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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
Human Rights Commission of Sri Lanka

2011

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ஆண்டறிக்கை  
ANNUAL REPORT

# ANNUAL REPORT

❧ 2011 ❧

## **Human Rights Commission of Sri Lanka**

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## **Composition of the Commission**

### **Chairman**

Justice. Priyantha R.P. Perera

### **Commissioners**

Mrs. Jezima Ismail

Dr.M.A.J Mendis

Mr. T.E. Anandarajah

Dr. Bernard de Zoysa



## **Abbreviations**

<b>UNDP -</b>	United Nations Developmet Programme
<b>NCPA -</b>	National Child Protection Authority
<b>OCHA -</b>	Office for the coordination of Humanitarian Affairs
<b>SLBFE -</b>	Sri Lanka Bureau for Foreign Employment


## **Chairman's Message**

The Human Rights Commission of Sri Lanka has a broad mandate to protect and promote Human Rights, to ensure the rights of all with a view to achieving a better human rights culture in Sri Lanka. The present report for the year 2011 elaborates the activities undertaken by the Commission and the achievements and challenges faced by the Human Rights Commission during the year 2011.

Hence I have pleasure in presenting you the Annual report for the year 2011. It is my considered view that the Annual Report relating to the year 2011 emphasises the transparency and accountability of the Commission. After the appointment of the Commission in February 2011 the Commissioners with the collaboration of the staff formulated a strategy to overcome the challenges which obstructed the smooth functioning of the Commission.

I take this opportunity to extend my grateful thanks to all the UN Agencies, INGOs, NGOs and Civil Society groups who have extended their valuable support and made useful comments for the betterment of the Commission.

Finally I would be failing in my duty if I do not place on record my grateful appreciation to the staff of the Human Rights Commission who always extended their fullest cooperation. I am confident that all the aforesaid parties would continue to extend their fullest cooperation to the Commission in its endeavor to achieve the aspirations of the present Commission which are as follows – “Ensure Human Rights for all and promote and protection the Rule of Law”.



**Justice Priyantha R P Perera**

*Chairman*

Human Rights Commission of Sri Lanka



## Chapter One

### INTRODUCTION

The Human Rights Commission of Sri Lanka was established by Act No 21 of 1996 as an independent, financially viable institution to promote and protect human rights of the people of Sri Lanka. The Act establishing the Commission contain the Paris Principles relating to the status of national human rights institutions. The Commission took over the functions performed by two earlier institutions, the Commission for the Elimination of Discrimination and Monitoring of Human Rights and the Human Rights Task Force. The functions of the Commission are laid down in Section 10 and include, the inquiry into complaints regarding procedures with a view to ensuring compliance with the fundamental rights provisions in the Constitution, inquiry into infringements or imminent infringement of such rights and to provide resolution thereof by conciliation and mediation and to promote awareness of and education in relation to human rights. The other three functions are in the advisory capacity to the government; firstly to advise the government to formulate legislation and administrative directions in furtherance of promotion and protection of human rights, secondly to make recommendations regarding measures to be taken to ensure that national laws and administrative practices are in accordance with international human right norms and standards, and thirdly to advise the government on the need to subscribe or accede to treaties and other international laws relating to human rights.

In order to discharge its functions the Commission is vested with a wide range of powers and these are laid down in Section 11 of the Act. These include the power to intervene in any proceeding relating to the infringement or imminent infringement .of fundamental rights pending before the court with the permission of such court, to monitor the welfare of persons detained either by a judicial order or otherwise by regular inspection of such places of detention and also make any recommendations if necessary to improve their conditions of detention The Commission has even the power to award an aggrieved person or a person acting on his behalf such sum of money as is sufficient to meet the expenses reasonably incurred in making a complaint to the Commission. The Commission has also the power to inquire and report in cases of matters referred to it by the Supreme Court. As one of the functions of the Commission is to promote awareness of and provide education in relation to human rights it has the power to undertake research and conduct programmes, seminars and workshops and to disseminate and distribute the results of such research. Furthermore Section 10 (h) states “do all such other things as are necessary or conducive to the discharge of its functions” thus giving the Commission wide powers in fulfilling its functions.

To perform its mission effectively as the national institution in the protection and promotion of human rights of people in Sri Lanka, the Commission has opened 10 regional offices in various parts of the island. Five of such regional offices function in the northern and eastern regions where there had been a very large number of complaints of violations due to the internal conflict. However, with the defeat of the LTTE in May 2009 there has been a significant drop in the number of complaints received both at the Head office in Colombo as well as in the regional offices. Likewise the nature of the majority of complaints is showing a

gradual change from those against civil liberties during the days of terrorist activity to complaints against such areas like school admissions, land problems and government inactivity in the present days.

The Commission has a Chairman and four Commissioners. It is only in February 2011 that the present Chairman and the Commissioners were appointed. They are entrusted with the mandate to carry out the functions as laid down in the Act establishing the Commission.

The Commission today continues to work in providing an informal forum for inquiry and settlement of violations or imminent violations of fundamental rights; in monitoring to ascertain whether state actions are in conformity with human right laws and norms; in promoting an awareness and education in relation to human rights and also fulfilling its mission in its advisory role to the government as laid down in the Act.

A brief summary of activities undertaken by the Commission its challenges and achievements in the year 2011 are given in this report.



## Chapter Two

### DIVISIONS OF THE HRCSL

The Commission comprises of four functional Divisions each headed by a Director. The activities performed by each Division in the year 2011 are outlined in chapter.

#### 2.0 Inquiries and Investigations Division

This Division plays an important role in the functions of the HRC. During the years prior to the end of the terrorist activity it received a large number of complaints each year. However the number has shown a significant drop after the year 2009. Thus in 2008 the number of complaints received in Colombo was 6574, in 2009 it was 5454, in 2010 it was 4205 and during 2011 there were only 4075 complaints<sup>1</sup>. Another noticeable feature is the drop in the Arrest & Detention cases in the Head Office and in the Regional Offices during the last two years.

