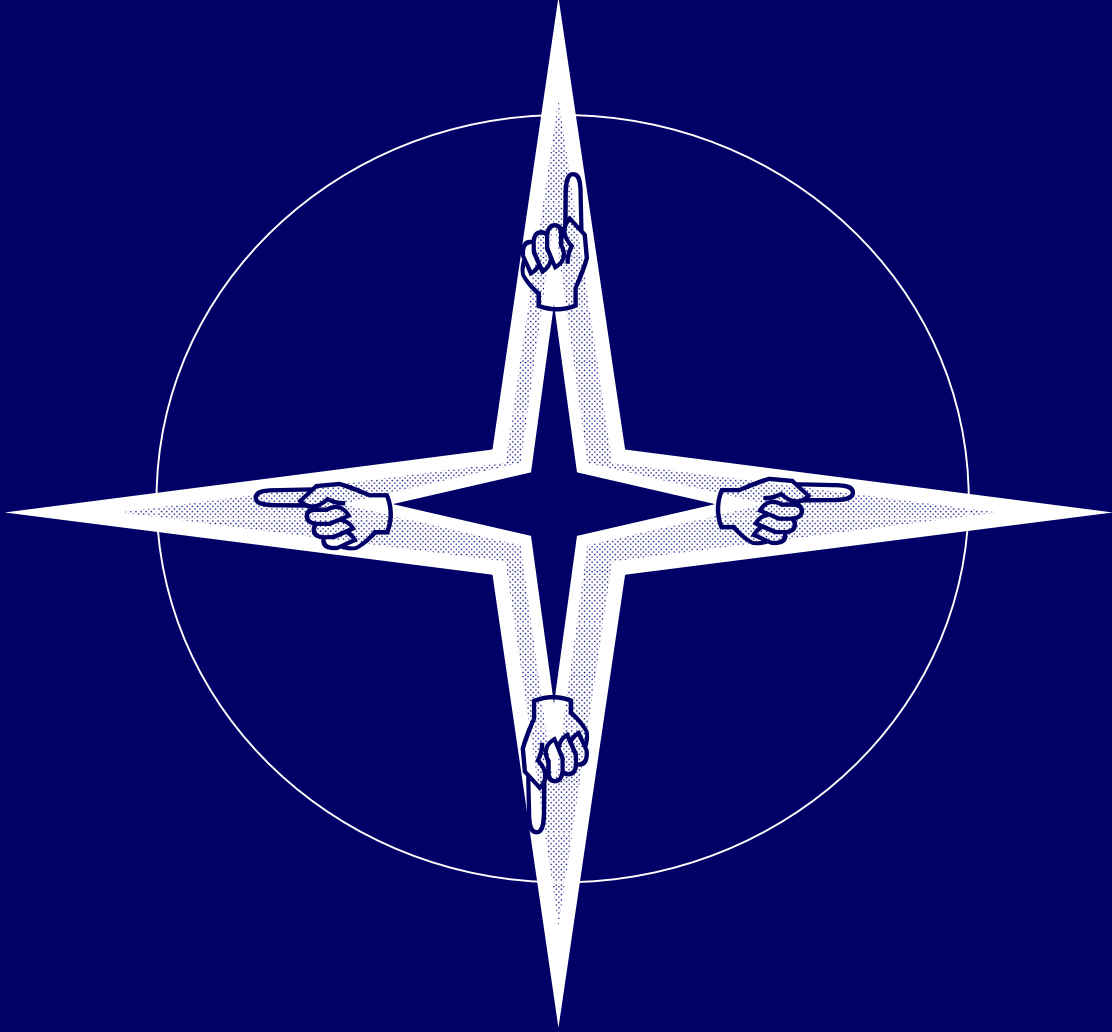


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ஆண்டறிக்கை
Annual Report

2008



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Human Rights Commission of Sri Lanka

Annual Report

2008

Human Rights Commission of Sri Lanka

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VISION

Our Vision is to Ensure Human Rights for all and Promote and Protect the Rule of Law

MISSION

Our Mission is to Develop a Better Human Rights Culture in Sri Lanka through Protecting and Promoting Human Rights for all in Law, Policy and in Practice, adhering to Universally Recognized Human Rights Norms and Principles with a Special Emphasis on the Fundamental Rights Guaranteed under the Sri Lankan Constitution for the Citizens of Sri Lanka, with the Coordination and Corporation of all Stakeholders that Work Towards Protecting and Promoting Human Rights for All

HRC SL

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COMPOSITION OF THE COMMISSION

Chairman

Justice S Anandacoomaraswamy
Judge of the Supreme Court (Rtd)

Commissioner

Justice D Jayawickrama
Judge of the Court of Appeal (Rtd)

Mr. Mahanama Tilakaratne
High Court judge (Rtd)

Mr. M T M Bafiq
Attorney at Law

Ms. N D Abeywardena
Attorney at Law

THE CHAIRMAN'S MESSAGE

I have pleasure in presenting to you the Annual Report for the Year 2008 of the Human Rights Commission of Sri Lanka.

The Four Commissioners who were appointed in the Year 2006 continued with me during this period under review. It is to the credit of the Commission that overcoming resistance and hurdles we managed to achieve our goals on all the fields of protection and promotion of Human Rights.

Human Rights were focused very much during the year all over the world and especially Sri Lanka was aimed at in several factors. Apart from the international concerns there were domestic worries due to long drawn civil conflict of the country. We as the National Human Rights Institution managed to provide necessary protection to everybody who needed the assistance especially in matters pertaining to disappearances and abductions.

It is to be noted that the Commission started to be under a separate financial head during this year and received increased capital and recurrent grants from the Government of Sri Lanka. We also extend our grateful thanks to external funding agencies UNDP, UNHCR and UNICEF for providing technical and financial support during this challenging period.

I thank our local partners, INGOs, NGOs and other stakeholders for their corporation, support and advice, encouragement and also constructive criticism. Their help during the period and continued dialogue helped us to reach the expectations of the general public.

The untiring commitments of the staff to achieve the objects are commendable. I look forward for their continued co-operation.

We are committed to achieve growth and restore conditions for sustainable peace in our country by promoting, protecting and monitoring human rights of the citizens in Sri Lanka. To achieve this goal we all have to be in hand in hand.

S.Anandacoomarswamy

CHAIRMAN

Human Rights Commission of Sri Lanka

INTRODUCTION

The Commission has a broad mandate to protect and promote human rights to ensure the rights of all, to achieve the better human rights culture in the country. The Human Rights Commission of Sri Lanka was established under the Human Rights Commission of Sri Lanka act No 21 of 1996. The powers of the Commission are vested in Section 11 of the Act. The Commission approaches its work advocacy of promotion and protection of human rights, monitor, educate and promotion of human rights. The Commission through its working set up uses all internationally developed norms, and adapted for Sri Lanka in all aspects of its work

The Commission carries out the functions according to the Section 10 of the Act¹. The Commission undertook several activities in the year 2008 based on strategic plan 2007 - 2009 through four major divisions i.e. Inquiries and Investigations Division, Monitoring and Review Division, Education and Special Programme Division and Administration and Finance division.

The Commission handles all the issues prioritising human rights violations affecting people and this commission listen, respects and responds to all people who come in contact with. Particularly it ensures that it is independent, transparent and accountable in carrying out its functions. The commission's reputation and credibility are built upon its integrity, expertise, professionalism and the quality of its work.

The year 2008 was a milestone in the history of the human rights, because Universal Declaration of Human Rights completed 60 years and the 60th anniversary was celebrated throughout the world. The Commission also initiated special activities through out the country.

This report of the Commission briefly elaborates the activities undertaken by the Commission and achievements and challenges of the commission during the year 2008.

¹ The Human Rights Commission Act No.21 of 1996 sets out the Commission's functions and related responsibilities which include:

- 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 hereof 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
- f. To promote awareness of and education in relation to human rights

CHAPTER 1

INQUIRIES AND INVESTIGATIONS DIVISION

1.0 Divisional Overview

One of the most important functions of the division is the investigation of alleged human rights violations. The division is handling complaints from individuals, groups and also Commissions own initiative (suo moto). In addition to that division organises regular visits to the Police stations, Detentions centres, Prison etc. and makes special visits too. Other services of the Division are complaint hearing, twenty four hours hot line service and maintaining registry for detention orders. Non implementation of Recommendations is a cardinal issue to be addressed.

1.1 Individual Complaints

The division received 6574 complaints related to Human Rights violations during the year 2008. These cases received directly, and through NGOs and from other sources. Many cases were referred by NGOs such as the Home for Human Rights, Institute for Human Rights, Asian Human Rights Commission and Janasansadhaya etc. and also Civil Societies are giving fullest support to the Commission.

