	13664	3586
III. Received in Jan. & Feb. 2000	1082	

Table : 2

HUMAN RIGHTS COMMISSION OF SRI LANKA

Report for the period January, 2000 to 31st December, 2000

Region	Visits to Police & Detention Camps				Number Detained	Arrests Reported	Missing Persons		Custodial Death	Fundamental Rights Violations			
	No. of visits		No. of detainees seen				Number Reported	Number Traced		No. of Complaints against the Police & Armed Forces	Number Disposed	No. of Complaints against other Authorities	Number Disposed
	Police Station	Detention Camps	Sinhales	Tamilis									
Ampara	136	Nil	2	83	Nil	85	Nil	Nil	Nil	46	15	160	24
A'pura	100	40	Nil	661	Nil	661	9	4	Nil	58	14	94	21
Badulla	68	5	23	157	Nil	180	2	Nil	Nil	159	210	52	52
Batticaloa	53	49	6	96	20	122	84	186	Nil	15	11	15	9
H. Office	537	6	112	166	8	286	560	474	3	633	512	1966	759
Jaffna	7	46	0	294	0	294	269	182	Nil	159	142	62	42
Kalmunai	266	345	Nil	120	Nil	120	116	225	Nil	254	125	60	14
Kandy	409	8	37	277	5	319	571	382	Nil	275	196	639	312
Matara	297	Nil	Nil	9	Nil	9	4	1	1	226	86	104	18
Trinco	77	15	1	55	26	82	134	323	1	5	Nil	8	4
Vavuniya	72	91	8	675	8	691	701	545	Nil	413	418	38	28
Total 2002	560	560	189	2593	67	2849	2961	2387	5	2243	1729	3198	1283

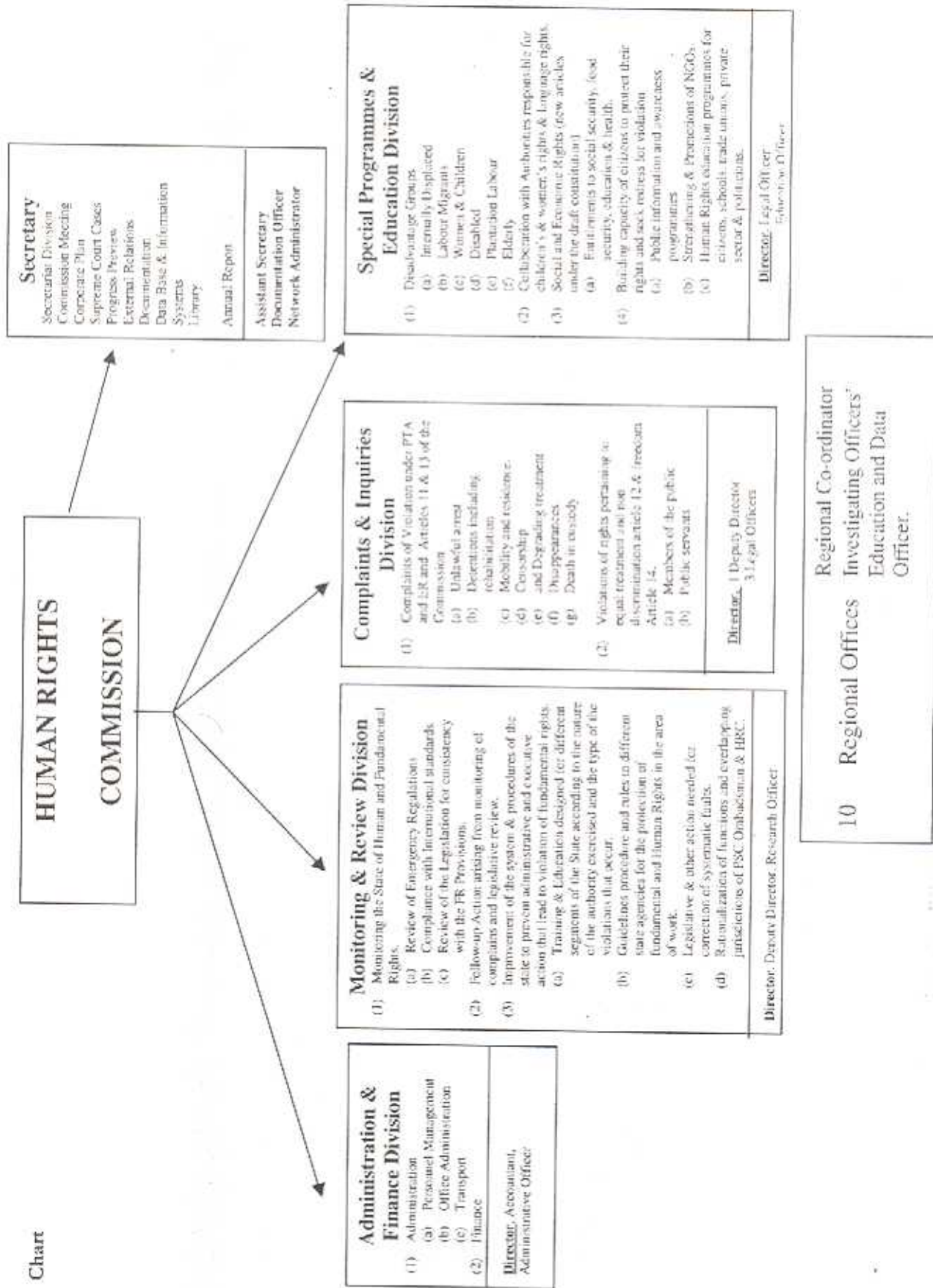
Table : 3

HUMAN RIGHTS COMMISSION OF SRI LANKA

Total no. of complaints; categories
(01/01/2000 - 31/12/2000)

Categories	H. Office	Batticaloa	A'Pura	Ampara	Kalmunai	Kandy	Matara	Badulla	Vavuniya	Jaffna	Trinco	Total
1 Arrests/Deprivation	164	214	31	1	225	201	29	6	711	186	250	2018
2 Harassment	82	8	9	2	5	35	12	1	30	3	Nil	187
3 Torture	413	1	1	25	5	5	36	19	16	9	22	552
4 Recruitment	119	2	Nil	4	4	13	16	16	Nil	Nil	Nil	174
5 Promotions	273	1	11	2	3	19	23	11	13	Nil	Nil	356
6 Employ. Benefits	241	Nil	16	44	4	51	19	Nil	2	Nil	Nil	377
7 Transfers	198	4	7	3	3	44	15	14	8	1	1	298
8 Service Extension	69		Nil	1	Nil	2	4	1	2	Nil	Nil	79
9 Retirement/Termination	293	1	Nil	13	1	85	9	24	Nil	Nil	Nil	426
10 Pensions/EPF	187	10	6	12	2	86	10	5	Nil	Nil	Nil	318
11 Property Matters	138	2	16	29	3	33	12	24	9	49	1	316
12 School Admissions	91	Nil	12	1	Nil	24	12	3	4	Nil	Nil	147
13 Others	331	5	86	69	43	343	137	97	326	70	11	1518
Total	2599	248	195	206	298	941	334	221	1121	318	285	6766

Chart



ANNEXURE I

THE MANDATE OF THE COMMISSION

(Extract of the HRC Act — sections 10 and 11)

10. The functions of the Commission shall be
 - (a) to inquire into, and investigate, complaints regarding procedures, with a view to ensuring compliance with the provisions of the Constitution relating to fundamental rights and to promoting respect for, and observance of, fundamental rights;
 - (b) to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights, and to provide for resolution thereof by conciliation and mediation in accordance with the provisions hereinafter provided;
 - (c) to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental rights;
 - (d) to *make* recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
 - (e) to make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights; and
 - (f) to promote awareness of, and provide education in relation to, human rights.