Year		Torture	Disappearances & Missing	Extra Judicial Killing	Death in Custody	Arrest & Detention
2008	Head Office	439	147	06	04	550
	Regional Centers	337	883	15	08	767
2009	Head Office	374	136	03	16	441
	Regional Centers	212	1972 (Tracing People)	04	01	1417
2010	Head Office	361	67	03	08	308
	Regional Centers	170	1987 (Tracing People)	05	04	865
2011	Head Office	348	48	04	10	307
	Regional Centers	221	182	02	---	274

<sup>1</sup>Regional Offices received 3400 complaints



During the year under review 1122 out of the 4075 complaints received were not within the mandate of the Commission. Thus only 2952 complaints were relevant to the mandate of the Commission. The number of complaints disposed of in the year were 3438, which included 1527 relating to former years

### Complaints Received – 2011

No	Categorization of Complaints	No. of Complaints
1	Personal Liberty	1049
2	Employment	845
3	Complaints on Inaction	370
4	Education	281
5	Property & Utilities	228
6	State Welfare	57
7	Others	122
	Total	2952

### Complaint Concluded - 2011

Categorization of the Concluded Cases(H/O)	Concluded 2011	Concluded other Years	Total
No F. R. Violation	504	490	994
Not Interested	312	353	665
Recommendation	28	119	147
Settlement	41	79	120
Relief Granted	71	144	215
Withdrawn	92	65	157
Refer to other Authorities	328	13	341
Directives Given	39	101	140
Pending Court case	108	88	196
Not Within Mandate	329	73	402
Time bar	59	2	61
<b>Total</b>	<b>1911</b>	<b>1527</b>	<b>3438</b>

In processing complaints the Commission has the power \_

- i) to facilitate parties for conciliation and mediation or
- ii) to conduct inquiries and investigations and make recommendations with regard to violations of fundamental rights or
- iii) to give directives to the relevant authorities to correct the situation that has resulted in a violation of a right.;

HRCSL conducts follow ups on the recommendations it has given in respect of each case. Requests for reconsideration of the recommendation issued by the Commission is received as an appeal. The Commission may then conduct a further inquiry and decide to uphold the recommendation or withdraw it.

During the year the Regional Offices referred 219 cases to the Head Office for inquiry and investigation. In cases where the inquiry and investigation is completed in the regional offices the reports are forwarded to the Head Office for the recommendations or directives to be issued by the Head Office. The Regional Offices have the power to facilitate parties for conciliation and mediation only.

No cases were referred by the Supreme Court for inquiry and report in the year 2011. The HRCSL does not intervene in any matter if the same subject matter is pending before a court of law.

The HRCSL refers cases that come under the purview of various other institutions such as the National Child Protection Authority, the Public Service Commission to such institutions.

There is a Duty Officer available during office hours to assist any person coming to the Head Office to lodge a complaint. Normally this officer attends to about 20 to 30 complainants a day. A complaint can also be made by writing a simple letter giving all the facts and posting it to Commission office or to any regional office or even faxing such letter.

As the Commission maintains a web site<sup>2</sup> an aggrieved person could even download a specified complaint form from the website and complete such form and thereafter file it in the suitable office.

This year action was taken to identify the cases that have not been concluded for a number of years and need to be inquired and finalized. There were a total of 305 of such cases. In July 2011 four retired judges were appointed as Inquiring Officers and it was possible to settle 99 cases by end of the year.

There is a 24 hour hot line available at the Head Office for the public to make a complaint of a violation or an imminent violation of a right. This facility is helpful to take immediate action on arrests or detentions on receipt of notice. It was unfortunate that the service was not available after office hours for a couple of months due to an internal problem. The web site of the Commission provides relevant information with regard to the Commission and its activities. As such a person is able to access the website and make himself aware of the work of the Commission.

<sup>2</sup>[www.hrcsl.lk](http://www.hrcsl.lk)

The data base maintained by the Division helps to identify the nature of the complaint, details of the petitioners and respondents, trace a file, the name of the Inquiry Officer and the stage of the case. Even in case of a complaint made to a Regional Office this facility is available to a person if his complaint has been referred to the Head Office for inquiry and settlement.

### **2.1.1. Special Interventions through Inquiries**

#### **Extra Judicial Killing of Beggars**

Complaint received that there was extra judicial killing of beggars taking place around Colombo. Information was received that the police had recovered two bodies of beggars with severe head injuries.

HRCSL conducted an inquiry summoning the Senior Superintendent of Police and the Officers in charge of Police stations of Peliyagoda, Kelaniya and Kiribathgoda respectively to find out the motive for these mindless killings.

As a result of investigations carried out by the police and it was possible to arrest the perpetrator responsible for 15 deaths, who was a person of unsound mind, a registered criminal.

The Commission informed that in a social democracy such as ours, the poorest man should be given extra protection and that law and order and social justice must prevail everywhere.

#### **Cultural Rights**

It was alleged that the complaint filed by the President of the Movement of State Tamil Drama Festival of Children, against the Ministry of Cultural Affairs and the Sri Lanka Cultural Council alleging that only Sinhala dramas could be staged for the festival has not been inquired into and necessary action taken.

The Commission commenced investigation into the matter. However the complainant informed that on receipt of summons from HRCSL the Movement was able to expedite the discussions with the relevant authorities who had agreed to include Tamil dramas in the State Drama Festival for the Children

It was appreciated that the intervention of the HRCSL has made the campaign for inclusion of Tamil dramas a success.

#### **Katunayake Incident**

There was a protest against the proposed "Employees Pension Benefits Fund Bill" by about 600 workers in the Katunayake Free Trade Zone.