The division engaged its own staff, the retired Judges and Part Time Mediators to complete the work. The method adopted enable the Commission to screen the complaint and identify those which do not come within the mandate of the Commission as well as those which the complainant do not want to pursue for a variety of reasons. The Commission refers complaints for conciliation and mediation after investigation and inquiries have been conducted. Regional Offices do the preliminary investigations/inquiries of the complaints received and forward the inquiry report to the Head Office. The complaints falling within a mandate of other institutions which are established by the Constitutional Council are referred to such authority such as Public Service Commission and National Police Commission. Details of complaint handled in year 2008 by the Division are given in table 1

Categorization of the Concluded Cases	Concluded 2008	Concluded other Years	Total
No F.R. Violation	338	842	1180
Not Interested	637	974	1611
Recommendation	49	285	334
Settlement	128	150	278
Relief Granted	119	439	558
Withdrawn	90	127	217
Refer to other Authorities	436	92	528
Others (Directives Given /Pending Court case)	290	755	1045
Total	2087	3664	5751

Table 1: Cases handled in year 2008

1.1.1 Categorization of Complaints

Detail categorization of cases received in year 2008 by the head office given in table 2

Categorization	Number of Cases
Torture	439
Harassments	272
Arrest/Detention	550
Missing Persons	147
Death In Custody	04
Shoot & Death	03
Death	03
Inaction Complaints	345
Recruitments	144
Promotions	202
Service Extension	28
Transfers	137
Termination	43
Interdiction	44
EPF	24
Salary	22
Employee Benefits	66
Pension	74
School Admission	287
University Admission	12
Certificates	09
Medical negligence	11
Land & Property Matters	172
Others	550
Total	3588

Table 2: Categorization of cases received by head office in year 2008

1.1.2 Percentage wise Case Details

Percentage wise case details are given in figure 1

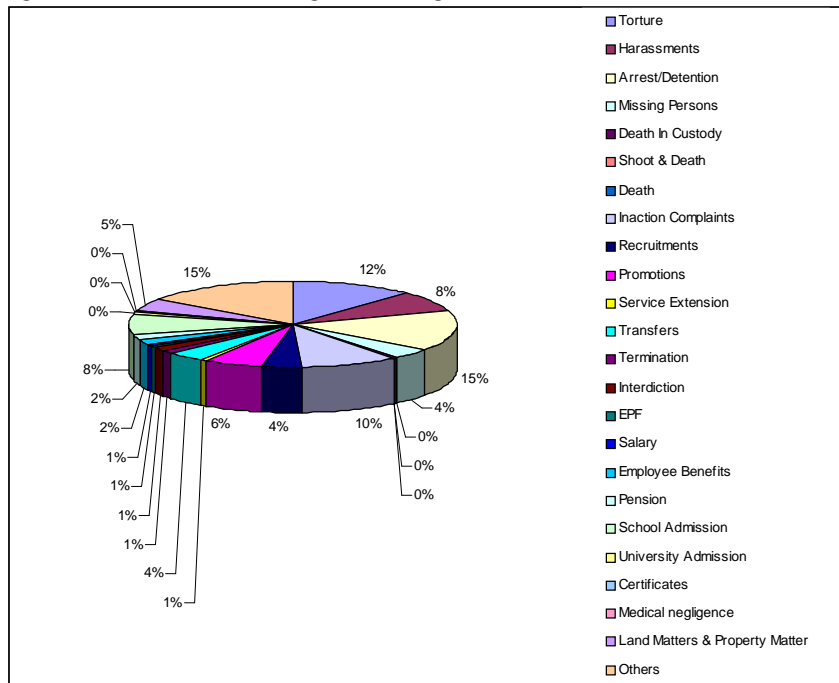


Figure 1: Percentage wise Categorization of cases received by head office in year 2008

1.2 Other Proactive and Reactive Role of the Division

Rather than be driven by the complaints, under the strategic plan the Commission has endeavoured to embark on a proactive providing of a work aimed in reducing and averting imminent violations. This programme includes surprise visits to Custodial Institutions, Places of Detention, and State Homes for Juvenile Offenders, Women and Children homes and Mental Hospitals.

1.2.1 Police Station Visits (General/Regular Visits)

There are about 400 Police Stations all over the country and visits have been scheduled to facilitate the visiting mechanism. Investigating Officers of the Head Office visit nearly 143 Police Stations and all other Police Stations are covered by the 10 Regional Offices of HRCSL. All Police Stations are visited at least once a month

Objective of Police Station visits are to eliminate or minimize incidents of torture in Sri Lanka through efficient proactive and reactive measures, to initiate steps to bring the responsible Officers who are committing these violations through the relevant statutory agencies. HRCSL coordinates and acts in collaboration with other relevant government and non-governmental institutions in order to combat incidents of torture. There is a 24-hours desk with hotline facility, that receives complaints on torture, illegal arrest and detention etc. The Commission makes sudden surprise visits and to investigate where the Officer does follow-ups on those on going cases too.

The officers are required to provide a complete detailed report on each Police Station which consists of details of detainees, all important issues and conditions of the cells. HRCSL intervened in the matters connected to administration of justice such as delay in producing the detainees to the Magistrate Courts within 24 hours. HRCSL makes special visits to Terrorist Investigation Division (TID) and to Criminal Investigation Division (CID) on regular basis.

Following common issues have been identified during Police Visits in year 2008.

- Delay in producing Detention Register.
- Overcrowding of the cells
- Non availability of proper sanitary conditions in cells in some Police Stations
- Arrest without prior investigations.
- Lot of suspects are taken into custody on suspicion, where the Police Officers are unable to explain the offence/crime that the detainees are suspicious of.

The above have been promptly brought to the notice of the responsible authorities.

1.2.2 Special Visits

The Division identified special human rights issues in the country and special teams were sent to the particular places.

1.2.2.1 Boossa Detention Camp

The HRCSL received 97 complaints from the relatives of arrested persons who are housed in Boossa detention camp. The Commission started investigations on the complaints and

planned a special visit to the camp to monitor the conditions of the detainees under the powers vested with it under Article 11 of the HRCSL Act No. 21 of 1996. The Commission officials comprised of 12 Officers visited the Boossa Detention Camp on 10th January 2008 and following observations have been made.

(a) Common Complaints by the Detainees

- The food provided is inadequate.
- Timetable to provide meals are not appropriate and very unreasonable (Breakfast at 5.30 a.m., Lunch at 12 Noon, and Dinner at 5.00 p.m.)
- Detention without a proper reason.

(b) General Observations

- Under aged (under 18) detainees are commonly detained with adults.
- Some of the detainees are detained under Detention Order and some are on pending Detention Orders.
- All confessions and statements are recorded in Sinhala language with the assistance of the translators.
- The records do not carry sufficient information though the authorities of the camp have produced record books to HRCSL Matara Regional Office complying with Section 28(2) of the HRCSL Act².
- Most of the detainees claimed that they were arrested without any specific reason and informed that one third of the detainees were unaware of the reason for arrest at the time of the arrest.
- Most of detainees are said to be subjected to torture outside the camp and no complaints were made on torture against the camp authorities.
- The camp authorities had informed the relatives of the detainees of their detention through police messages within a day.
- There is no evidence to prove the legality of the establishment of the Boossa camp under Section 19(2) of Emergency Regulations (2005)³.
- Improved conditions have been shown after the prevailed situation was highlighted by the HRCSL Officers from Matara Regional Office.

(c) Suggestions made by the team to strengthen the welfare of detainees.

- To pay a visit to all the detention centres at least once a month.
- Create a special information collecting format to use when visiting the Detention Camps.

² HRCSL act Section 28(2) Any person authorized by the Commission in writing may enter at any time, any place of detention, police station, prison or any other place in which any person is detained by a judicial order or otherwise, and make such examinations therein or make such inquiries from any person found therein, as may be necessary to ascertain the condition of detention of the persons detained therein.

³ The Gazette of the Democratic Socialist Republic of Sri Lanka(Extraordinary) No:1405/14 ó 2005 Section 19(2) Any Police Officer or member of the Sri Lankan Army, Sri Lanka Navy or Sri Lanka Air Force shall have the right to carry into effect any order made under paragraph(1)of this regulation and to sue all such force as may be necessary for the purpose.

- Create awareness on fundamental rights to the Officers of Detention Camps and of their responsibilities on arrest and detention under the emergency regulations.
- Display posters on Rights of Detainees in all Detention Centres.
- Conduct regular meetings with the Police, Army, Navy and Air Force for the proper implementation of Section 28 of HRCSL Act⁴.
- Develop a Data base on arrests and detention under the Emergency Regulations at the HRCSL Head Office.
- Conduct meetings with the TID to clarify the regularity relating to the establishment of Detention Camps.
- Create a mechanism to share relevant information with the HRCSL Regional Offices.

(d) Recommendations of the Commission

- Immediate action should be taken to issue a receipt, which has been already introduced and published by Ministry of Human Rights when a person is arrested and detained.
- Immediate action to be taken to separate detainees under 18 years of age from the adult detainees
- Setting up a committee consists of Director TID, Senior Officer of Prisons Department, Representatives from Attorney General Department, Legal Aid Commission and Ministry of Human Rights to formulate a management policy of detention camps and to look into the matters related to court proceedings and to improve the coordination between relevant authorities.
- Prison regulations have been adapted to the detainees by the officials and the same Time table for meals is applicable to the detainees. This is to be addressed in the above committee.
- Pradeshiya Sabha of Ratgama as the relevant Local Government Authority of the area to take early action on sanitary issue.

1.2.2.2 Mirihana Detention Centre (Illegal Migrants and Asylum Seekers)

HRCSL carried out an inspection according to the section 11 of HRCSL act⁵. In this centre non Sri Lankans are detained under the Immigration Law. This visit was in response to complaints lodged by Pakistan Citizen, group of Myanmar people and on HRCSL initiative.