11. For the purpose of discharging its functions the Commission may exercise any or all of the following powers
 - (a) investigate, any infringement or imminent infringement of fundamental rights in accordance with the succeeding provisions of this Act;
 - (b) appoint such number of sub-committee at Provincial level, as it considers necessary to exercise such powers of the Commission as may be delegated to them, by the Commission, under this Act
 - (c) intervene in any proceedings relating to the infringement or imminent infringement of fundamental rights, pending before any court, with the permission of such court;

- (d) monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention;
- (e) take such steps as it may be directed to take by the Supreme Court, in respect of any matter referred to it by the Supreme Court;
- (g) undertake research into and promote awareness of human rights, by conducting programmes, seminar and workshops and to disseminate and distribute the results of such research;
- (g) award in its absolute discretion, to an aggrieved person or a person acting on behalf of an aggrieved person, such sum of money as is sufficient to meet the expenses that may have been reasonably incurred by him in making a complaint to the Commission under section 14.
- (h) do all such other things as are necessary or conducive to the discharge of its functions.

ANNEXURE II

NARRATIVE REPORT ON CLEARING THE BACKLOG

(From 1st November 2000 to 31st May, 2001)

The activities of the special project relating to clearing of the backlog commenced on 01.11.2000. For the purpose of organizing the project activities, the incomplete cases had to be categorized according to the nature and status of the complaint. Several workshops were held to categorize the files with the participation of the NRC staff and outside lawyers.

The pending files were categorized into the following groups.

- 1) Cases which required early investigation and had to be dealt with by mediators.
- 2) Cases to be directed to the project Legal Officers for further fact finding and inquiry.
- 3) Cases in which the complainant may not need further action by the Commission. The consent of the complainant had to be obtained if the case was to be closed.
- 4) Cases that could be disposed of on the ground that they do not come under the mandate of HRC Act.

According to the above categorization, separate registers were prepared for each category. According to the action plan, the follow-up action is different for each category.

Estimate of uncleared work

The original estimate of uncleared complaints was in the region of 10,000. This included a number of verbal and written complaints of a minor nature, which had been dealt with but had been shown as outstanding. Some of the cases received in 1999 had been registered as cases in the year 2000. When adjustments were made for these cases the total number of cases that had to be cleared for the period 1997 to 1999 was 6693. The details are given below:

1997	1998	1999	PC Cases	Total
1,829	2,475	765	1,624	6,693

Progress of work

Category of files given to mediators

The files in the first category were referred to the mediators. Training workshops were conducted for the mediators in two batches. The work of the mediators came under close scrutiny by the Commissioners to ensure compliance with the required procedures and standards. Consequently in the initial stages the rate of progress was slow.

Total number of cases under the category to be referred to the mediators	- 566
Total number of cases referred to the mediators	- 262
Total number of concluded cases	- 195

Category dealt with by legal officers

The position in this category as at 31.5.2001 is as follows

• Total number of cases under category to be referred to Legal Officers	1400
• Total number of cases already referred to Legal Officers	883
• Total number of concluded cases.	600

Category requiring the consent of complainants regarding future action

Letters were posted to the petitioners and some have responded. The summary of the progress is as follows

1. Number of letters posted	
	1997 - 289
	1998 - 536
2. Requests to proceed	460
Not required to proceed	465

Category of cases not within the mandate of the HR

Total number of cases not within the HRC mandate

800

Number of concluded cases

Concluded by mediators	195
Concluded by legal officers.	600
Not required to proceed	465
Not within mandate	800
No : concluded	2060

At the current rate of progress, the outstanding cases are scheduled for completion before the end of this year.

Meanwhile, as the cases are completed, the Commission is examining systems and procedures that have resulted in complaints of violations. Action is being taken to decide on proper procedures and principals to minimize the incidents of such violations. This work will be undertaken more systematically as work proceeds with the classification of cases and the identification of problems.

ANNEXURE III

THE COMPLAINT REGARDING THE DEATH OF MR. GANESH CHANDRAKANTHAN.

The International Secretariat of Amnesty International in U.K. referred a complaint to the Commission regarding the arrests of Sinnathamby Pradeepan, Poopalaratnam Arulramesh, Gunsekaran, Sathiyaseelan, Samithamby, Eswaran and Ganesh Chandrasekaran. It was alleged that Chandrasekaran had been tortured and killed.

The complaint alleged that the above mentioned persons were arrested by the Kantalai Police and Ganesh Chandrakanthan was badly tortured on 04.06.2000, the day of his arrest. At about 3 p.m. on 05.06.2000, he was seen being carried out of the Police Station and placed in a jeep. His left hand appeared to be broken. On 07.06.2000 his family was informed by the Police that he was killed by a grenade he had set off at the time of his arrest. The Police had refused to release the body unless his relatives signed a statement that he was a member of the LTTE. However, since the family refused to do so his body was buried by the Police at the Kantalai Cemetery in the absence of his family and relatives.

The Commission conducted investigations into the said matter with the assistance of the Regional Coordinator in Trincomalee. The investigations revealed that Mr. Ganesh Chandrakanthan together with the others had been taken into custody by the Kantale Police immediately after the death of two police officers which had been caused as a result of an attack with grenades by the members of LTTE. The police had also discovered high powered bombs, grenades, automatic firearms and cartridges in their possession at the time of their arrest. The police had detained them at the Kantale Police station upon a detention order.

The said Chandrakanthan had agreed to point out two places where such explosives had been hidden i.e. Kovilgama and Peraru. In these two places, the police had unearthed a large cache of weapons and explosives. The police officers stated that this suspect was engaged to remove the buried weapons and that in the course of doing so he had taken a grenade and had attempted to remove its pin in order to target the same at a police officer. The Sub Inspector who saw this had ordered that he be shot. As a result of such shooting the bomb had exploded and the suspect was also killed in the explosion.

The Magistrate of Kantale had held an inquest and a postmortem had been conducted by the DMO, Kantale. After examining eight witnesses the Magistrate concluded that the death of Ganesh Chandrakanthan has been caused by cardiac arrest due to gunshot injuries and heavy haemorrhage and the damage of multiple organs.

The Commission has referred this matter to the Attorney General's Department for further inquiry.