Special Report on the intervention by HRCSL on this incident is in Chapter IV

### **2.1.2 Some Relevant Cases**

#### **HRC/AP/2009---Education & Good Governance**

Action filed by members of a trade union alleging that their rights to promotion to the post of Provincial Director of Education and the posts of Zonal Directors of Education in the North

Central Education Department have been infringed by the appointment of unqualified officers. Subsequent to the inquiry the HRCSL recommended as follows;

- i) all irregular appointments made in the education sector of the North Central be quashed;
- ii) applications for the said posts be called
- iii) hold interviews
- iv) and make appointments in accordance with the Circulars applicable, Departmental Orders and the Establishment Code.

As the respondents had not taken the necessary steps to implement the said recommendation, the HRCSL summoned them for a discussion. After discussion a settlement was entered and a directive was issued as it is necessary to guarantee the protection of the fundamental right under Article 12 of the Constitution.

- i) the appointment of non qualified persons to the said positions adversely affected the rights of the persons in the Education Service;
- ii) the qualified persons lost the opportunity for promotion in the Education Service;
- iii) there had been no transparency in the administration of the Education Department;
- iv) that transfers had been taking place without any consideration to the directions of the Commissioner of Elections;

Another trade union has filed a case in the Court of Appeal against the HRCSL and the Respondents in this case, seeking a Writ of Certiorari quashing the directives given by the HRCSL.

The case is still pending in courts.

### **IHRC/3650/08 .Agrarian Service related**

#### **F.M.Kapurubanda Vs Dept of Agrarian Services**

The landlord inherited the paddy field after the death of his father and the tenant cultivator gave him his rightful share of the yield in the first year after his father's death. Thereafter he stopped giving the share, He was unable to make a complaint to get his right to the yield from the tenant cultivator as the Agrarian Tribunals which had the power to settle these matters were not set up for 12 yrs.

On receipt of the complaint the HRCSL called the Secretary to the Ministry of Agrarian Services and the Commissioner General of the Department of Agrarian Services for a discussion and explained that the failure to set up the Agrarian Service Tribunals deprived the land lords and the tenant cultivators a forum to settle their various grievances including their rights to certain share of the crops. The relevant authorities informed that the amended bill is tabled before the Parliament and the problems faced by the farmers would soon be solved.

The bill was passed and the Agrarian Development (Amendment) Act No 46 of 2011 came into effect on 22nd Nov 2011. HRCSL has informed the aggrieved party of the new legislation.

**HRC/1267/10-Education related****S.Kahadagama Vs St. Pauls Balika Vidyalaya**

It was alleged that a student was made to kneel for 30 minutes as a punishment. The student had a spine problem which had got aggravated due to the said form of punishment and she was compelled to take medical treatment.

HRCSL called the Principal for an inquiry and thereupon gave a directive that such type of degrading punishment should not be carried out.

**HRC/2671/11-Education related****S.Ranasinghe Vs Payagala Police Station**

The Revd, Father in charge of the Maggona Childrens Home complained that the boys in the Home had shouted at some women who were collecting (stealing) coconuts from the land belonging to the Home. Thereupon these women had raised their cloths and the boys had hooted. The women had then called the neighbours and a gang of men had entered the premises and assaulted the students. The Revd, Father made a complaint to the Police but no action had been taken, though he was informed that a case has been filed. The children referred by Juvenile Courts / Department of Probation and Child Care reside in the Maggona Childrens Home.

The HRCSL called the Chairman National Child Protection Authority and summoned the Senior Superintendent of Police, Kalutara for a discussion and the following directions were given;

- That the investigations conducted by the Payagala police had failed to focus on child rights issues;
- The Chairman of the NCPA instructed the police to inform all cases of child abuse to the NCPA;
- The NCPA to monitor all cases of child abuse reported by the police;
- The Superintendent of Police, Kalutara was directed to supervise the investigation carried out by the Payagala police;

**2.1.3 Visiting Mechanism**

The Commission makes visits to police stations, prisons, detention centres or any other places where the government provides for the detention of persons.

All police stations in the island are covered by way of scheduled or random route visits through the Head Office and the Regional Offices. In the year 2011 the Commission commenced visits to police stations at the night as it will enable to monitor illegal detentions and torture better during the nights rather than during the day.

The objective of police visits is to eliminate or minimize incidents of torture and illegal arrest in Sri Lanka through efficient proactive and reactive measures; to initiate steps to bring the responsible officers who are committing these violations to the relevant statutory agencies

and also to coordinate with other relevant government and non governmental institutions in order to combat incidents of torture. The 24 hour desk with hotline facility receives many complaints on torture, illegal arrest and detention etc. The Commission also makes surprise visits and investigations. In these cases there is a follow up by the officers in respect of such cases.

HRCSL makes special visits to the Terrorist Investigation Division (TID) and to the Criminal Investigation Department (CID) which are under the authority of the Department of Police.

Common issues identified in police visits are as follows;

- Delay in producing in courts
- Overcrowding of cells
- No proper sanitary facilities in cells of certain police stations
- Assault in custody
- Arrest without prior investigation

In case of a number of persons taken into custody on suspicion the police officers are unable to explain the offence/crime that the persons is alleged to have committed.

Once a month visits are made to prisons and on request further visits are made. The purpose of these visits are to observe matters such as health facilities, facilities to meet relations and internal security. The Commission has been able to address some issues on the spot with the consultation of the authorities and bring about a change to improve the conditions of detention.

#### **2.1.4 Access to Rehabilitation Centres**

The Human Rights Commission is vested with powers to monitor the welfare of persons detained either by a judicial order or otherwise by regular inspection of their places of detention and make recommendation to the government for the improvement of the conditions of detention.