⁴ HRCSL Act section 28. (1) Where a person is arrested or detained under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security ordinance, (Chapter 10) it shall be the duty of the person making such arrest or order of detention, as the case may be, to forthwith and in any case, not later than forty ó eight hours from the time of such arrest or detention, inform the Commission of such arrest or detention as the case may be and the place at which the person so arrested or detained is being held in custody or detention. Where a person so held in custody or detention is released or transferred to another place of detention, it shall be the duty of the person making the order for such release or transfer, as the case may be, to inform the Commission of such release or transfer, as the case may be, and in the case of a transfer, to inform the Commission of the location of the new place of detention.

⁵ HRCSL act section 11 monitor the welfare of persons detained either inspection of their places of detention and to make such recommendation as may be necessary for improving their conditions of detention

The team of HRCSL visited the detention centre on 22nd October 2008 and monitored detention conditions in relation to basic needs like food, health, sanitary facilities and unacceptable living conditions.

The Detention Centre is managed by Mirihana Police and the team is assisted by the Officer in Charge. 80 detainees are in the centre and most of them are from Myanmar and others are from India, Pakistan, Bangladesh, China, America, Iran and Maldives. Complaints of Myanmar Citizens reflect the insecurity of their own country and shown the reluctance to be deported. Other detainees are either without passport, visa or criminal charges in the Sri Lankan courts.

The Tents provided for Detainees are put up using Aluminium and Rexene. And also during rainy seasons the water seeps into the sides of the floor. Only 02 toilets and 02 showers are available for 80 detainees.

It was observed that financial allocation for Food per day is Rs. 95.00 per head but according to immigration authorities it is Rs. 125.00 per day. The team observed that there is no monitoring system by Department of Immigration and Emigration and that food can be provided quality than which is being given.

The Commission organized a meeting with Ministry of Internal Affairs, Deputy Controller and Assistant Controller of the Immigration and Emigration Department to discuss the observations of the team and highlighted the views of the Commission on matters related to Human Rights.

Government Authorities have arranged passports for the needy with consultation with Embassies. However Airfare cannot be met. Further the authorities agreed to improve the conditions and inform the Commission. The Commission decided to conduct discussion with UNHCR on related issues and follow up before issuing recommendations.

It is noted Sri Lanka has yet to accede to the Convention on Refugees 1951 and that the States are legally bound to adhere to the principles that have been recognized as Customary International Laws. Under this principle, the state is prohibited from returning a refugee or asylum seeker to territories where there is a risk that his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social groups or political opinion.

1.2.3 Complainant Hearing Duty

Officers are scheduled daily for public hearing to provide proper advice before lodging a formal complaint. The Duty Officer attends to 25 - 40 complaints per a day during office hours.

1.2.4 Hotline Service

24 hours hotline service is available and the public can contact the Commission through the Hotline. Immediate actions are taken on arrest and detentions through contacting relevant authorities. This is a very successful methodology used by the Commission on elimination of torture while in custody. The complaints received on Hot Line are individually addressed, resulting in a 100% success rate in providing relief sought for. In 2008

Commission attended approximately 8000 such complaints. This has amazingly served to deter the custodian of the victim either committing or furthering any intended violation. The devotion of the staff who is assigned with hot line duties is well equipped with necessary details even without sophisticated equipments available in the market.

1.2.5 Registrations of Detention Orders

Under section 28 of the HRCSL Act the Commission is mandated to be informed when a person is arrested or detained under the Prevention of Terrorism Act, No. 48 of 1979 (Temporary Provisions) or a regulation made under the Public Security Ordinance (Chapter 10). It shall be the duty of the person making such arrest or order of detention to inform the Commission of such arrest or detention and where a person so held in custody or detention is released or transferred to another place of detention, regarding such a release or a transfer. The Commission maintains a Registry for Detention Orders and 1317 Detention Orders have been registered during the year 2008. This record facilitates the monitoring of individual detention periods, the dates of expirations and location of detainee.

1.3 Non Implementation of Recommendations

Non implementation of Recommendations is a cardinal issue to be addressed. As per Section 15 (8) of the HRCSL Act where any authority or person to whom a recommendation under the preceding provisions of this section is addressed, fails to report to the Commission within the period specified in such recommendation or where such person reports to the Commission and the action taken by him to give effect to the recommendations of the Commission is in the view of the Commission is inadequate, the Commission shall submit a full report of the facts to the President who shall, cause a copy of such report to be placed before Parliament. Commission has reported 88 such non implemented matters to the President up to 2008. The Ministry of Public Administration had issued Circular No 17/2005 dated 05.10.2005 on Making available the co-operation of Government Institutions in the performance of duties vested in the HRCSL and implementation of HRCSL recommendations but still non implementation of some recommendations continues.

1.4 Selected Cases Focused on Different Aspects

1.4.1 Public Transport: HRC Application No: HRC/ L/4/1036/01

(a) Facts

Inconveniences faced by public who use Piliyandala Kahapola road in public transportation. Following are the allegations made by the Complainants against the Respondents.

- Acted against the normal law of the country and acted according to the laws created by them. Respondents have not listened to the complainants despite of the several complaints made to the authorities to prevent these inconveniences.
- Though the illegal acts and conduct of the private bus owners and their employees have taken place no corrective measures have been taken.
- People live in this locality including Public Officers and School Children had to walk 7 km due to the restrictions imposed on C.T.B buses by the private bus owners and their employees

Based on the facts submitted by the parties:-

- As there is no amalgamated time table the division was made proportionately between the private buses and C.T.B buses.
- The Authority is ready to combine the both services in order to have efficiency if the agreement is entered into by the parties concerned
- The time for traveling and loading was done according to specified time.
- Two time keepers have been assigned by the authority and many other steps have been taken for the betterment of the public
- The authority takes actions against the owners who break the conditions of license as per the Ordinance No.01 of 1992.
- The authority investigates the complaints lodged by the public.

(b) Observations of the Commission

It is observed that this problem arises as there is no combined time table for government owned transport system and private transport system.

1.4.2 Torture: S.K.A.S Fernando Vs. , Negombo Police

(a) Facts:

The Asian Human Rights Commission (AHRC) lodged a complaint on behalf of Mr. Nishantha Fernando stating that he was tortured by the Negombo Police and his life was threatened. Copy of this complaint was referred to Honourable Chief Justice, Honourable Minister of Disaster Management and Human Rights, Attorney-General and Inspector General Police. It was requested to provide relief to him and his family members as their lives were threatened.

While the Commission investigated the matter media revealed that he had been killed. Meanwhile the Commission received a letter from the AHRC emphasizing the need for intervention of the HRCSL.

(b) Recommendations:

The Commission issued the following interim report in this regard and issued following recommendations to relevant state authorities

- The Inspector General of Police and Deputy Inspector General of Police shall take necessary steps to ensure the security of deceased wife and his children until the cases are over which are pending before the Supreme Court and HRCSL
- Recommended to carry out the investigations without the involvement of the officers from Negombo Police
- Transfer Respondents of the complaint till the independent inquiry is over
- The State to take steps to approve the Bill for Protecting Witnesses and Victims of Crime as soon as possible.

In addition to above the Commission was informed that the National Police Commission has taken some steps including transferring the Police Officers who were involved in the matter outside the Western Province (North).

1.4.3 Termination of Services: S.P.W. Jayasiriwardene Vs. Sri Lanka Insurance Corporation

(a) Facts

Petitioner is a Motor Claim Assessor of the Sri Lanka Insurance Corporation Ltd who made complaint against the Corporation. His grievance was unreasonable and sudden termination of his services by the Respondent Corporation is in violation of the Fundamental Rights of the Complainant.

Respondent in his written submissions claimed that Sri Lanka Insurance Corporation was converted to a public company in 1993 and it was not a government entity. Therefore an inquiry against the Respondent cannot be held by the HRCSL. The Complainant in his reply cited the case of *Pinnawala Vs. Sri Lanka Insurance Corporation Ltd. 1997 3 SLR 85* in which it has been decided the Sri Lanka Insurance Corporation Ltd was subject to the Fundamental Rights Jurisdiction of the Supreme Court on the ground that the said Corporation was subject to the control of the state in all its important matters of policy and arrangement and in that it was a "Government agency or instrumentality"

The above case it has been decided that the said Corporation was a government agency or instrumentality subject to the Fundamental Rights Jurisdiction of the Supreme Court. As such the Respondents argument cannot be accepted. The Commission made its observations after considering the submissions and counter submissions.

(b) The Observations of the Commission

The observations of the Commission are as follows:

- The Complainant had been working in the Respondent Corporation as a Motor Claims Assessor from 1993 up to the time of his interdiction. The Commission has to observe that the Commissioner of Labour had made an order that Motor Claim Assessors be paid E.P.F. In addition, E.T.F. by the Respondent Corporation.
- On an alleged complaint by a client the Respondent had not given work to the Complainant and no inquiry had been conducted by the Respondent. The Commission to investigate Bribery and Corruptions had found that the Complainant was not guilty to the said accusation. Even after findings the Respondent had not taken any steps to obtain the services of the Complainant and that the Complainant should have given work after his discharge.
- No reason has been given for this discontinuation when he was not allowed to sign the Assessors Register. An employee has a right to know why any decision was taken against him especially in case it is related to his livelihood.