ANNEXURE IV

INTERIM REPORT ON THE INCIDENTS AT THE BINDUNUWEWA REHABILITATION CENTRE, BANDARAWELA

Introduction

On the 25th of October 2000, Mr. Senaka Dissanayake, the Regional Co-ordinator of the Human Rights Commission assigned to the Badulla District, brought to the notice of the Commission that in the early hours of that day there had been an incident at the Bindunuwewa Rehabilitation Centre in the course of which several inmates had been killed and several others seriously injured. In response to this information, the Commission decided to inquire into the matter and accordingly having informed Mr. T E Anandarajah, Acting Inspector General of Police and General Rohan Daluwatte of the Sri Lanka Army, the Commission visited Bandarawela on the 27th of October 2000.

We interviewed Mr. B.M.Premaratne, Senior Superintendent of Police, Bandarawala, Mr. Laxhman Seneviratne, Senior Superintendent of Police, Badulla, ASP Mr. Dayaratne and Brig. C. Gunasinghe, the Commanding Officer of the Diyatalawa Army Camp. On the material date, Mr. B. M. Premaratne, SSP Bandarawala had not been in his Division and A.S.P. Mr. Dayaratne had been acting for him.

The three Police Officers concerned stated that they had no personal knowledge of any of the incidents and furnished us with such information as they said that they had been able to obtain in the course of their investigation. We thereafter visited the Bindunuwewa Rehabilitation Centre and made our observations. We also visited the Diyatalawa Army Hospital and interviewed 10 detainees who had sustained injuries. We recorded statements from nine of them as the other was not in a fit condition to make a statement. We also had the assistance of our Regional Co-ordinator.

As at the 24th of October 2000, this Centre came under the administrative control of the National Youth Services Council (NYSC) which now functions under the Ministry of Youth Affairs. The Officer in Charge of this Centre was Captain Y.K. Abeyratne who is a Volunteer Officer in the Cadet Corp. of the Sri Lanka Army. He had been employed in that capacity by the NYSC and had been in charge of the centre for about six years. He is reported to have maintained a satisfactory working relationship with the inmates. He was assisted by another Volunteer Officer namely Lieutenant Y.K. Abeyratne who had been assigned to the Centre about two months back.

There were four other civilian officers attached to the Centre. There was a Police Post within the Centre manned by a Reserve Police Constable, a Grama-Arakshaka and two Security Assistants, all of whom were from the Bandarawela Police. Three of these officers carried weapons namely two T56 firearms and a shotgun.

We have not yet been furnished with a record of the number of detainees as maintained by the officials attached to the Centre. According to the records maintained at the Regional Office of the Human Rights Commission, there were 46 detainees at the Centre as at the 15th of October 2000. Here, it is pertinent to note that one of the functions of the HRC is "to monitor the welfare of persons detained by a judicial order or otherwise". Accordingly Mr Senanayake, the Commission's Regional Co-ordinator in Badulla had regularly visited the Centre and inspected the conditions of detention. The Co-ordinator also received and recorded all information pertaining to new admissions to the Centre as well as releases from the Centre on the termination of rehabilitation. The detainees at the Centre consisted of young Tamil men who had been arrested or had surrendered as suspected members of the LTTE. They were undergoing rehabilitation and had been detained at the Centre for periods ranging from one to fifteen months, according to the information furnished to us from records available at the office of HRC.

According to the figures furnished to us by the Police officers we questioned, there had been 41 detainees at the time of the incident. Mr. Jayantha Seneviratne, HQI Bandarawela has furnished to our Regional Co-ordinator a list containing the names of 27 detainees who were fatally injured. The Police had informed the Co-ordinator that 14 other detainees had sustained injuries. Of the injured one had succumbed to his injuries yesterday. According to these figures given by the Police, the detainees accounted for as dead and injured aggregate to 41. However, there is a discrepancy in regard to the precise number of detainees who would have been in the Centre on the day of the incident when this figure is considered in the light of records maintained at the Regional Office of the Commission. Our Regional Co-ordinator is investigating this discrepancy.

The versions given by the Senior Superintendents of Police

According to the information furnished by the Superintendents of Police, the OIC of the Centre had held the usual meeting with inmates in the evening at about 6:00 p.m. of the 24th of October. At this meeting some inmates had protested against what they alleged was the undue delay in releasing them from the Centre and had demanded their immediate release. In the course of the argument that ensued the OIC had been surrounded by some of the detainees. One of the police officers on duty had fired in the air and thereafter the detainees had turned violent. They had forcibly entered the storeroom, armed themselves with iron rods, poles and implements and had caused damage to the building. They had also set fire to some documents said to have been maintained at the Police Post, destroyed the florescent lights and caused damage to the furniture and the Police Post. They had also taken a gas cylinder and attempted to set fire to it but had failed. The Police Officers and the Assistant to the OIC had deserted the Centre as they feared that they were in danger of physical injury. Lieutenant Abeyratne, the Asst. to the OIC is said to have been attacked by one of the inmates and sustained a bleeding injury in his chest. He is said to have gone to a house in the neighborhood to change his shirt which was allegedly blood stained and had telephoned the Bandarawela Police to inform them of the disturbances at Bindunuwewa. In the account given to us by the Police officers there was no suggestion that the inmates had taken any of the officers on duty at the Centre as hostage and were holding them. We were unable to interview either OIC or his Asst. as they were said to be at the office of the CID in Colombo.

In consequence of a telephone message received at the Station to the effect that there was unrest at the Centre and that an attempt had been made to snatch the weapons of the Police Officers on duty, Mr. Jayantha Seneviratne, HQI Bandarawela Police had set out at about 7.45 p.m., with a contingent of about 10 officers, all armed with T56 weapons and had arrived at the Rehabilitation Centre at about 8.00 p.m. I.P. Karunasena, OIC Crimes, is said to have set out shortly thereafter along with another contingent of Police Officers all of whom were also armed and arrived at the Centre.

According to S.S.P. Premaratne there had been about 30 Police Officers led by the HQI and all carrying T56 weapons present in the vicinity of the Centre by about 8:00 p.m. The inmates had objected to the Police entering the Centre and the HQI had persuaded the detainees to permit him to enter the Centre without the other officers. They had agreed to allow him to do so provided he came in unarmed. The HQI thereupon entered the Centre by himself, unarmed, and spoke to the inmates and the OIC Capt. Abeyratne. The inmates protested against the action of the Police Officer in firing a shot. The HQI had adopted a conciliatory tone and accepted the position that this had been an error and suggested to Capt. Abeyratne that the Police should withdraw to avoid further unrest. Capt. Abeyratne had welcomed this suggestion and stated that he would be able to maintain order within the Centre. By this time a contingent of soldiers from the Diyatalawa Army Camp had also arrived and were present in the vicinity of the Centre.

Meanwhile about 200 to 300 persons who were said to be villagers had gathered in the vicinity and were shouting. Upon observing their presence the HQI had inquired from Capt. Abeyratne as to what action should be taken. Capt. Abeyratne had informed him that he would look after affairs within the Centre and that the Police should prevent any outsiders from entering the Centre.