The officials of the Human Right Commission Regional Officers in Jaffna, Vavuniya and Anuradhapura were not permitted to enter the Rehabilitation Centres by the relevant authorities

The Chairman of Human Rights Commission of Sri Lanka wrote to the Commissioner General of Rehabilitation with regard to this matter.

The Commissioner General of Rehabilitation informed the HRCSL that the Rehabilitation Centres are designated as Protective Accommodation and Rehabilitation Centres (PARC) and the inmates therein are not detainees as described in the Human Rights Commission Act of Sri Lanka. It was further pointed out that Rehabilitation Beneficiaries have voluntarily surrendered or have been released by virtue of a court order to undergo rehabilitation.

Since there was a misinterpretation of the law in the said letter the Commission summoned



the Commissioner General of Rehabilitation and the legal provisions of the Human Rights Commission Act was explained to him.

The Commission stressed the concluding observation of the United Nations Committee Against Torture (CAT) dated 31st October-25th November 2011 section 173

“The states party should ensure that the Human Rights Commission of Sri Lanka effectively fulfills its mandate and receives the necessary resources for that purpose. It should also ensure that the Commission is able to initiate as well as carry out independent investigation into alleged and possible cases of Torture and ill treatment, including those concerning military premises, as well as “rehabilitation centres” and other government controlled facilities such as “welfare centres” and to publish results.”

### **2.1.5 Registration of Detention Orders**

Under Section 28 of the HRCSL Act 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 to inform the Commission of such arrest or detention and the place at which he is so held and when a person so held in custody or detention is released or transferred to another place of detention, inform the Commission accordingly. The Commission maintains a Registry for Detention Orders and 507 Detention Orders have been registered for the year 2011.

### **2.1.6 Disrespect of the Authority of the Commission**

The Prison officer attached to the Trincomalee prison refused to accept a hand delivered letter of the HRCSL which requested information regarding the inmates therein.

The said officer was summoned by the Commission and the Chairmen of the HRCSL severely warned him. He was also given 2 weeks time to forward an affidavit if he was not guilty of the offence of contempt against or disrespect of the Authority of the Commission.

## **CONCLUSION**

In conclusion it must be stated that though the Division concluded 3438 cases during the year, 1527 of such cases related to those of previous years. As such the Division had concluded only 1911 cases relating to the year 2011 leaving a balance of 1041 cases of the year to be carried forward to the year 2012. It is of course understood that there will invariably be an unattended balance at the end of the year as the complaints received in the last few months will take some time to be concluded but whether the balance of 1041 cases ‘not concluded’ as at 2011 can be accepted as reasonable in the context of the staff and facilities available in the Division has to be examined.

## 2.2 Monitoring and Review Division

The Monitoring and Review Division is tasked with monitoring the status of human rights in the country. In order to fulfill this mandate, the Division is required to plan out programmes for ascertaining consistency with the Fundamental Rights provisions of the Constitution and the international human rights norms and standards.

In carrying out its goals it is necessary for the Division to identify any systematic faults which lead to violations of Fundamental Rights by state agencies and recommend remedial measures to the concerned authorities to avoid administrative and executive actions that may result in such violations. The Division also undertakes fact finding missions/studies/research and on analysing the results obtained after the completion of such projects, submit recommendations to the government. It is also this Division that takes the lead to publish general guidelines and issue standard modalities to the state authorities to avoid violations of human rights when dealing with the public. The Division takes steps to review the progress of such guidelines/modalities when it is deemed necessary.

Some Important work performed by this Division in 2011

### 2.2.1 Media Monitoring -“Sumo Moto” Actions

In this type of monitoring the Commission inquires into violations that appear in the print or electronic media by its own motion.

#### **Observations issued to the Higher Education Ministry on Leadership Training and Development of Positive Thinking programme of the Ministry.**

HRCSL inquired into this controversial matter appearing in the print media and studied the syllabus of the course of study of this program of theoretical and practical training for the university students proposed by the Ministry of Higher Education.

The Commission encourages any training that enhances the holistic development of the personality of university students that will equip them to meet the challenges in life and observes that the following areas could be reviewed for a more comprehensive and balanced training programme;

- i). As mentioned in page 65 of the syllabus under the caption of “ Collective Presentation” the six leaders should be chosen to represent all ethnic communities which would help in the promotion of national reconciliation;
- ii) It not clear whether both academics and service personnel are in the panel of lecturers for the programme. Therefore HRCSL suggests that the course content and the curriculum of the pre admission training programme for the new entrants should be decided by the academics only. Service personnel expertise could be hired only for purpose of physical training. Thus University autonomy and academic freedom could be ensured;



- iii) Reconsidering an alternative location for the training programme is important;
- iv) Political interference in academic issues will harm the qualitative outcome of higher education system. Therefore results based approaches should be adopted;

“Grieving Parents Plead” - Print media news regarding long term detainees/remand prisoners who have been held in detention /remand for periods 3-15 years

Special report on monitoring this issue by HRCSL is in Chapter IV  
Forceful Registration of Civilians in the Northern and Eastern Provinces.

It was highlighted in the print media that there was a forceful registration and photographing of northern residents while an ordinary house to house census was being conducted island wide. Further it was highlighted that the residents of Killinochchi District were forced to sign forms printed and written in Sinhala.

HRCSL attended to the matter as follows;

- i) Called statements from the government officials such as grama sevaka niladharis, and Divisional Secretaries in the area;
- ii) Called affidavits by civilians about the actual position of this registration process;
- iii) Carried out a fact finding mission on the above issues by the Jaffna Regional Office;
- iv) Reviewed the views given by the Attorney General in SC(FR)Application No 73/2011  
In view of the decision in the above Fundament Rights case the HRCSL decided not to proceed with this matter.