(c) Conclusion

The Commission observed that the Respondent has violated the Fundamental Rights of the Complainant guaranteed under Article 12(1) of the Constitution⁶ by not allowing him to work as a Motor Claim Assessor from 10th July 2001 without acceptable reasons and the

⁶ Sri Lanka Constitution, Article 12 (1) All persons are equal before the law and are entitled to the equal protection of the law.

Commission recommended that the Respondent should be compensated for the loss of his income.

1.4.4 Child Rights and Torture - HRC Application No: HRC/2684/08

(a) Facts

The Complainant was the father of the victim; a child is studying in grade 6. He was beaten by his school Teacher with a baton as he was not in the class when the Teacher came to the class. It was alleged that the child was hospitalised and had been treated for 2 days. He was examined by the Judicial Medical Officer (JMO) and the report of the JMO states that there is a bruise and what was said by the patient is consistent with the wounds. The Respondent, School Teacher accepted that he beat the child with a cane but not with a baton.

(b) Observations

As per article 28(2) of the Convention on the Rights of the Child, States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

According to the 2005/17 Circular issued by Secretary, Ministry of Education the child cannot be beaten even it is done with *bona fide* intention.

It was revealed that this type of punishment affects the child adversely in following manner. Enhance the risk of child abuse, developing anti social behavioural patterns, aggressive behaviour, destroying the teacher student fiduciary relationship and developing negative impressions.

It was revealed that the said Teacher was unaware of the relevant circular that prohibits the assault of students.

According to article 11 of 1978 Constitution no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(b) Recommendation

The Commission found that there is a violation of fundamental rights of the child that guaranteed under Article 11 of the Constitution. It was recommended further that the Ministry of Education should send the said circular to every school in order to educate the staff of all the schools.

1.4.5 Secondment of Service: HRC/7386/07 M.R. Rathnayake and Others Vs. Secretary, Ministry of Child Development and Women Empowerment, Chairman, National Child Protection Authority and others

(a) Facts

This Complaint is related to secondment of service from National Child Protection Authority (NCPA) since 2002. They transferred from Department of Police to NCPA. When a person is serving on secondment basis as per existing regulations they are entitle to receive 1/3 of their salary as an allowance where NCPA failed to oblige. Complainants argued that their fundamental rights guaranteed by article 12(1) and (2) of the Constitution have been violated. The Respondent said that they made a request to treasury where

UNICEF has made an allocation for this purpose and that they do not allocate the funds for this purpose. It is observed that there is no dispute regarding the claim.

To prove discrimination based upon Article 12 (1) a party will have to satisfy the court about two things. That he has been treated differently from others and he has been differently treated from persons similarly circumstanced without any reasonable basis. Although the Complainant could not establish that these Officers are in similar position as that of the Officers who got this benefit.

(b) Recommendation

The Commission issued a recommendation with broad interpretation which is stated in Paris principle and focused on Child Rights aspect of this case. The NCPA was established for the purpose of formulating a national policy on the prevention of child abuse and protection of child. Thus, the Commission recommends the following based on section 10(c) and (e) of HRCSL act.

- State became a party to Convention on Child Rights in 1991 by signing it. It was informed to the UN Committee on Child Rights that the state ensures the Child Rights by all means.
- The Government Treasury should allocate money for the said 1/3 allowance from the date of UNICEF stop funding in order to encourage the Officers for a better service.
- Secondment should be formalised by the Respondent with the assistance of the Police Department.

1.4.6 Housing Rights: HRC/3447/2008

(a) Facts

the complaint received against the Department of Railways. Petitioners were asked to vacate their shelters which had been built up in the land owned by the Department of Railways. There are about 100 people and they had been living in these temporary shelters for a long period of time. It is evident that the local authorities had issued assessment tax numbers to the said houses. Even though the Petitioners are not the legal owners of the land the Commission intervened in this matter on a different basis.

(b) Observation

Even though the right to Housing is not recognised as a fundamental right in the Constitution, that it is recognised as an important right in the various international instruments. Sri Lanka ratified some conventions to impose an obligation on the State. Article 11(1) of International Covenant Economic Social Cultural Rights (ICESCR)⁷, Article 5 (e) (iii) of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD)⁸, 14(2)(h) of Convention on Elimination of Discrimination Against

⁷ ICESCR article 11 (1). The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

⁸ ICERD article 5 In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (e) Economic, social and cultural rights, in particular: (iii) The right to housing;

the Women (CEDAW)⁹ and the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)¹⁰ are relevant in this regard.

At the inquiry the Commission insisted on the State responsibility and the rights of the people ensured by the article 25 of UDHR, article 11(1) of the ICESCR and the article 12(1) of the Sri Lanka Constitution.

The Commission accepted the fact that the Respondents have the legal right to evict illegal encroachers. At the same time the Commission emphasised on the Human Rights violations of the said Complainants.

⁹ CEDAW article 14 (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

¹⁰ ICRMW Article 43(1). Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

CHAPTER 2

MONITORING AND REVIEW DIVISION

2.0 Divisional Overview

The Monitoring and Review Division start with fulfilling responsibility given to the Commission under the HRCSL Act. The primary directive of the Division is to monitor the status of the human rights in the Country. In order to fulfill this mandate the division is required to plan prioritized programmes for ascertaining consistency with fundamental rights of the Constitution and international human rights norms and standards responsibility for its execution on approval by the Commission for existing legislation. It undertakes the continuing review of current legislation and regulations and also examine systems and procedures of state organizations with potential for violations of fundamental rights and submit proposal to the Commission for making recommendations to the concerned authorities to avoid administrative and executive action that may result in such violations.

The Division is also tasked to an identified any other systemic faults that give rights or permit to violation of fundamental rights by state agencies and recommend remedial measures to the Commission for submission to the government and create general guidelines for state agencies for the avoidance of the violations of fundamental rights in their dealings with the public and their employees. Issuing such guidelines with the authority of the Commission and update such guidelines as and when necessary fall within the mandate of the Division.

In order to fulfill its mandate the Division conducts surprised investigative visits to assist the HRCSL at state children and women's homes and implement necessary programmes to improve the human rights condition in the above institutions. In year 2008 the Division conducted some fact finding missions, institutional visits, policy paper recommendation and attend meetings related to human rights. Also the Division took main part for the UDHR 60th Anniversary programmes in the country.

2.1 Fact-Finding Missions

The Division had undertaken several fact finding missions in different aspects and details of few are given below.

2.1.1 Landslides in Nuwara Eliya District

Severe landslides had occurred in Nuwara Eliya District in the year 2007. Walapane and Haguranketha Divisional Secretaries divisions were affected badly. About 300 families were displaced and accommodated at welfare centers. According to the electronic media reports, the basic needs of the welfare centers were very poor and there were landslides threats at welfare centers sites too. The HRCSL conducted a fact finding mission on 13th to 15th January 2008 and identified the problems and made recommendations to the government together with the views on the situation. It was found that there were about 15 welfare centers and 205 families were still remaining in those welfare centers.

2.1.2 General Hospital – Negombo (Preliminary Mission for the National Inquiry on the Right to Health)

Sri Lanka provides highest primary health care facilities among the South Asian nations. It includes primary and community health facilities. However the available health facilities are not equally distributed among the citizens always. In 2008, there were many newspaper reports about problems related to the medical facilities in various parts of the country. HRCSL also received number of complaints about issues related to the right to health. It was planned to conduct a National Inquiry on the right to health by the HRCSL. The programme consists of fact-finding, public hearing, and high profile consultation session. Originally the Division had planned to do a fact-finding mission at five different levels of hospitals in Gampaha District. But, this programme was limited to primary visits to General Hospital, Negombo due to financial constraints.

2.1.3 Declaration of Emergency Situation due to Chikungunya - Ratnapura

In May 2008, the Hospitals in Rathnapura district were filled with patients suffering from fever. After few months, there were patients with Post *Chikungunya* Symptoms. Therefore, economic activities of the district functioned at a minimum level. The President considered this situation and declared an emergency in Rathnapura district on 28th May 2008. The HRCSL conducted a Fact-finding Mission at Rathnapura.

As per findings of the team, medication for disease was carried out with lack of resources such as doctors and nurses. Equipments for controlling mosquitoes were insufficient. In addition to the above, there was an issue related to procedure and law of controlling transmissible diseases in Rathnapura district. Firstly; according to the Urban Council Act, the Chairman of the Urban Council does not need to consult health authority of an area on the public health matters. This position had negatively effected on the prevention and controlling transmissible disease of the urban area. Secondly, there is no clear identification of the health promotion in the Estate sector and no coordination on the health issues between Plantation Companies or Plantation Human Development Trust and Provincial Director's Office of Health Services. HRCSL has brought these matters to the notice of relevant authorities.

2.1.4 Demolishing Houses and Businesses at Glennie Passage in Slave Island by the Urban Development Authority (UDA)

Residents at Glennie Passage in Slave Island have faced with very sorrowful experiences due to the demolition of houses and business premises by the UDA in 18th July 2008. The Ministry of Defence has sent letters on 10th July 2008 to the residents at Glennie Passage, emphasizing that they were illegal residents and this land belonged to this Ministry. Therefore, it has decided to demolish all illegal constructions due to the current security situation. UDA has provided an alternative shelter at Grandpass. The residents at Glennie Passage were not happy with these inferior quality shelters as the shelters were very small, made of wooden planks with poor facilities. Residents sought relief from the Judiciary and UDA removed 39 illegal constructions while it was preceding the process of Judiciary. Action of UDA created a large public demonstration. HRCSL decided to conduct a fact-finding mission on this matter. HRCSL team visited Glennie Passage, shelters in Grandpass and met affected people and UDA Officials. It was revealed that UDA has

planned to build a new housing scheme for the Glennie Passage people in Dematagoda and HRCSL team visited that place too.