Thereupon the Police and the Army dispersed the crowd and the HQI left at about 10:30 p.m. leaving the rest of the Police personnel in the charge of IP Karunasena and IP Jayaratne who remained along with the contingent of soldiers under the command of Capt. Balasuriya. By about 11.30 P.M. the situation appeared to have returned to normal. In those circumstances, the army contingent withdrew at 1:30 a.m. having informed IP Karunasena. The Police personnel remained at the scene. Upon his return to the Station, the HQI had directed that Police personnel from the other stations in the division who had been instructed by the ASP to report to the Police Station at Bandarawela be ordered to proceed to the Centre. He had also received an inquiry from the ICRC, Batticoloa over the telephone as to whether there had been any unrest at the Centre and the HQI had informed the ICRC that the situation was under control. According to the HQI several Police Officers had left for the Centre in pursuance of the directive and there had been 69 Police Officers gathered at the scene. However, there are no records by way of any official entries to substantiate this claim.

At about 6:45 a.m. the HQI had received a message over the radio telephone from IP Jayaratne that persons were gathering in the vicinity of the Centre and that the Army had withdrawn. The HQI informed ASP Dayaratne of this development. He thereafter received a further message over the radio telephone from IP Jayaratne at about 8:15 a.m. stating that a crowd had entered the Centre and that the Centre was on fire. He

had asked for reinforcements. The HQI had rushed to the scene and found that several persons had entered the Centre, the Police were also within the Centre and found several detainees dead and injured and the buildings on fire.

The SSP Premaratne stated that according to the information he had been given, in the early hours of the morning of the 25th, the detainees had once again began to behave in an unruly manner and damage the buildings. Some of the detainees had indecently exposed their persons to passersby and had pelted stones. By this time, a large number of villagers had gathered from all sides of the Camp and had started pelting stones towards the direction of the detainees. Thereafter the crowd had entered the Camp and attacked the detainees with clubs, iron rods, knives, machetes etc. They had damaged the building and set fire to it. Detainees were murdered, maimed, badly wounded and injured. All this was done very swiftly and was over within 10-15 minutes. The crowd left the place thereafter. The SSPs of Badulla and Bandarawela stated that the police officers on duty had not fired at the mob nor tried to prevent them from entering the Camp even by firing shots in the air. The wounded were transported to the hospital by the Police later on. Both SSPs admitted that the inaction of the police officers was a grave lapse on their part.

The SSPs also observed that the soldiers should not have left the scene and even if they were leaving they should have informed the Police. They also complained that the army came very late when they were informed of the unrest in the morning of 25th. This was emphatically refuted by the Commanding Officer, who said that his men withdrew at 1.15 a.m. on 25th. They had gone to assist the Police and had left only after they had accomplished the task given to them by sending off the villagers from the place. With regard to the following day's incidents, the Commanding Officer said that it was he who received the telephone call from the Police and that it came to him at around 08.45 a.m. on the 25th. He immediately sent a platoon which reached the scene of the crime around 09.15 a.m. By that time, every thing was over and the mob had left the place.

The SSPs also reported on other connected matters. According to them, there had been opposition by the villagers to the camp being located in that site. The SSP Mr Premaratne stated that he had written to the higher authorities recommending that the camp be shifted to some other location. However, no action had been taken to implement the recommendation. They also mentioned that an inmate one Anthony James who had been admitted to the Centre recently had been agitating and attempting to incite the other inmates. However, when we inquired from the officers whether they had received any specific complaints against James, they replied that there had been no such specific complaints.

We questioned the SSPs on two other matters. We inquired about the action that had been taken immediately after the incidents of the 25th to investigate and arrest those who were responsible for the violence and killings. We also wished to know what action they were taking regarding the posters that had appeared in Bandarawela town inciting people to violence against the inmates of the Binudunuwewa Centre. Both SSPs stated that the attempts made by the HQI to arrest suspects was ineffective as large numbers had been taken into custody for questioning indiscriminately. They expressed the view that the arrests seemed to have been made in a manner

that had rendered the entire exercise meaningless and had the effect of thwarting proper investigations. In regard to the posters the SSPs denied any knowledge of the posters and stated that they were unaware that several posters had appeared in Bandarwela as stated by us. The Regional Co-ordinator who had seen the posters stated that they were still to be seen in the Bandarwela town.

Description of the scene

Thereafter, the HRC visited the Bindunuwewa Centre accompanied by the SSPs. On our way the Regional Co-ordinator showed us a large number of posters that could be seen prominently in Bandarawela. The content of the posters which incited people to act in order to remove the camp and deal with the inmates indicated that most of them had appeared before the incidents of the 25th. As alleged they could have appeared on the 24th night.

At Bindumuwewa, we inspected all the buildings in the centre. We were shown the damage inflicted by the inmates on the 24th. The Store did not show any signs of forced entry; the doors were intact and undamaged. The glass panes of some of the windows in the office and officers' quarters had been broken. There were a few charred pieces of paper and a small quantity of ash in the office that indicated that a few papers had been burnt. At the same time we noted that articles such as the television, radio, refrigerator had not been damaged by the inmates. It was evident that some damage had been caused by the inmates. But the account we had received had suggested that the inmates had gone round smashing up the buildings and causing extensive damage. What we observed of the damage caused by the inmates did not lend credence to that account.

We examined the premises for any signs that would suggest that a very large crowd had converged from all directions, and forcibly entered the premises. We did not find any visible signs such as footprints or areas that had been heavily trampled by a large crowd. There was a footpath leading to the playground of the training school adjoining the centre; this section was not protected by a fence. We were informed that part of the crowd came from this direction.

We found the halls which accommodated the detainees completely damaged and pulled down. There was a dead body found in the debris during our visit. This body had not been identified earlier. Even the equipment used for vocational training had been heavily damaged. The condition of the buildings clearly indicate that those who caused the damage made sure that the buildings were damaged beyond repair and would not be available for use.

The survivors version.

In the afternoon the Commission visited Diyatalawa and spoke to nine of the ten inmates who had been hospitalized at the Army Hospital. One of the survivors could not speak to us as he was very badly wounded. Of these ten survivors, one was aged 11 and other 12. There were three others who were below the age of 18 years. While we were interviewing the survivors we observed that a team of C.I.D. officers had arrived and were conducting investigations.

According to the nine survivors who gave their account of the events of the 24th and 25th, the detainees had raised issues with the OIC of the Camp on the 24th with regard to the following matters: letters received for the detainees were not delivered to them, telephone calls/messages received for them were not transmitted to them, they were being detained for unduly long periods such as one year or more when they should be held for shorter periods of three-nine months. It also transpired that when the OIC explained that it was not within his power to release them early as orders have to come from the authorities who dealt with such matters, they agitated and surrounded the OIC demanding that he should take immediate action to expedite their release. Observing this melee, one of the police officers had fired his gun in the air. This had caused further agitation among the detainees who caused damage to tube-lights, the police post etc. The accounts given by the survivors also mention that they objected to the police party entering the Camp. However, after some time they allowed the HQI to come in without any arms. They also mentioned that some villagers had gathered near the Centre and threw stones at the inmates. The detainees requested the OIC of the Camp to tell the villagers that the detainees had no problem with them, and that they should not do them any harm. Their problems were with the administration. During the discussions the detainees had stated that they will not follow the vocational training classes till the OIC expedites the release of the detainees who were in the Centre for long periods. Thereafter conditions had returned to normal and the detainees had retired to their halls and had gone to sleep. According to them, the police personnel and the ordinary people who came to the camp had left the place by about 11:30 p.m..