### **The Commission assists Visually Impaired Persons**

Persons with vision impairment at the school for the Deaf and Blind, Ratmalana, were facing difficulty in accessing the school since the Pedestrian Crossing and the Colour Light system denies accessibility to persons with vision disabilities. This issue was highlighted in the electronic media.

HRCSL discussed the matter with the Road Development Authority, Department of Police and the school officials at the Head Office. After the discussion the authorities agreed to implement short term and long term solutions. Currently the short term solutions have been implemented as follows;

- i) between 6.00am to 10.00pm a police officer is on duty on roster basis to assist the visually impaired persons to assist in crossing the road;
- ii) Display Visual Boards are placed alerting motorists to be careful as visually impaired persons are using the pedestrian crossing.

### 2.2.2 Economic, Social and Cultural Rights

The Monitoring Division conducted a study of the migrant fishermen who are living in isolated islands off Kalpitiya in Sri Lanka in 2010 and issued recommendations. The recommendations issued by the Commission were implemented in 2011. They were as follows;

- Established a government education network.
- The Ministry of Education and Early Childhood Education Development Authority of the North Western Provincial Council have taken steps to establish a pre-school in the islands of Baththlandgunduwa, Kalpitiya in September 2011.
- The Ministry of Education of North Western Provincial Council has taken steps to train school teachers in special multi grade teaching methods for the Primary School in Baththlandgunduwa, Kalpitiya.

### 2.2.3 Convention on Rights of Persons with Special Needs

The report issued by the HRCSL on the National Conference on Disability Rights raises the following matters for further consideration;

- i) promote awareness of disability rights in Sri Lanka in order to formulate a national policy on Disability;
- ii) advocate for the passage of legislation on disability rights;
- iii) obtain commitment of all sector including the development sector for the inclusion of persons with disabilities in the work programs so that such persons are treated as equal citizens;
- iv) to further the establishment of welfare policies for persons with disabilities.

The Monitoring Division has called for a Conference to further review the above matters in order to prepare a report after the deliberations of the conference. Such a report would help in promoting the ratification of the Convention on the Rights of Persons with Disabilities.

### 2.2.4 Convention on the Rights of the Child

Work performed by the Division in respect of the above Convention.

- Consultation with the National Child Protection Authority and assisted in formulating a General Guideline on monitoring mechanism in the Ranmuthugala Remand Home.
- Consultation with Commissioners of National & Provincial Probation & Child Care Services in relation to the Reporting Mechanism Format on State Childrens Homes and Juvenile Institutions to be published and circulated in the Probation and Child Care Department.
- Prepared the Human Rights Commission Independent Observation report to the UN Secretary General on Children and Armed Conflict in Sri Lanka---1612 Resolution.
- Consultation with the Institute of Human Rights officials regarding women, children, prisoners and young persons issues, conditions and visiting mechanisms in places of detention and the areas relating to which remedial measures could be introduced.

## **CONCLUSION**

Finally it must be must be mentioned that the media monitoring actions by the Division has been of significant success in two areas. Firstly the observations issued by the Division to the Higher Education Ministry on the Leadership programme have been incorporated together with other recommendation submitted by other persons and organizations in preparing the revised programme, which is in operation in the year 2012. Secondly the provision of facilities to help persons with vision impairment to access the school for the Deaf and Blind using the pedestrian crossing near the school is currently in operation and is much appreciated by the general public. These are certainly achievements for the Division.

## 2.3 Education and Special Programmes Division

One of the important functions of the Commission is to promote awareness of and provide education in relation to human rights. Therefore this Division plays an important role in the field of human rights since it is through education one gets awareness of rights and would thus be able to conduct his duties without infringing the other person's rights.

During the year 2011 the Head Office as well as the Regional offices organized several awareness programs. There were over 200 awareness programs organized by the Regional offices which are listed under the ten respective offices. These were organized in consultation with the Education Division. On several occasion officers from the Head Office participated in these programmes. The Division also conducted 12 awareness programmes in the Head Office details of which are given as follows;

No	Target Group	Type of Programme & Topic
1	Sri Lanka Corps of Military Police - CMP	Awareness: <b>Human Rights, Fundamental Rights, Human Rights Commission &amp; remedies</b>
2	All staff of the HRCSL, Head Office	Special Lecture : <b>Human Rights</b>
3	Newly recruited Police Constables	Awareness: <b>Human Rights, Fundamental Rights, Human Rights Commission</b>
4	Military Police, Colombo	Special Event: <b>to Commemorate the International Women's Day</b>
5	Law College Students	Lecture: <b>Constitution &amp; Relevant articles regarding Fundamental Rights</b>
6	Under graduates - NISD	Awareness: <b>Human Rights, Fundamental Rights, Women's Rights &amp; Children's Rights (English Medium)</b>
7	Students of NISD	Awareness: <b>Human Rights, Fundamental Rights &amp; Child Rights. (English Medium)</b>
8	Members of Women's Federation	Awareness: <b>Womens' Rights</b>
9	Social Workers	Awareness: <b>Work of the Human Rights Commission of Sri Lanka</b>
10	Members of Parliament Supports Staff	Awareness: <b>Fundamental Rights, How to Assist Members of Parliament as Supporting Staff.</b>
11	Selected staff of Head Office, Regional Coordinators	Training: <b>Monitoring &amp; Evaluation Capacity Development</b>
12	Senior Non Commissioned Officers of the SL Army	ToT: <b>Advance Refresher Training / Human Rights</b>

In addition to the awareness programmes carried out during the year under review the Division also engaged itself in various other programmes some of which are briefly described below;

### 2.3.1 Fact Finding Mission - Right to Social Security of Persons with Disabilities in the Post Internal Armed Conflict Situation in Sri Lanka.

This mission was carried out in the Paddipalai Divisional Secretariat in the Batticaloa District, in the eastern region of Sri Lanka which had been under terrorist domination for nearly 30 years. Under the government assisted social security scheme introduced for persons with

disabilities, only 34 most vulnerable families with persons with disabilities, qualified to obtain assistance from a Divisional Secretariat area.