General Observation:

- UDA should make alternative arrangements prior to demolition taking place.
- The UDA followed improper procedure to evacuate people. Appropriate procedure should be followed with people's participation in future activities as it directly affects the people.
- Government mechanisms had failed to maintain the proper co-ordination among them and it should be maintained to provide proper assistance to relocated people.
- People should have equal protection before the law, but in this incident, it has been violated by the UDA as proper procedures have not been followed and as people have been treated inhumanly. The compensation should be paid for the damaged property or belongings.
- Government should ensure that alternative measures have been taken prior to evacuation of the people.
- While Considering the National security and the security of families who are living in those areas arrangements should be made to evacuate with alternative measures with durable solutions for affected people.

Since Supreme Court case was pending, the Commission has only looked into the measures taken by the stakeholders.

2.2 Institutions Visits

The Division has visited three custodial institutions during the year 2008 such as Remand Home (for Boys) at Pannipitiya, -Prajapathi State Receiving Home at Panadura and Remand Home at Ranmuthugala (for Girls). These visits were aimed to recommend the government on the requirement of fulfilment of norms of the institution into internationally accepted standard and awake the relevant authorities to perform their duties in proper manner.

2.3 Ratification of the Convention on the Rights of Persons with Disabilities

HRCSL is vested with powers to make recommendation to the Government on the need to subscribe or accede to treaties and other international instruments in the field of Human Rights. The Commission has to comply with Paris Principles of the United Nations and it states that National Human Rights Institute (NHRI) should encourage ratification or accession of International Human Rights instruments.

The Convention on Rights of the Persons with Disabilities is open for signature by all states and by regional integrated organizations at United Nations Headquarters in New York as of 30th March 2007. The Commission observed that the Sri Lankan Government has not yet signed this Convention.

The Commission observed that the conflict situation in the country, disability comes in different forms, and rights of disabled persons should be protected in international level and national level. The Commission recommends the government to ratify and accept the Convention and implement the provisions of the Convention within the country.

2.4 Participating Action/ Policy Plan Meetings

The Division is one of the key members on National Committee on Women of the Ministry of Child Development and Women's Empowerment. This Committee mainly deals with Migrant Women issues. This Committee meeting is organized periodically to take necessary actions for preparation of a Plan of Action for Migrant Women. Mainly, network focused its attention on;

1. The role of the Association of Licensed Foreign Employment Agencies and local level suppliers
2. Welfare Officers' role, qualities and responsibilities
3. Welfare of children of migrant women
4. Proper agreement between employer and employee
5. Pre migration arrangement such as training and medical test

There is a Steering Committee of Child Helpline and Human Rights Commission of Sri Lanka is also a member of the said committee.

2.5 Other Activities

The Division has conducted two awareness programmes. The Director of Sri Jayawardenapura General Hospital requested to hold a special awareness programme for the health professionals of the Sri Jayawardenapura General Hospital. This programme mainly focused on right to health and responsibility of health professionals. In addition, Magistrate of Pugoda requested to conduct a special awareness programme for the female students of Kirindiwela on Child Rights and How to Prevent Child Abuse was the focused area of the programme and this was highly taken up as a Judicial Officer had observed the necessity of such a programme.

CHAPTER 3

EDUCATION AND SPECIAL PROGRAMMES DIVISION

3.0 Divisional Overview

The Education and Special programme Division is carrying out the functions according to the mandate as set out in the HRCSL Act No 21 of 1996. Mandate related to Human Rights Education is to promote awareness of and provide education in relation to human rights. The human rights education programmes are incorporated in the 2007 ó 2009 HRCSL strategic plan. The Goal Two of the strategic plan is said as follows, "Public awareness on fundamental rights and other Human Rights and a willingness and capacity to enforce them". The importance of Human Rights Education was recognized by several institutions in year 2008. Specially governmental institutions invited the HRCSL head office level as well as regional level on their own. Such as Police In service Training Centers, Divisional Secretariats and Exercise Department etc. At regional level several INGOs, NGOs and Community based Organizations (CBOs) jointly with Regional Office conducted awareness programmes for different target groups, such as Government Officers, Community leaders, NGO officers, Women, Students, IDPs etc.

This year, the Division paid more attention on group rights. Especially on health right as HRCSL received many complaints on issues related to medical negligence, other health related issues and several health issues published in Local News Papers. The Special awareness programme designed and conducted based on such information.

Staff capacity building in various aspects also carried out by the Division. Training directly related to their work as well as support for their work was provided. Certain training programmes organized directly and some were organized together with the other institutions such as Center for study of Human Right (CSHR), Faculty of Law, University of Colombo. Special lectures were organized for the staff and selected staff was sent for training on short courses. Special events were organized to commemorate the special days too. Also took part in wider promotional activities for the UDHR 60th anniversary programmes.

Within the available resources, activities were carried out to the maximum during the year 2008. Activities which are stated under goal two of strategic plan 2007 ó 2009 were covered up to a certain level.

3.1 HRCSL Staff Capacity Building Programmes

The division designed and organized internal and external training programmes for HRCSL staff.

3.1.1 Internal Training

Programmes were organised for the Improvement of Work Productivity through Effective Usage of Personal Computers to enhance knowledge and carry out day to day work effectively. Training included uncovering modern easy technologies which are not utilised

by the staff accurately. And the programme was conducted in collaboration with the IT unit of HRCSL.

Rights Based Disaster Management Programme was organised with the collaboration of NPDS project of IDPs in HRCSL. The staff was educated on unexpected natural disasters man-made disasters and conflict situation crisis and changes.

Four special lectures were organised for the staff of the Head Office such as No More Stress at Work Place, Laws Relating to State Land, Permits Issued to State Lands and Recovery of State Lands, The Work Relating to the Labour Department, Labour Tribunal and other similar Institutions and the Commissioner for Workmen's Compensation.

3.1.2 External Training

HRCSL staff selected and sent to external training programmes such as Workshop on conflict Management and workshop on Good Governance.

3.2 Human Rights Awareness programme

The division organised several human rights programmes which were focused on different aspects of human rights and different target groups.

3.2.1 Awareness Programmes on Health Rights

This year the Division mainly focused on health rights for Nurses Training School, Hospital Staff and Medical Officer of Health (MOH) Staff. 04 Awareness programmes on health Rights were conducted for Doctors, Nurses, Public Health Inspectors, Midwives and other Health Staff. Also the document relating to Health was developed and provided to participants.

3.2.2 Human Rights and Women Empowerment Programmes

The Division organized 10 programmes collaboration with the Divisional secretariats on Women Empowerment Programmes. This programme includes Human Rights and Gender based Accountability and Human Trafficking.

3.2.3 Human Rights Awareness Programme for Excise Department Officers

The Excise Department of Sri Lanka has requested the Commission to arrange programme for Excise Department Officers. The Division organized two programmes and 84 Officers participated.

3.2.4 Human Rights Awareness Programme for Police Officers

The division conducted 07 programmes combining with Police Training College and the Police In-service Training Institutes.

3.2.5 Special Events

International Women's Day 2008 ó A programme was conducted at Nurses Training School, Colombo under the theme Ensure the Women's Health Rights through Emphasizing the available Health Mechanism

International Day in Support of Torture Victims ó A programme was conducted at Police Training College, Kalutara to commemorate the day. 200 trainee Police Officers participated in the programme.

Dayata Kirula Independence Day Exhibition ó The HRCSL participated at the Dayata Kirula Independence Day Exhibition which was held at the BMICH. Thousands of people visited the stall.

National Law Week Exhibition ó HRCSL participated in the National Law Week Exhibition organised by Bar Association of Sri Lanka(BASL) held at the Faculty of Law, University of Colombo. Purpose of this week is to awaken the people of their legal rights and privileges guaranteed to them by the Constitution and other laws of the country so as to facilitate them to obtain and enjoy the rights and privileges they are entitled to as a right.

Legal Aid Clinic - HRCSL also participated at the Legal Aid Clinic organised by the Law Students Human Rights Movement of Sri Lanka Law College.

International Human Rights Day ó the Division organized the International Human Rights day 2008 and UDHR 60th Anniversary celebration on 10th December 2008 at Bandaranayake Center for International Study (BCIS). In this programme, Secretaries of respective Ministries, Chairman from different Commissions, Head of Governmental Departments, Representatives of foreign missions, UN Organizations, INGOs and NGOs participated. On this occasion Mr. Neil Bhune, Resident Coordinator, United Nation was invited as Chief Guest.

CHAPTER 4

UNIVERSAL DECLARATION OF HUMAN RIGHTS - 60TH ANNIVERSARY COMMEMORATIONS

On 10th December 2007, Human Rights Day a year long campaign was launched in which all parts of the United Nations Family take part in the lead up to the 60th Anniversary of the Universal Declaration of Human Rights (UDHR) on Human Rights Day 2008. The Theme of the campaign was **“Dignity and Justice for all of us”**.