On the morning of 25th when the detainees got up in the morning they saw a large number of civilians surrounding the camp and a number of police officers standing by. The crowd started to pelt stones and came in and attacked with knives, machetes, clubs, iron rods etc. They state that the crowd consisted of both men and women. According to these survivors, they were attacked when they were in the halls of residence. The halls of residence were set on fire by the mob and two or three inmates were thrown into the fire. Many were clubbed to death. They said that the police officers did nothing to stop the crowd. When some of the detainees tried to run for safety, one of them was shot down by the police officers. We observed that one the survivors to whom we spoke had lost two fingers in one of his hands as a result of gunshot injuries. According to statements made by some of the survivors, when they had tried to hide in the police truck, the mob came in and attacked them. Two police officers were watching while they were being assaulted and did nothing to stop the assault. One of the injured, however, stated that the police was helpless as there was a large crowd and they failed to control the crowd even though they made some attempts. The survivors whom we interviewed do not speak of any disturbance caused by the inmates on the 25th morning prior to the attack on the Centre by the crowd. From the account they gave they had seen the crowd gathered round the Centre when they woke and they had entered the Centre and started attacking the inmates soon thereafter. According to this account there was no time for inmates to engage in protests and disturbances on the 25th morning.

Summary of findings and recommendations

We give below a summary of our main findings and recommendations.

The events of the 25th morning.

From all the information that we received in the course of our inquiry it is clear that the police officers, approximately 60 in number, have been guilty of a grave dereliction of duty in not taking any effective action to prevent the acts of violence that resulted in the deaths of 27 inmates and injury to several other inmates of the Bindunuwewa camp. There are various estimates of the crowd that entered the camp that morning ranging from a few hundred to several thousands. From what we could gather from the evidence available to us we felt that the large estimates of 2000-3000 exaggerated the size of the crowd. These estimates must be received with caution as they appear to be calculated to mitigate the inaction of the police. In any event the crowd that collected had not possessed any firearms and were armed only with knives, poles and implements. The police on the other hand were fully armed and could have easily brought the crowd under control and dispersed it. At least some of the persons who were leading the crowd could have been arrested.

The situation preceding the events of the 25th.

All the accounts of the incidents that occurred on the 25th agree that the inmates had agitated for their release and had acted in an unruly manner. The accounts however differ in regard to the nature and seriousness of the disturbance that had been caused. A small crowd of "villagers" had collected and the inmates and the crowd had thrown stones at each other. What is however clear is that by about 11.30 the situation had returned to normal. The army which had arrived on a message from the police had left at around that time. According to the information supplied to us by the police about 30 police officers had been left behind to guard the camp. At this stage both the police and the army had apparently assumed that there was no serious threat to the security of the inmates.

We also made inquiries concerning the relations between the camp inmates and the residents in the neighborhood. The SSPs stated that the residents had complained against the continuance of the rehabilitation camp in Bindunuwewa. In 1998 there had been an exchange of correspondence between the SSP Bandarawela Police Division and the OIC of the Centre in which issues regarding the security of the Centre had been raised. The SSP had stated that he was not in a position to provide additional security to the camp owing to a shortage of police cadres and had recommended that the Centre be relocated. There is however no evidence of any overt agitation or collective protest against the Camp or its inmates by the residents. Our Regional Co-ordinator who had regularly visited the camp has reported that the relations between the Camp inmates and residents had not given cause for any concern prior to these incidents.

However the incidents on the 24th suggest that the inmates were raising new demands and articulating them more aggressively. We have not been able to investigate whether this was due to the activity of detainees who had come recently and who were out to create a disturbance in the Centre with some ulterior motives. The name of Anton James was mentioned to us. The survivors whom we questioned were not able to speak with any certainty about James and the role he played in the disturbances of the 24th. But it is an aspect of the Bindunuwewa tragedy that should be fully investigated.

Action after the 25th

The action taken by the local police to arrest the persons who were responsible for the violence and the killings seems to have been totally ineffective. Mr Premaratne the SSP Bandarawela commenting on the action taken admitted that the manner in which large numbers of villagers resident in the neighborhood of the Camp had been arrested had only the effect of thwarting any purposeful process of investigation. The timely action taken to send special investigating teams from Colombo would hopefully prevent any cover-up by all those who are accountable for the police inaction that led to the tragedy.

Posters.

When we interviewed the two SSP we found that they were unaware that a large number of posters had appeared in Bandarawela town, allegedly on the night of the 24th inciting people to violence against the inmates and the rehabilitation Camp. The posters provide a line of investigation which may lead to persons or organizations which may have planned and led the attack on the Camp. We learn that a statement made by one of the suspects who have been arrested have identified and named some of the persons who were responsible for the posters and who instigated the violence and led the attack on the camp. We strongly recommend that this line of investigation be pursued. We think such a course of action is vital, as all the information we have been able to gather so far does not suggest that what occurred on the 25th was an unpremeditated eruption of mob violence caused by the provocations of the inmates. It is more consistent with a premeditated and planned attack.

Issues pertaining to rehabilitation

The administration and management of rehabilitation under the provisions of regulations 20A(1), B (1) and C (1) of the Emergency (Miscellaneous Provisions and Powers) Regulation No.1 of 2000 needs to be reviewed.

The inmates of the Bindunuwewa Rehabilitation Centre were all young persons sent to the Centre on a rehabilitation order of the Defence Secretary. They included both suspects arrested under the PTA as well persons who had surrendered voluntarily to escape the LTTE. Some of them were as young as 11-14 years. The policy of sending all these persons to one centre and treating them alike is inadvisable and needs to be re-examined. The location of centres of this type would also need careful consideration. In some cases where the inmates cannot get back to their homes on account of the LTTE, the release after they complete their term of rehabilitation poses problems which need to be satisfactorily resolved. The Commission proposes to examine all these problems and make recommendations for dealing with them.

Initiatives to promote ethnic harmony and reconciliation

One of the disturbing conclusions emerging from the Bindunuwewa incidents is that our society is still not free from racial violence and that it can express itself in very brutal forms. The Bindunuwewa

tragedy needs to be inquired into fully and all the underlying causes that led to the atrocity uncovered. The disturbances and unrest within the centre, the unusual speed with which a group mounted a poster campaign, the violence in the plantation areas that followed the incidents which included the killing of two detainees from the plantation areas, the inaction of the police and the participation of local people regardless of the numbers involved, all point in different directions and open different lines of investigation. No doubt, investigations have to be pursued on all these lines and everyone responsible for the incidents of the 25th and who has any complicity in them need to be brought to justice speedily. At the same time it would be necessary to strengthen all the initiatives that have been taken in the recent past to promote ethnic harmony and reconciliation and involve the local communities more effectively in those efforts.

On our return to Colombo and learning of the disturbing developments in the Plantation areas, we contacted the Secretary of the Ministry of National Integration and Ethnic Affairs and stressed the need for immediate action such as the formation of peace committees at the local level with the support of religious leaders and civil society organizations. There is also need for launching a medium and long-term programme of national integration and ethnic harmony drawing lessons from the Bindunuwewa case.