It was revealed that in the selected Divisional Secretariat, there were more than 200 families with persons with some sort of disability. The mission identified 100 most vulnerable families from this figure of 200 which included the 34 families that are in receipt of government assistance. Therefore the task was to identify whether the balance of 66 families who do not get any assistance have been denied of the right to social security and in choosing the 34 families whether there was an element of discrimination. The same form distributed by the Social Services Department to identify the families that qualify for the allowance was distributed, and persons were interviewed by the HRC offices, staff of the Divisional Secretariat and grama nildharis. Lack of knowledge of Tamil was an impediment. It was noted that the same form and the procedure had been adopted in the identification of the families but the lack of resources had compelled the authorities to restrict the assistance to only 34 families. It is in this context that one has to examine whether there has been an element of discrimination by the selection of only 34 families as the most vulnerable families and also whether the other families have also been denied the right to social security.

### **2.3.2 Fact Finding Mission - With the Objective of securing Economic, Social and Cultural Life & Right to Development and Equal and Full Participation in the life of the Community of a Group of Women in Manmunai South – West Paddipalai Divisional Secretariat Area - Batticaloa**

The group belonged to the ex cadres of the karuna faction that were requested to put down weapons and return home. They informed that they had several issues and needed HRCSL help to obtain some relief. Eighty females (80 females) came forward to provide information and the following issues were identified;

- Due to the conflict situation they were unable to continue their education.
- Need to complete education and also to obtain vocational training. They state that most often the government and ngo s grant livelihood support only if a person has received vocational training.
- The society identifies them as ex combatants and has a negative attitude. Necessary to build trust of the society towards them.
- Their right to family life is denied because of age, dowry, and because of their earlier status ( out of 80 women 13 are single)
- Some are disabled and unable to do any hard work.
- Most of them had vacated their native places and gone to other areas and are working as labourers, as they are unable to do this type of work in the former areas where they had ordered people to execute their orders when they were engaged in combat.
- No one wanted counseling; only some training to empower them.
- Some had bullets in their bodies and need medical care.
- No proper transport is available.
- No proper drinking water is available.

As there is massive infra structure development of the Eastern Province under the 'Negenahira Navodaya' the HRCSL Coordinator was requested to take up the issues of the non availability of drinking water and the lack of transport with the authorities of the area. The HRCSL will study the other issues raised by these persons and take steps to assist these persons to integrate into society.

### **2.3.3 Different Levels of Ability to Move Freely – Equal & Full Participation of persons with Disabilities in Social Life and Development (Supreme Court Case No : SC (FR) 221 of 2009)**

In the 2001 census covering 18 Districts of the country a total number of 274,711 persons were identified as persons with disabilities. In the said ~~number of disabled persons~~ it was found that disability is very high among persons in the age group of 20 – 54 years. This age group represented the work force in Sri Lanka. It was also revealed that 31.7 % of the disabled population was also not schooling. This was due to the non recognition of their rights and not recognizing them as full and effective participants in an inclusive society. Malnutrition, ever increasing accidents and crimes especially against children, environmental hazards, post conflict syndromes affected the disabled population.

In 2011 the right to accessibility of persons with disabilities was taken up in a Fundamental Rights case which has thus focused attention of public authorities in that accessibility to buildings must be provided for all persons in the construction of new public buildings. This was the case of Dr Ajit C.S.Perera vs A.G SC (FR) 221 of 221 of 2009

Guaranteeing the right to accessibility to persons with disabilities is important for such persons to have the right to the full and effective participation in the social, cultural and leisure opportunities in the society,

This Division took steps to translate the Supreme Court case in to Sinhala and Tamil languages and distribute among stakeholders (government and private institutions, NGOs and those interested in the area of disability rights and in guaranteeing such rights). Copies are available in the Division, in the HRCSL Library and on the HRCSL website in all three languages.

The Division is at present studying the international standards and norms and domestic laws in order to take further measures to protect and guarantee the rights of disabled persons,

## **CONCLUSION**

The Division performs an important task in educating the public on the human right norms and standards. It has together with the regional offices carried out over 230 awareness programmes targeting groups such as security personnel, public officers and civil society members. In the future it is hoped to carry out these programmes targeting policy makers and planners as well as members of local authorities so that such categories of persons would adhere to human right values in carrying out their duties and responsibilities.



## 2.4 Administration and Finance Division

### 2.4.1 Administration section

There were two significant occurrences in the Administration section in the year 2011, namely the appointment of the new Board of the Commission and the relocation of the Head Office of the Commission. Justice Priyantha R. P. Perera was appointed as the Chairman and Mrs Jezima Ismail, Mr T. E. Anandarajah, Dr Bernard de Zoysa and Mr Ananda Mendis were appointed as Commissioners of the HRCSL with effect from February 2011. The current Board having a multi ethnic, multi religious composition which is characteristic of the Sri Lankan society, is expected to give the required guidance and leadership to the Commission which had functioned without a Chairman or Commissioners for about 15 months previously.

The need for more office space has been growing as the volume of work of the Commission had increased during the last few years. Therefore in November 2011 on the termination of the lease of the Barnes Place premises the Head Office of the Commission shifted to a new spacious building with adequate parking space at 165, Kynsey Road, Colombo 08.

Several regional offices did not possess HRC owned vehicles and this was an impediment for the proper functioning of such offices. In order to overcome this problem 7 vehicles were taken on rent for the use of these offices during the year

The current practice in both government and semi government institutions in respect of janitorial services is to obtain these services on a contract basis from outside, as a better service is obtained by such means. Therefore in the year under review the HRCSL too called for tenders and awarded these services to an outside contractor.