As part of the commemorations for UDHR the United Nations High Commissioner for Human Rights calls on NHRI to pay special attention to the rights of persons deprived of their liberty as they are particularly exposed to human rights violations. In many countries detainees face obstacles in accessing health care and basic amenities. Also certain groups of detainees also face particular problems such as women and juvenile detainees. For instance a significant number of women are held together with their children posing special challenges for the enjoyment of their and their children’s rights as well as for the administration of prisons.

Taking this initiative into consideration in 2008 the Commission has given its priority to coordinate the 60th Anniversary Celebrations by the Monitoring and Review Division. Therefore the Division has drawn a special focus on Juvenile detainees and monitored closely the new trends in the Youth offenders and Juvenile Detainees and the visiting mechanisms in detention places. An Activity plan which is to be carried out by the Commission submitted to the OHCHR and funded to carry out.

4.1 Proposed Activity Plan of HRCSL for UDHR 60th Anniversary

An activity plan consisting of 05 activities were submitted to OHCHR and a special attention was given to Fact finding Mission on the youth offenders and young detainees in state detention homes. The activities proposed and the actions taken are given below.

4.1.1 Activities 1: Fact-finding Mission on the Youth Offenders and Young Detainees (Children under 18) in State Detention Homes in Sri Lanka

Fact-finding mission on the youth offenders and young detainees (Children under 18) in state detention homes in Sri Lanka focusing mainly in the North and East where the issue is at peak will be initiated in the Jaffna District as a Pilot Programme. Here the demographics, welfare, protection, rehabilitation and future well-being of the detainees of the children will be monitored and analyzed. The programme the HRCSL believes that this initiative will pave the way to allow the HRCSL to be knowledgeable about the current situation at these detention centers, which in turn provides room for the Commission to act with other stakeholders for the future well being of these children.

4.1.2 Activities 2: High Profile Consultation Meetings

High profile consultation to be conducted on the human rights situation of the youth offenders and young detainees in detention homes in Sri Lanka. These meetings will be held

to ensure sustainable and continuous improvement of a detention process that focuses on the Rights of the detainees themselves. This programme will no doubt serve as a benchmark for the future activities of all stakeholders and will provide a base for the relevant authorities to actively participate in the decision process where they too will be held responsible for the actions taken.

4.1.3 Activities 3: Preparation of a Guideline on the Visiting Mechanism to Places of Detention for the Officials of HRCSL

This guideline will focus on the prevention of degrading treatment of persons deprived of their personal liberty and detention home visits.

4.1.4 Activities 4: Public Awareness on Dignity and Justice for Detainees

Public Awareness will be organised on Dignity and Justice for Detainees for Public Officials such as Prison Officers, Probation officers and Police officers.

4.1.5 Activities 5: Advance Training for HRCSL Staff

HRCSL has already adopted *Zero Tolerance Policy* on eradication on torture, and to carry out activities towards this goal it is planned to improve this mechanism by providing further training to regularize a better role towards the international norms and standards which would be useful to enhance the knowledge of the officials.

4.1.6 Activities 6: Regularizing the Proper Mechanism on Detention

The HRCSL is of the view that the importance of regularizing the proper mechanism on detention, and to act as the chief component on independent national monitoring. HRCSL is proposing to the Government to strengthen the present mechanism in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to uplift and conform to international standards.

These activities were carried out by the Monitoring & Review Division (1, 2&3), Education and Special Programmes Division (4&5) and Inquiries and Investigations Division (5&6).

4.2 Progress of the Activities

4.2.1 The Progress of the Activities No.1, 2 & 3

Special Project was formulated which is included activities No.1, 2 & 3. This project focused on:

1. Children handed over to the Commission's Regional Office, as a pre-emptive action due to real or perceived threat of abduction or recruitment as a child soldier;
2. Children handed over to the Commission's Regional Office for protective custody;
3. Juvenile Offenders and Detainees;

As the pilot project detention centre at Jaffna Peninsula and in the Western Province Gampaha District (Pallansena) Youth Offenders Training Centre were taken and sudden visits were carried out.

4.2.2 The Progress of the activities No.4 & 5

This year reached another milestone in human Rights. That was the 60th Anniversary of Universal Declaration of Human Rights (UDHR). As a NHRI the Commission organized UDHR 60th Anniversary Campaign Island wide. It initiated to declare Human Rights Week from 4th to 10th December 2008. His Excellency the President declared this week. The issue of UDHR 60th Anniversary Commemorative Stamp was a very significant event. Various programmes in schools Awareness programme for differently able people and Human Rights and Stress Management programme for Prison Officers were arranged. Also wide media campaign took place at national level.



Figure2: First day cover for UDHR 60th Anniversary

CHAPTER 5

REGIONAL SET UP

6.0 Regional Overview

The Commission has built its local human rights capacity through its regional set up consisting of Ten Regional Offices and one Sub Office. The Regional offices are committed to work with wider community to ensure the rights and responsibilities of everyone and also ensuring the dignity, equality and security of everyone all the time. The regional set up reports monthly to the Commission the dispute resolution results with positive outcomes for the parties and the durable settlements.

6.1 Ampara Regional Centre

Ampara Regional Office received 195 complaints during the year 2008. Out of which 76 cases were inquired into by the regional office and redress provided. 54 cases were referred to Head Office for further inquiry or reporting. The Office has made 133 visits to Police Stations as well as Special Places (TID) of the region. The Office conducted 24 educational programmes which include workshops and seminars. Programmes were conducted for Police Officers, Public Servants, students and civilians. The Office collaborated on some projects with civil societies of the area.

6.2 Anuradhapura Regional Centre

The Anuradhapura Office received 706 complaints in 2008. The Office concluded 739 cases with the remaining brought forward from the previous year. The office made 181 visits to Police Stations and Detention Camps during the year. 32 Human Rights education and awareness programmes were conducted covering various aspects and areas relating to human rights. Special programmes were conducted to commemorate the Children's day and International Human rights day.

6.3 Badulla Regional Centre

The Badulla Office received 275 complaints and concluded 383 cases including previous years in 2008. 262 visits were made to Police Stations and Prisons. The Office conducted 15 awareness programmes, and the target groups for these programmes were Police Officers, State Officers, School Teachers and Students. Special programmes were conducted to commemorate the Children's day and International Human Rights day.

6.4 Batticaloa Regional Centre

The Batticaloa Office received 734 complaints in 2008. Out of which 303 were concluded and 166 cases were also settled. 34 awareness programmes were conducted and 1715 persons benefited through this programmes. The Officers visited Police Stations and Detention Centres in the discharge of duties.

6.5 Kalmunai Regional Centre

The Kalmunai Office received 410 complaints in 2008. The Office visited 58 Police Stations and also visited Children's Homes. The Office conducted 35 programmes during the year under awareness and training programmes.

6.6 Kandy Regional Centre

Kandy Regional Office received 1087 complaints during the year. Out of which 694 cases were concluded. 52 Police Stations were visited during the year. The Office conducted 39 educational and awareness programmes in 2008. Special programmes were conducted to commemorate the Children's day and International Human Rights day.

6.7 Jaffna Regional Centre

Jaffna Office received 444 complaints during the year. Together with the balance brought forwarded from 2007 the total of 531 cases handled in 2008. And the redress was granted to 226. Most of the cases are disappearances and threat by unknown persons. 64 Police Stations visits were made during the year. 02 Children Homes were visited and one visit was made to the Thellipalai Rehabilitation Centre where surrendees to the Sri Lanka Military is undergoing rehabilitation and the protection seekers who seek the protection of the Commission.

6.8 Matara Regional Centre

Matara Regional Office received 819 complaints during the year 2008. The Office made 538 visits to Police Stations and 15 visits to Detention Camps and Prisons during the year 2008. The Office conducted 18 educational and awareness programmes. In addition to this, programmes were conducted on International Children's day and International Human Rights Day.

6.9 Trincomalee Regional Centre

Trincomalee Regional Office received 453 Complaints. And relief was granted for 16 and 78 cases were concluded during the year. 82 visits covered such as Police Stations, Remand Prisons and IDP Camps. 19 awareness programmes were conducted during the period covering general public, Government Offices, NGOs, INGOs, students etc.

6.10 Vavuniya Regional Centre

The Vavuniya Office received 1152 complaints during the year. The Office conducted 32 human rights awareness programmes and also visited 43 Police Stations.