ANNEXURE V

THE ALLEGED DISAPPEARANCE OF MR. GULAM MOHIDEEN MOHAMMED ZAKARIYA.

The Foreign Ministry referred to the Commission in September last year a complaint sent by The UN Working Group on Enforced and Involuntary Disappearances regarding the disappearance of one Gulam Mohideen Mohammed Zakariya who is alleged to have been detained by the Sri Lanka Navy on 11.08.2000.

The communication sent by the UN Working Group on Enforced and or Involuntary Disappearances revealed that on this particular day in question at about 7.30 in the morning, Mr. Gulam M.M. Zakariya was on his way home on a bicycle with his wife and one of their children and was stopped at a Navy check point in the town of Nilaveli in the Eastern District of Trincomalee. The Navy personnel had taken him away for questioning and had told the wife to take a bus home with the child. Later that day his wife was told by Authorities at the Nilaveli Navy Camp that no such person had been arrested. The inquiries made to determine his whereabouts have given no results.

The Commission commenced inquiries into the said complaint with the assistance of our Regional Coordinator for Trincomalee. The Commission also contacted the relevant Navy officials to find more details as to the whereabouts of Mr. Zakariya.

Our investigation revealed that according to the evidence of the relations of the missing person he had been seen in the custody of the Navy and had been seen by one Ayesha Umma at the Base Hospital, Trincomalee on 24.08.2000 with some Navy Officers when he has been produced for treatment. Mr. Zakariya's mother stated that she had seen him being taken by two Navy Officers on 12.09.2000.

However, on inquiry from the officers of the Sri Lanka Navy, the Commission was informed that Mr. Zakariya was one of their informants regarding LTTE activities and that he could have been taken by the LTTE. The Navy completely denied arresting Mr. Zakariya.

Since no concrete information about the said missing person was forthcoming the Commission also contacted the Navy Commander and other relevant Navy Officials to assist the Commission with further investigations into the matter. Investigations so far conducted have failed to produce any further information regarding Mr. Zakariya's disappearance.

ANNEXURE VI

FRAMEWORK FOR THE CORPORATE PLAN OF THE HRC

(2001 – 2003)

VISION

A society in which all are able to live in dignity and freedom and have equal access to justice and the protection of the law.

MISSION

To strengthen and develop institutions and processes, which protect, enforce and enhance fundamental and human rights.

GOALS AND OBJECTIVES

In protecting and promoting human rights in Sri Lanka, the Commission needs to respond to the special challenges and constraints of a developing, multi-ethnic society.

The country has to cope with the consequences of a prolonged ethnic conflict that has led to violence and war.

- Human rights have to be protected in emergency conditions demanding high security.
- Several groups suffer from special disadvantages which often lead to the denial of their human rights.
- The war has resulted in the internal displacement of about a million people.
- About 5% of the population have gained citizenship rights recently and need supportive measures that enable them to realize their civic and other rights in full measure.
- There is an outflow of temporary labour migrants who are finding it difficult to exercise their rights as permanent residents.
- The institutional and legal framework for the protection of the rights of women and children is in the process of being developed.
- The rights of the disabled and the aging are demanding greater attention, the former because of the casualties of the war and the latter as a result of the rise in life expectancy.

Within this perspective the commission seeks to achieve the following goals and objectives:

- Achieving full compliance of international norms and standards pertaining to human rights and fundamental rights;
- The affirmation of rights of disadvantaged and vulnerable groups;
- Strengthening the Commission's special role in mediation and conflict resolution;
- Promoting the value systems and culture supportive of fundamental rights and human rights in a multi ethnic and multi cultural society
- Protecting human rights and fundamental rights in situations of armed conflict and during the operation of emergency laws
- Developing a broad based partnership with civil society for achieving the Commission's objectives
- Strengthening and creating where necessary the sub-national institutions and structures at provincial and district levels for the fullest possible democratic participation in the protection and promotion of human rights.

Main functions

The functions of the Commission will be organized in the following clusters

Cluster 1 - Enforcement and redress:

(1) Complaints of violations under PTA and ER and Articles 11 and 13 of the Constitution

- a)* Unlawful arrest
- b)* Detentions including rehabilitation
- c)* Mobility and residence
- d)* Censorship
- e)* Torture and degrading treatment
- f)* Disappearances
- g)* Deaths in Custody

(2) Violations of rights pertaining to equal treatment and non-discrimination Article 12 and Freedoms Article 14

- a)* Members of the Public
- b)* Public servants

Cluster 2- Preventive action:

i. Monitoring the state of human and fundamental rights

- a)* Review of Emergency Regulations
- b)* Compliance with international standards
- c)* Review of legislation for consistency with the FR provisions

ii. Follow-up Action arising from monitoring of compliance and legislative review

iii. Improvement of the systems and procedures of the state to prevent administrative and executive actions that lead to violations of fundamental rights.

- (a) Training and Education designed for different segments of the State according to the nature of the authority exercised and the type of violations that occur.
- (b) Guidelines procedures and rules to different state agencies for the protection of Fundamental and Human Rights in their area of work.
- (c) Legislative and other action needed for correction of systemic faults.
- (d) Rationalization of functions and overlapping jurisdictions of PSC Ombudsman and HRC.

Cluster 3- Enhancement: (Areas requiring pro-active responses from the Commission)

(i) Disadvantaged groups

- a)* Internally Displaced
- b)* Labour Migrants
- c)* Women and Children
- d)* Disabled
- e)* Plantation Labour
- f)* Elderly

(ii) Building capacity of citizens to protect their rights and seek redress for violations

- a) Public information and awareness programmes
- b) Strengthening and promotion of NGOs
- c) Human Rights Education Programmes for citizens, schools, trade unions, private sector and politicians

(iii) Collaboration with authorities responsible for children's and women's rights and language rights.

(iv) Social and economic rights (New articles under the draft constitution)

- (a) Entitlements to social security, food security, education and health

Strategy

(1) Assessment of present capacity of Commission and the required addition to capacity in regard to the following:

- a) Physical infrastructure - office space equipment etc. Selection of a new office building and relocation; additional equipment.
- b) Human resources and organizational structure.
- c) Reorganization, new salary structure, new schemes of recruitment, training of existing staff and filling of new positions.
- d) Strengthening the regional units to undertake the main functions of the three clusters of the Commission's activities as appropriate to the regional level.
- e) Powers and authority of the Commission and necessary amendments to the Act.
- f) Preparation of manuals for receiving of complaints, investigation, mediation and other action on complaints.
- g) Establishing the required computerized databases on arrests and detentions and follow-up on cases.
- h) And decisions taken.
- i) Library and documentation.
- j) Process for the preparation of Annual Report of the Commission

(2) Selecting the priorities for action from among the areas identified under main functions.

Selection of priorities.

Rank 1 priorities

Cluster 1

- a) Protecting fundamental rights and human rights under Emergency Regulations - review of ER, compilation of the Central Register.
- b) Establishing machinery for special investigations on cases of torture and disappearances.
- c) Clearing of the 3-year backlog.
- d) Selecting at least 2 problem areas for public hearings during year 2001.