The salary conversion PA Circular No 06/2006 (iv) was also implemented in respect of HRC employees during this year.

In the year 2011 a Media Consultant was appointed to the Commission.. His responsibilities include the preparation of reports on important matters concerning the HRCSL to be published in both the print and electronic media, updating the HRCSL website which is available in all three languages regularly.

High priority is always assigned for training of staff to enhance the professional knowledge and skills needed to perform the wide range of tasks they have to perform. This year too these programmes were conducted as in previous years <sup>3</sup>.

The HRCSL had an exhibition stall in the building allocated to the Presidential Secretariat at the "Deyata Kirula" Exhibition held in February 2011 at Buttala. Staff from the Head Office and some of the Regional offices helped persons who visited the stall to understand human rights standards and norms.

The Human Rights Day which falls on 10th December each year was celebrated on 9th December 2011 at the Sri Lanka Foundation Institute auditorium. The Chief Guest on this occasion was the Hon Justice C.G.Weeramantry, former Judge of the Supreme Court of Sri Lanka and former Judge and Vice President of the International Court of Justice, who

<sup>3</sup>Annexures i & ii

delivered the Key note address. The Chairman Justice Priyantha Perera, the Additional Secretary Mr. Nimal Punchihewa, Mr Mohan Samaranayake the Chairman of the Rupavahini Corporation also addressed the gathering. A Banner Competition had been organized at the Regional office level to commemorate the event. The winners of the competition were given certificates and valuable cash prizes at this event.

## 2.4.2 Finance Section

### Appropriation Account for the Year 2011

		Total January – December 2011
<b>Government Contribution</b>		
<b>Recurrent</b>		124,024,400.00
<b>Capital</b>		7,175,000.00
<b>Capital Foreign Grant (UNFPA)</b>		544,100.00
<b>Total Receipt</b>		<b>131,743,500.00</b>
Personal Emoluments		69,271,932.00
Traveling Expenses		938,355.50
Supplies		3,930,455.12
Maintenance Expenditure		3,347,218.51
Services		42,207,120.57
Transfers		998,705.50
Rehabilitation and Imp. Of Capital Assets		5,018,527.30
Acquisition of Capital Assets		1,139,609.95
Capacity building		159,400.50
Other Capital Expenditure (UNFPA Project Activities)	8,846.00	
<b>Total</b>		<b>127,020,171.15</b>





## Chapter Three

### REGIONAL OFFICES

There are ten Regional Offices established by the Commission which are directed by Regional Co-ordinators. The support staff in these offices include Investigating Officers and other staff. A brief summary of the work performed by each office in the Year 2011 is given below.

#### 3.1 Ampara Regional Office

The Ampara office received a total of 158 complaints of which 29 were not within the mandate. 17 complaints concerned Torture, 10 Harassment, 9 Arbitrary Arrest and 64 government inaction. There were no complaints relating to school admission or land matters. The others were against other authorities. The office completed 155 cases during the year.

**Categorization of Complaints - Ampara**

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	17
	Harassments	10
	Arrest/Detention	09
Employment		24
Discrimination		21
Inaction		64
Others		13

There were 122 visits to police stations and prison lockups. From July to December the officers were able to monitor the welfare of 65 detainees.

The office conducted 12 Awareness Programs on human rights and child rights and 08 Education Workshops covering the same subject areas and also covering women rights, torture and human trafficking and 03 Education Workshops on economic, social and cultural rights. 834 persons attended the office for consultation during the year.

### 3.2 Anuradhapura Regional Office

The Anuradhapura office received 663 complaints during the year. At the beginning of the year there were 273 complaints outstanding. There were 58 concerning Torture, 52 Arrests and Detention, 26 Harassments, 168 government inaction, 129 land matters and the rest against other authorities. The office was able to complete 541 cases leaving a balance of 395 to be carried forward to the next year.

**Categorization of Complaints - Anuradhapura**

Categorization of Complaints		No. of Cases
<b>Personal Liberty</b>	Torture	58
	Harassments	26
	Arrest/Detention	54
	Disappearance/Missing	01
<b>Employment</b>		136
<b>Inaction</b>		168
<b>Education</b>		09
<b>Property &amp; Utility</b>		151
<b>State Welfare</b>		10
<b>Others</b>		03

The office made 300 visits to police stations, 18 visits to detention camps and was able to monitor the welfare of 366 detainees. The office also carried out 24 Awareness Programmes targeting the police, army, government officers and civil society

### 3.3 Badulla Regional Office

The Badulla office received 220 complaints during this year. There was only one relating to Torture, Assault 11, Harassment 23, Arrest and Detention 08 and Missing 01, government inaction was 49 and complaints relating to property were 25. and none relating to school admissions. The rest were against other authorities. The office was able to complete 202 cases. It has to be noted that 64 cases were concluded as 'No Violation' cases as no documentary or oral evidence was produced by the petitioners

**Categorization of Complaints - Badulla**

Categorization of Complaints		No. of Cases
<b>Personal Liberty</b>	Torture	12
	Harassments	43
	Arrest/Detention	08
	Disappearance/Missing	01
<b>Employment</b>		74
<b>Inaction</b>		49
<b>Education</b>		03
<b>Property &amp; Utility</b>		25
<b>State Welfare</b>		06
<b>Others</b>		19

The office made 61 visits to police stations and 01 visit to the prison

There were 10 Rights Awareness programs targeting the police, army, grama niladharis and the members of the civil society.

There were 869 who visited the office for consultations on various issues.

The office staff assisted in the at HRC stall at the 'Deyata Kirula' exhibition at Buttala.

**3.4 Batticaloa Regional Office**

The Batticaloa office received 327 complaints during the year under review. There were 3 relating to Torture, Harassment 41 Arrest 26 and Disappearances 17. Employment relate 64, Education related 10, Land 34 and the rest against other authorities. At the beginning of the year there were 137 cases on hand. The office was able to settle 374 cases during the year leaving a balance of 90 cases at the end of the year. This is in addition to the 227 disappearance complaints cases for the period 2006 – 2009.