Type of the Complaints	Kandy	Matara	Anuradh ipura	Badulla	Ampara	Trinco malee	Jaffna	Vavu niya	Kalm unai	Batic aloo	Total
Promotion	21	10	16	--	06	03	--	09	11	06	82
Transfers	29	15	31	06	07	04	--	02	--	08	102
Recruitment	09	71	15	05	01	05	--	01	47	63	217
Interdiction	--	--	--	--	--	--	--	--	02	--	02
Service Extension	02	--	--	--	07	01	--	--	12	--	22
Retirement /Termination	05	--	28	03	01	--	--	59	05	02	103
Pension / EPF / ETF	23	05	25	10	02	02	02	01	12	05	87
Property Matter	109	124	47	19	--	04	--	04	32	32	371
Employee Benefit	106	14	30	44	--	07	--	09	12	25	247
School Admission	59	92	09	04	03	01	--	07	02	06	183
University Admission	--	--	--	--	--	--	--	--	--	--	--
Others (Economic, Social, Environmental & ext:)	159	311	--	109	119	33	113	107	97	186	1234
Arrest/Detention	57	47	51	04	03	154	29	243	41	138	767
Torture	72	114	52	29	23	--	31	08	08	--	337
Death (in custody police)	--	--	--	02	--	01	02	--	--	03	08
Harassment	--	16	59	--	01	13	--	57	05	63	214
Inaction Complaints	127	--	276	43	21	--	--	--	41	10	518
*Missing/Abduction/Disappearance	04	--	07	04	--	183	127	301	60	197	883
18 below	--	--	--	--	--	--	01	--	--	--	01
18 above	--	--	--	--	--	--	--	--	--	--	--
Shooting	--	--	--	--	--	32	--	20	--	--	52
Extra Judiciary Killings	--	--	--	--	--	--	15	--	--	--	15
Surrenders	--	--	--	--	--	--	29	--	--	--	29
Threat	--	--	--	--	--	--	37	280	--	--	317
Total	782	819	706	282	194	453	386	1152	387	734	5791

Table 3: Categorization of Cases - Regional Centres - 2008

CHAPTER 6

SPECIAL DISCUSSIONS

On behalf of the Commission HRCSL secretariat made necessary arrangements for special meetings. These discussions were very useful for the Commission.

5.1 Meeting with United States Ambassador Mr. Robert O' Blake

The Ambassador for the United States of America called over at HRCSL Office on a courtesy visit and was very much pleased with the humanitarian work carried out by the Commission.

5.2 Meeting with Asia Pacific Forum Officials

Asia Pacific Forum delegates including its Director Mr. Kieren Fitzpatrick and a Commissioner from Malaysian Human Rights Commission visited HRCSL and had very cordial discussions. Their main aim was to regain the ~~A~~ status for HRCSL in the ICC forum. Their advice on publishing of annual reports and giving publicity to the work of HRCSL were highlighted facts.

5.3 Meeting with European Union and United Nation Teams

The UN teams in local office such as UNDP, UNHCR, UNICEF and a team from EU ambassadors visited HRCSL in order to find out how they could help the HRCSL on capacity building.

CHAPTER 7

FOREIGN FUNDED PROJECTS

7.0 Overview of Projects

The Commission has donor funded projects to meet the Commission's objectives. The Oxfam GB funded the Disaster Relief Monitoring Unit (DRMU) and UNHCR extended their financial and technical support to the National Protection and Durable Solution for Internal Displaced Persons Project (NPDS for IDPs).

7.1 Disaster Relief Monitoring Unit (DRMU)

The role of the DRMU under the HRCSL is to monitor the relief and rehabilitation which is being handled by the Government of Sri Lanka and frequently implemented and funded by international and national non-governmental organizations and inter governmental development organisations. This means that the main concerns of the DRMU are ensuring that persons and communities not to face any infringements of their fundamental or human rights caused through the actions or inactions within the year of 2008.

DRMU's activities continued only in the Eastern Province, namely, Ampara (Kalmunai), Batticaloa and Trincomalee Districts. The DRMU conducted consultations with the Tsunami affected communities, relevant stake holders and Government officials in these Districts. DRMU staff attached to the Head Office along with HRCSL Regional Staff visited existing transitional camps and new resettlement locations and conducted fact finding missions and awareness programmes concerning housing and livelihood issues. In addition, numbers of discussions were held with Tsunami affected communities at their new settlements to review the status of recovery and development. These discussions were carried out with emphasis on several major areas such as vital needs which included status of access to water, health and sanitation, food consumption, housing and basic social services like status of school children, transport and hospital services.

Field visits formed one of the most important aspects of the Unit's activities, during year 2008. Field visits were done in Ampara, Batticaloa and Trincomalee districts specially in resettlement scheme. The visit to Pothuvil was targeted as a fact finding mission in the region.

In Ampara District, certain affected areas such as Akkaraipattu, Potuvil and Thirukkivil are with excess housing while in other areas such as Sainthumaruthu, Kalmunai and Marathamunai the expected number of houses still have not been completed and handed over. In fact in Ampara district alone there are 666 families still waiting for donor driven permanent housing and at present most of these families are living in transitional shelters and with hosts. In Batticaloa District, there is a need of 106 permanent houses for affected community in Kathiraveli of Vaharai DS Division.

The east is on a slow path to recovery but due to the new development programmes which have been initiated after the re-unification of the east and the sudden increase of political will for development, sees the region grow in infrastructure which undoubtedly will assist in resolving issues. The reasons for delays in the East are due to several inter-connected issues, including the conflict and climate of insecurity, the lack of donors for housing construction to the affected communities (Vahari), the lack of appropriate land (Kalmunai, Sainthamaruthu, Karaitivu, Town and Gravets), insufficient communication with the affected communities and implementation of policies and poorly defined government Tsunami policies (eg. Buffer zone, compensation criteria and housing standards).

The DRMU carried out programmes with emphasis on several major areas such as vital needs which included status of access to water, sanitation, housing, health and land, secondly basic social services like status of school children, psychosocial status, status of roads, hospitals, clinics and finally with reference to livelihoods, status of agriculture, loan schemes, social programmes, fishing gears, self employment were also evaluated.

The invaluable information gathered and insights gained from the same, along with interventions made on behalf of affected persons, clearly justified the premeditated allocation of the Unit's time and resources towards such work. The DRMU's ability to successfully follow-up on all matters unearthed, especially during field visits.

The DRMU monitor assistance delivery by both Government bodies and NGOs in Vaharai Area. During this exercise the Unit's officials were able to consult: members of the public; CBOs; local and national level NGOs; Government officials such as Gramaseva Niladharies and Samurdhi officers. As a result of the Unit's said endeavour and eventual dissemination of all vital information gathered among the donor community, it was possible to bridge the impugned assistance delivery gap to some extent; for instance, aid by the Danish International Development Agency (DANIDA) was coordinated as a result of the said involvement by the DRMU.

7.2 National Protection and Durable Solution for Internal Displaced Persons Project (NPDS for IDPs)

NPDS for IDPs Project of the HRCSL was initiated in the year 2002, with a mandate to both promote and protect the rights of all IDPs. The Project also advises the government as regards enacting reformative laws and procedures concerning IDPs. The Project operations are currently centred in the districts of Anuradhapura, Batticaloa, Colombo, Jaffna, Puttalam and Trincomalee. The vision of the Project is to ensure a life with Dignity for Internally displaced persons. The mission of the Project is to be the Social and legal guardian of both the IDPs and eventual returnees. The strategies of the project are (i) Capacitating protection mechanisms (ii) Capacitating internally displaced persons and their environment and (iii) Proactive and reactive intervention in human rights protection.

In 2008 over retracted IDPs and recently displaced were accounted for.

7.2.1 Protection and Monitoring

The 138 Monitoring Missions were conducted by the project and different actions such as rectifying, forwarding and lobbying were done and found some solution for the findings. 379

complaints were received and disposed. 1263 legal consultations were done to IDPs returnees and host community members. 73 co-ordinating meetings with the UNHCR in all the regions were held and the reports were shared. Also monitoring mission and joint programmes were held with UNHCR.

7.2.2 Trainings

The 97 NGOs/CBOs were trained on Right Based Disaster Response in Vavuniya and Trincomalee. 10 Co-ordination meetings and 5 joint field visits were held with NGOs. 62 Camp Officers in Puttalam District were trained on responsibility of Camp Officers on Protection of Human Rights of IDP through 3 training programmes. The Technical and Planning Officers of the Local Government Service, Anuradhapura were made aware about their responsibility in providing their services to IDPs. 361 Military Officers were trained on Right Based Disaster Response through 9 training programmes.

55 training programmes were conducted to capacitate 318 Human Rights Defenders on Human Rights, Fundamental Rights, Rights of IDPs, Rights of Children and Women, Court System and Remedial Institutions, Service Providing Institutions, Disasters and First Aid, Right to Education, Right to Health, Consumer Right etc in Anuradapura, Batticaloa, Vavuniya, Trincomalee and Puttalam. Also 57 HRCSL staff was trained on Right Based Disaster Response and Protection of IDPs to respond effectively during disasters.

7.2.3 Co- ordination

Studies were done on the services of 20 state services providing institutions and 24 remedial mechanism co-ordination meetings were held. Participated in CHA sub committee meeting on resettlement and welfare of IDPs and IDP Protection workshop group meeting at the national and district level.

7.2.4 Advocacy and Studies

A Draft IDP bill was handed over to the Minister of Disaster Management and Human Rights and the Draft Resettlement Policy also handed over to the Ministry and a Committee was set up to evaluate and develop the draft. Study on Right to Education of IDPs and Right to Health of IDPs were completed.

CHAPTER 8

ADMINISTRATION AND FINANCE DIVISION

8.0 Overview of the Division

The Division provides necessary resources to carryout the tasks to achieve the Commission's goals.