Cluster 2

- a) Monitoring of events and situations with high propensity for violation of human rights - election-related violence and violations of election law.
- b) Human rights education for two selected groups in the state sector - security and law enforcement agencies and the education sector;
- c) Systems improvement — preparation of guidelines for two selected agencies - general guidelines for the public service in relation to state employees; guidelines for selected agencies - Education Ministry, Police and Security Forces.
- d) Rationalization of functions and overlapping jurisdictions of PSC, Ombudsman and HRC.
- e) Process for preparation of Annual Report.

Cluster 3.

- a) Internally Displaced. Situation analysis, identification of problems and issues of relevance to the HRC and formulation of programme of Implementation
- b) Plantation Labour
- c) Labour Migrants
- d) Disabled
- e) Human Rights Education in collaboration with NGOs . Preparation of a national programme and commencement of implementation.
- f) Collaboration with Authorities responsible for Children's and Women's rights and Language Rights.
- g) Regional Offices will implement the regional plan based on the priorities of the three clusters.

Rank 2 priorities

The functions other than those listed above.

THREE YEAR WORK PLAN

Outline for Year 1

Formulating an annual plan for the main functions for Year 1 with a quarterly breakdown.

Formulating a programme of activities for the priority one items in the three clusters.

Preparatory programme for priority 2 items. Preparatory work is to be done in Year 1 for formulating a programme and implementing it in Year 2.

Outline for Years 2 and 3.

To be prepared in detail during December, including the regional components of the Corporate Plan. Before formal adoption of the Corporate Plan the Commission will hold in-house consultations and consultations with the main stake holders.

Implementation plan for capacity building of HRC.

Programming of Activities under Capacity Building of the HRC.

Work has begun with the relocation of the HRC head office. The detailed plan of implementation with targets will be prepared during December.

ANNEXURE VII

COMMENTS OF THE HUMAN RIGHTS COMMISSION ON THE AMENDMENTS TO THE EMERGENCY (MISCELLANEOUS PROVISIONS AND POWERS) REGULATION

Derogation (temporary suspension) from the guarantee of free expression during periods of public emergency has to be in conformity with the international legal obligations of Sri Lanka. Those obligations are spelt out in Article 4 of the International Covenant on Civil and Political Rights (ICCPR). While this provides for derogation, under Article 19 of the ICCPR relating to freedom of expression, one of the important conditions stipulated is that any derogation imposed has to be only to the extent strictly required by the exigencies of the situation. In other words there has to be a distinct nexus between the threat to public security and derogation (such as censorship).

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (which are not legally binding but have wide international acceptance) expand on the requirements laid down in Article 4 of the ICCPR. According to Principle 3, prior censorship is permitted only during periods of public emergency and is subject to the requirements laid out in the ICCPR.

The Government's proposals for constitutional reform (October 1997) has a separate article on derogation in times of public emergency which in effect reiterates the obligations under Articles 4 and 19 of the ICCPR. It states that measures prescribed by law derogating from the exercise and operation of the fundamental rights should be "to the extent strictly required by the exigencies of the situation and necessary in a democratic society".

Therefore, Emergency Regulations and directions pertaining to censorship during a public emergency have to be very specific and narrowly defined. Authorities have to justify the extent of censorship by establishing that it is strictly required by the exigencies of the situation. Arguably, in a war situation the extent of censorship that is legally permissible varies, inter alia, according to the nature and intensity of combat and the date of occurrence of the events that are covered. For example, the guidelines issued by the Pentagon during the Gulf War stated that reports on major battle damage or personnel losses should not be reported until "that information no longer provides tactical advantage to the enemy and is, therefore, released by the state (CENTQM)". What is considered to be the exigencies of the situation will have to be clearly elaborated by the authorities. In other words, the onus of the providing the necessity and the legality of the censorship lies with the government.

The directions under Emergency Regulation 14 (Gazette No. 1,131/20 of 10/5/2000) which imposed news censorship were couched in language that was over broad and vague. Regulation 14 promulgated on 1/7/2000 attempts to correct some of the deficiencies in the earlier Regulation 14 dated 10/5/2000.

The new regulations have imposed restrictions of two types.

In Regulation 14.2.a the restricted material pertains to military and security operations carried out by the armed forces and police including the Special Task Force and broadly satisfy the criteria of specificity and the nexus that should exist between the exigencies of the situation and the censorship that is being imposed. It covers

- Deployment of troops
- Deployment and use of equipment including air craft and naval vessels
- The procurement of weapons
- Any statements pertaining to the performance of the head or members of the armed force which affect the moral of the armed forces

These restrictions could be further amplified to provide more detailed guidelines as in those that were issued by the Pentagon during the Gulf War to ensure that the censorship is restricted only to the material which may provide information that may adversely affect the conduct of the military operations and do not include other information about the war which the public have a right to receive. The restriction covering police operations as included in the Regulation is too broad as presently formulated and will extend to operations that have no connection to the emergency situation. The restrictions on material pertaining to procurement of weapons and statements on the performance of the armed forces should be formulated in a manner that does not preclude the media from raising issues of public accountability that are in the national interest.

In contrast to Regulation 14.2.a, Emergency Regulation 14.2.b retains the generality and vagueness of language of the previous regulations. Under this part, censorship may be imposed on the grounds of "prejudice to the interest of national security or the preservation of public order or the maintenance of supplies and services essential to life of the community". Such language, which confers extensive discretion on the competent authority, is in violation of Article 4 of the ICCPR. The Regulation, it can be argued, is also unconstitutional in the light of the Supreme Court Judgment in *Joseph Perera Vs. A. G.* (1992) ISLR 199 which required proof of a rational nexus between an Emergency Regulation and the objective sought to be achieved by the government. In the submission made to the Supreme Court by Article 19- the global organisation concerned with freedom of speech-attention is drawn to a wide range of superior court judgments from several countries that have ruled against laws of censorship which are too widely expressed, too unclear as to its limitations and too intimidating, because no one could be sure whether what he may write, would or would not attract the penalties prescribed for contravention of the regulations. These criteria have special bearing on the present situation where pre-censorship has been lifted. More specific guidelines are required in regard to the restrictions imposed on the ground that the material is "prejudicial to the interest of national security, preservation of public order or maintenance of essential supplies and services". An example of a justifiable restriction would be any information on the security arrangements for key installations providing essential services.

Censorship should not be imposed with regard to any violations of human rights and humanitarian laws. During a duly proclaimed period of public emergency, emergency regulations supersede nominal laws. Consequently, they have a great impact on the lives, especially on the rights of people. The drafting of emergency regulations and directives must be done with utmost care so as to minimise the negative impact on human rights while also achieving the legitimate objectives of the State. The need for professionalism and meticulous attention to detail is acutely felt in this respect.

The authority that is appointed to implement and oversee censorship should ideally consist of a body of persons as opposed to a single individual. Such a body should include a person with military knowledge as well as a senior journalist. Such a collective body would to a great extent reduce the risk of subjective and abusive exercise of power and establish the right relationship between the censorship authority and the media.