8.1 Organization Structure

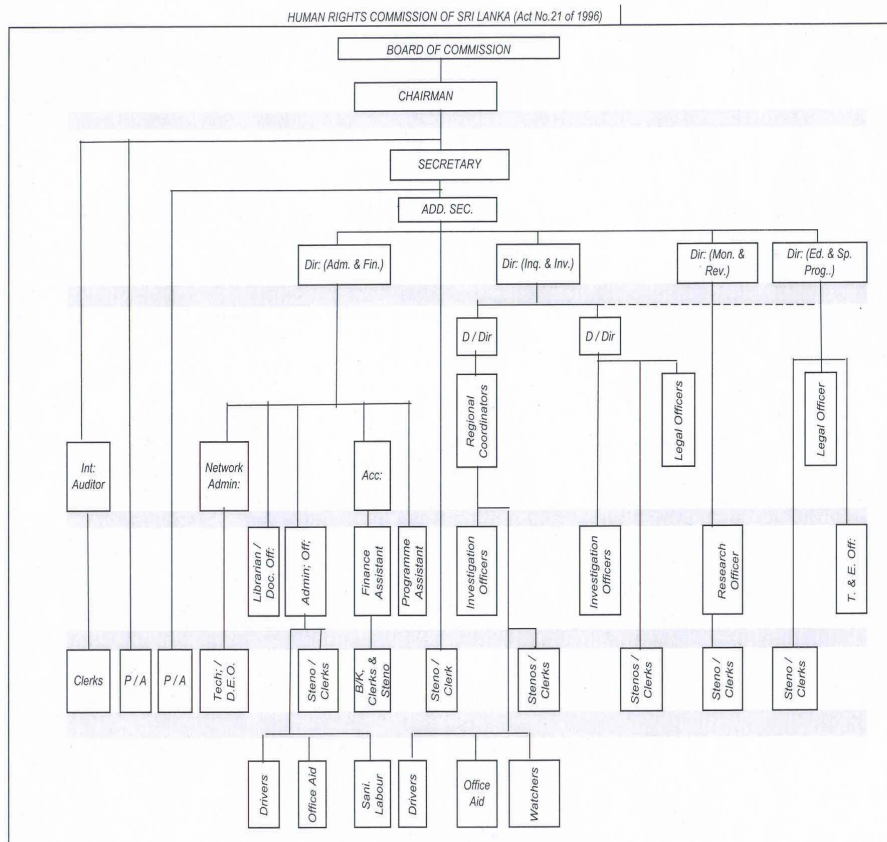


Figure3: HRCSL Organizational Chart

8.2 Financial Statements

8.2.1 Recurrent Expenditure

The Government provided adequate funds for the recurrent expenditure for the year under review. The HRCSL estimated recurrent expenditure was Rs.102.56 million for the year 2008. This total expenditure was allocated through the Government Grant. Out of this total expenditure, Rs.94.67 was only incurred during the year resulting a saving of Rs. 8.0 million or 8%. The total estimated expenditure and actual expenditure were as follows in respect of the following expenditure items;

	<u>Total Recurrent Expenditure</u>		
	<u>Estimated</u>	<u>Actual</u>	<u>Variance</u>
	Rs.(M)	Rs.(M)	Rs.(M)
Personal Emoluments	67.1	62.9	4.2
Travelling Expenses	1.1	0.6	0.5
Supplies	4.1	4.6	(0.5)
Maintenance Expenditure	2.0	2.8	(0.8)
Contractual Services	25.0	20.7	4.3
Others	3.3	3.1	0.1
Total recurrent expenditure	102.6	94.7	7.9

8.2.2 Balance Sheet

HUMAN RIGHTS COMMISSION OF SRI LANKA
BALANCE SHEET AS AT DECEMBER 31, 2008

	<u>2008</u>	<u>2007</u>
	<u>Rs</u>	<u>Rs</u>
<u>NON CURRENT ASSETS</u>		
Motor Vehicles	41,544,711	42,134,711
Equipment	2,950,628	2,491,231
Furniture & Fittings	1,201,567	1,064,993
Library Books	212,631	137,643
Computers	316,250	316,250
	46,225,787	46,144,828
Accumulated Provision for Depreciation	(26,722,421)	(15,935,231)
Net written down value	19,503,366	30,209,596
<u>CURRENT ASSETS</u>		
Stocks	143,678	133,544
Receivables	363,475	151,286
Staff Loan	1,954,666	2,114,498
Advances	2,612,700	2,594,960
Deposits	200,000	270,000
Pre-payments	1,140,781	1,360,315
Cash & Bank	3,034,611	9,051,530
	9,449,911	15,676,134
<u>CURRENT LIABILITIES</u>		
Payables	944,479	190,141
Accrued Expenses	2,053,040	1,988,720
	2,997,518	2,178,861
Working Capital	6,452,392	13,497,273
	25,955,759	43,706,870
<u>Financed By</u>		
<u>CAPITAL</u>		
<u>CAPITAL GRANTS</u>		
Government Grants	29,074,008	28,299,008
Donations	24,907,426	24,907,426
	53,981,434	53,206,434
Capital Grants Amortization for the year	(10,934,689)	(9,415,273)
Capital Grants Amortization for prior years	(15,935,231)	(6,519,959)
	(26,869,921)	(15,935,231)
Transferred	(7,200,000)	-
	19,911,513	37,271,203
<u>RESERVES</u>		
<u>ACCUMULATED FUND</u>		
Balance Brought Forwarded	(1,783,808)	(9,915,241)
Prior year adjustments	(285,830)	-
Prior year adjustments for amortization		6,519,959
Surplus / Deficit for the year	(1,281,808)	1,611,475
Balance carried forward	(3,351,445)	(1,783,808)
GRATUITY PROVISION	9,395,690	8,219,475
	25,955,759	43,706,870

Sgd. B. A. R. Bamunusingha
Director (Admin & Fin)

Sgd. MsC. Ellawela
Secretary

Justic Deshabandu S. Anandacoomarswamy
Chairman

Note

The figures related the capital grant amortized / revenue recognized related to capital grants and provision for depreciation in the previous years have been restated for easy comparison.

8.2.3 Revenue Statement

<u>HUMAN RIGHTS COMMISSION OF SRI LANKA</u>		
<u>REVENUE STATEMENT FOR THE YEAR ENDED DECEMBER 31, 2008</u>		
	<u>2008</u>	<u>2007</u>
	<u>Rs</u>	<u>Rs</u>
<u>REVENUE</u>		
Government recurrent Grants	94,450,000	85,480,000
Foreign Grants		1,607,842
Other Income	463,957	148,563
Revenue recognized on Capital Grants	10,934,689	9,415,273
	105,848,646	96,651,678
<u>EXPENDITURE</u>		
Personnel Emoluments	62,321,383	56,310,672
Travelling Expenses	610,822	1,346,459
Supplies	5,014,619	5,085,752
Repairs & Maintenance	2,729,263	2,013,912
Contractual Services	18,274,663	15,357,688
Other Expenses	4,311,092	1,273,841
Expenditure on Special Programmes	1,173,963	1,491,857
Provision for Depreciation	10,934,689	9,415,273
Provision for Gratuity	1,759,960	2,744,751
	107,130,454	95,040,203
Surplus / (Deficit)	(1,281,808)	1,611,475

8.2.4 Cash Flow Statement

<u>HUMAN RIGHTS COMMISSION OF SRI LANKA</u>		
<u>CASH FLOW STATEMENT FOR THE YEAR ENDED DECEMBER 31, 2008</u>		
	<u>2008</u>	<u>2007</u>
	<u>Rs.</u>	<u>Rs.</u>
<u>CASH FLOW FROM OPERATING ACTIVITIES</u>		
Government Grants - Recurrent	87,250,000	85,480,000
Other Receipts	382,207	335,016
Un Funds for UDHR	869,840	
Cash receipts for Projects	3,280,246	5,293,022
Cash Payments for Projects	(3,968,342)	(4,619,355)
Operating Expenses	(94,666,749)	(86,106,941)
Net cash flow from operating activities	(6,852,799)	381,743
<u>CASH FLOW FROM INVESTING ACTIVITIES</u>		
Government Grant - Capital	775,000	8,575,000
Cash proceeds from sale of motor vehicles	682,500	-
Acquisition of Fixed Assets	(621,621)	(480,752)
Improvement of fixed assets	-	(1,800)
Net cash flow from investing activities	835,879	8,092,448
<u>CASH FLOW FROM FINANCING ACTIVITIES</u>		
Net cash flow from financing activities	-	-
Net Cash Flow	(6,016,919)	8,474,191
Cash and Cash equivalent at the beginning of the year	9,051,530	577,340
Cash and Cash equivalent at the end of the year	3,034,611	9,051,530

8.2.5 Financial Details of Projects under HRCSL

Project Name	Project Description	Year of Commencement	Year of			Total
			2008	2007	Up to 2006	
UNHCR	National Protection & Durable Solution for IDP Project	2002	26.8	29.0	67.6	123.4
OXFAM-GB	Disaster Relief Monitoring Unit & Help Desk Project	2006	2.7	12.6	7.8	23.1
UDHR	UDHR 60th Anniversary - UN Funds	2008	0.9	-	-	0.9
Total Funds			30.4	41.6	75.4	147.4

8.3 Audit

During the year under review the Audit Committee headed by a member of the Commission met several times as required by Good Corporate Governance

8.3.1 Statutory Audit

Financial statement of the Commission is audited by the Auditor General under the Article 154 of the Constitution.

8.3.2 Internal Audit

An Internal Audit section is functioning independently under the Chairman of the Commission. Projects are audited by duly appointed auditors nominated by the Donors.