ANNEXURE VIII

PARLIAMENTARY ELECTIONS OCTOBER 10, 2001

Summary of decisions taken on the representations made by the Centre for Policy Alternatives, Dr Pakiasothy Saravanamuttu, Rohan Edirisinghe and Manjula Sirimanne at the meeting held on 04.10.2001.

The petitioners informed the Commission that they had studied the directives and circulars pertaining to elections which had been issued by the Police Department and which had been sent to them by the respondents as agreed at the last meeting. At the outset, they pointed out that the instructions issued by the Police Department to police officers regarding their duties in connection with the election contain many ambiguities due to the translation and referred to the instructions relating to the use of loudspeakers, as one example. Mr Raban SSP, Director Police Elections Secretariat replied that the Department would examine the translations and make corrections where necessary.

The petitioners then made their main submissions on the directives issued and expressed concern that the directives were inadequate in regard to the following matters:

- i. The absence of directives to ensure (a) freedom of movement to electors from their residence to the polling station on the day of the poll (b) security to the polling agents who accompany senior presiding officers to the counting centre and (c) the security of election staff.
- ii. The refusal or failure of police officers to entertain and record all election-related complaints and the failure to categorise these complaints correctly.
- iii. The delays and omissions in investigating the offences revealed in the complaints and taking legal action against the offenders.
- iv. The effective discharge of duties and responsibilities of police officers posted to protect the polling station- specially the responsibility of preventing unauthorized persons from entering the polling station including persons accompanying candidates.

The petitioners also made submissions on the following issues:

- v. The norms governing the deployment of police officers during the election period.
- vi. The need to empower the Elections Commissioner to cancel the poll and order a repoll in cases where "stuffing" of ballot papers occurred.

Mr Raban produced a circular issued by the Police Department dated 1st October 2000 which gives specific directions on the matters referred to by the petitioners in (i). He also submitted other more recent circulars that had been issued after the manual had been prepared.

Regarding (ii) Mr Raban stated that the Police Department has at all times considered that the refusal or failure to record a complaint is a grave offence and that disciplinary action is taken against officers who are guilty of such an offence. The petitioners as well as the Human Rights Commissioners pointed out that in regard to election-related complaints the lapses brought to their notice have been numerous. Mr Raban stated that the Police Department would impress on all police officers that refusal to accept any election-related complaint is a grave offence and that disciplinary action would be taken in all such cases. Mr Raban requested the petitioners to provide specific instances of such lapses to enable him to inquire into them and report at the next hearing. The Commission inquired whether some special arrangement could not be made particularly during the election period to deal with this problem, and the contestants and public informed on how and where they could make an appeal when their complaints are not accepted and recorded by the O.I.C of the area. In view of the large number of allegations of lapses and lack of impartiality, a regular procedure of this kind which keeps watch over the process of receiving and recording complaints seems to be necessary.

Regarding the categorization of election-related complaints it was agreed by all parties that in the case of any complaint made by contestants and their supporters on any matter related to the election, police officers should record all such complaints as election-related offences without exception and not have any discretion to decide whether complaints are election-related or not. Discretion could be used only where complainants do not specifically allege that the incident is an election-related incident. The police officers should be instructed to take action accordingly

In regard to (iii) Mr Raban stated that as a rule all complaints are promptly investigated and action taken to prosecute offenders is initiated where such action is warranted. He undertook to provide the Commission with a report of action taken on all complaints relating to offences which have been categorized as serious, giving the party affiliation of the complainant and the alleged offender. To a suggestion made by the Commission that such information be made public on a regular basis during the election period, Mr Raban thought that the Department should have no difficulty in doing so. The Commission also inquired whether the police staff could not deploy a special unit to deal with election offences to expedite investigation and action, as prompt action against offenders during the period of the election itself would be the best deterrent to election-related violence.

In regard to (iv) Mr Raban stated that police officers have been given clear instructions on how they should protect the polling stations on Election Day and told that they should open fire to maintain law and order if the situation demanded such action. This would apply to situations in which armed gangs try to force their way into polling stations. The petitioners' requested that police officers should be directed to ensure that only the candidates are permitted to enter a polling station and persons accompanying them should be prevented from accompanying the candidate into the polling station. Mr Raban pointed out that the police officers may find it difficult to assert their authority in a situation where candidates choose to ignore or defy their orders. The presiding officer appears to be helpless in such situations. The Commission suggested that in such situations police officers might at least record the incident with the names of the candidate and the persons accompanying him and report the matter to the mobile patrol for further action.

On (v) the petitioners pointed out that in the deployment of police officers during election time the Department should avoid posting officers to areas where a family member or close relation of the officer is contesting as a candidate. Even if such an officer does not allow any conflict of interests to affect his official conduct, the officers action will always be open to the charge of partiality even if he acts impartially. Mr Raban stated that the Police would not always be able to adhere to this principle when deploying staff. He also mentioned that the Department has found that in such situations it is very rarely that an officer allows such connections to influence his work. The Commission pointed out that the problem arises only during the period of elections and that it would be desirable if the norms and principles suggested by the petitioners be taken into account when deploying staff during that period. Even temporary arrangements could be made to accommodate the special needs of the election period.

On the issue raised in (vi) the Counsel for the Commissioner of Elections and the petitioner stated that already the Commissioner had made a recommendation that the law should be amended giving the Commissioner power to annul the poll in a polling station in which there has been stuffing of ballot papers and to call for a fresh poll. No action had been taken although the recommendation had been made some time ago. The Commission noted the submission made by the petitioners and the Counsel for the Commissioner of Elections and stated that the Commission would consider how it could intervene to have the recommendation considered and action expedited.

To an inquiry from the Human Rights Commissioners addressed to the Counsel for the Commissioner of Elections on the possibility of solving many of these problems through the regular consultations the Commissioner has with the contesting parties and groups, the Counsel replied that consultations have become ineffective for dealing with many of the issues discussed as the ruling party does not regularly attend them. He also stated that various complaints are received by the Assistant Elections Commissioners and these are referred to the Police as a matter of routine. He suggested that many of these complaints might be more effectively handled by the Police, Regional Co-ordinators and Assistant Election Commissioner acting together at the regional level. The Human Rights Commissioners stated that the Commission's regional co-ordinators have been already instructed to receive and attend to complaints of violations of fundamental rights in relation to the Election and that what the Counsel suggested could become part of such duties.

ANNEXURE IX

Cash Flow Summary for the Year - 2000

Receipts	
Recurrent	21,700,000.00
Capital	<u>1,950,000.00</u>
	<u>23,650,000.00</u>
1503(5) Payments	
Personal Emoluments	
Salaries & Wages	10,752,445.55
Overtime & Holiday pay	337,138.28
Allowances	288,732.18
Traveling Expenses	643,919.00
Supplies	1,225,951.26
Maintenance Expenses	2,981,933.35
Contractual Expenses	5,903,846.44
Others	782,522.50
	<u>22,916,488.56</u>
2201 Capital Expenditure	
Rehabilitation & Improvement of Capital Assets	
Acquisition of Fixed Assets	856,945.64
	<u>856,945.64</u>
Total Expenditure	<u><u>23,773,434.20</u></u>