**Categorization of Complaints - Batticaloa**

Categorization of Complaints		No. of Cases
<b>Personal Liberty</b>	Torture	03
	Harassments	41
	Arrest/Detention	26
	Disappearance/Missing	17
<b>Employment</b>		64
<b>Inaction</b>		105
<b>Education</b>		10
<b>Property &amp; Utility</b>		34
<b>Others</b>		25

The office made 88 visits to police stations and 11 to remand prisons and noted the limited space available in cells and informed the fact to the officers concerned.

The Office carried out 38 Awareness/Education Programmes including meetings, discussions and training workshops targeting various groups such as students, government officers, probation officers and civil society members.

### Other activities

Three ceremonies were held to celebrate the Womens Day,

Conference held with 600 participants including probation officers, child protection officers, government officers , ngo sector and civil society. Mr T.E. Anandarajah Commissioner participated.

Two fact finding missions one relating to problems faced by 80 female Ex combatants and the other relating to the special needs of 78 disabled persons were carried out with the Head Office participation. ( Reported in detail under the Education & Special Projects Division).

## 3.5 Jaffna Regional Office

The Jaffna office received 205 complaints of which 03 related to Torture, Harassment 35, Arrest and Detention 20, Disappearances 30 , Extra Judicial Killing 2, government inaction 25, property 24 and the rest against other authorities. During the year the office was able to conclude 114 cases.

### Categorization of Complaints - Jaffna

Categorization of Complaints		No. of Cases
<b>Personal Liberty</b>	Torture	03
	Harassments	35
	Arrest/Detention	20
	Disappearance/Missing	30
<b>Employment</b>		32
<b>Inaction</b>		25
<b>Education</b>		15
<b>Property &amp; Utility</b>		24
<b>State Welfare</b>		09
<b>Others</b>		12

The office made 191 visits to police stations, 9 to prisons and 9 to childrens' homes . The office also conducted 4 Awareness Programmes on child rights for child protection workers and 10 Awareness programmes covering a broad range of human rights and protection remedies.

### 3.6 Kalmunai Regional Office

The Kalmunai office received 210 complaints during year 2011. Complaints against Torture were 4, Harassment 17, Arrest and Detention 07, Missing 06, government inaction 78, property 21 and the rest against other authorities. The office completed 118 cases out of which 63 related to previous years.

#### Categorization of Complaints - Kalmunai

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	04
	Harassments	17
	Arrest/Detention	07
	Disappearance/Missing	06
Employment		15
Inaction		78
Education		10
Property & Utility		21
State Welfare		01
Others		50

The office made 73 monitoring visits to police stations, 02 to childrens' homes, 01 to elders' homes 01 and others 01. This office also conducted 23 Rights Awareness Programmes, 07 workshops, 25 meetings and 31 other events all done with the objective of imparting knowledge of human right norms, standards and remedies available targeting various sections of the society.

The activities conducted by the office included the following;

Two research projects were conducted, one focusing on child abuse at Wellaveli DS Division and the other on school drop outs at Karaitivu. and remedial action was taken by the office.

Two mobile services at Addappalam and at Addalachchenai to issue birth certificates /NICs/ marriage certificates, passports etc

The officers helped at the HRC stall at the "Deyata Kirula" exhibition at Buttala in Feb 2011.

The Womens Day and the Childrens Day were celebrated with two Street Dramas, the Torture Day was celebrated with a Special Awareness Programme for IP Rank officers and the Peace day was celebrated with religious leaders and students.

The office took steps to solve the problems faced by fishermen and pre school teachers.

### 3.7 Kandy Regional Office

The Kandy office received 555 of complaints during the year of which 35 concerned Torture, Harassment 25, Arrest and Detention 59, Missing 01, government inaction 87, employment related 130, education related 30, property 63 and the rest were against other authorities.. The office completed 714 with some of the previous years' cases.

#### Categorization of Complaints - Kandy

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	35
	Harassments	25
	Arrest/Detention	59
	Disappearance/Missing	01
Employment		130
Discrimination		102
Inaction		87
Education		30
Property & Utility		63
Others		24

There were 67 visits made to police stations, 5 visits to prison and 01 visit made to a childrens' home to monitor the welfare of detainees and inmates at the respective places. In carrying out its mandate the office organized 40 Educational/Training/Awareness Programmes and lectures and also 11 special programs targeting the students, police, army, government officials, civil society and the public in general with over 1800 participants.

#### Other activities

Participated in the 'Deyata Kirula" exhibition in February 2011

### 3.8 Matara Regional Office

The Matara office received 577 complaints during this year of which 81 related to Torture, Harassment 34, Arrest & Detention 57, Missing 01, government inaction 54, property & utilities 76 and the rest against other authorities. At the beginning of the year there were 157 cases. During the year 626 cases were concluded leaving a balance of 108 cases at the end of the year.

#### Categorization of Complaints - Matara

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	81
	Harassments	34
	Arrest/Detention	57
	Disappearance/Missing	01
Employment		88
Inaction		54
Education		55
Property & Utility		76
State Welfare		05
Others		126

The office made 357 monitoring visits to 62 Police Stations and 13 visits to detention camps/childrens' detention homes/prison.

They also conducted 19 Awareness Programmes/Special Programmes, for the law enforcement officers, army, civil society and for students. The officers also carried out a research programme on three child detention homes namely Kithulampitiya Senehasa girls home, Ruhuna Children's home and the remand home for Boys.

### 3.9 Trincomalee Regional Office

The Trincomalee office received 63 complaints during 2011. There were 7 relating to Torture, Harassment 09, Arrest 06, Missing 03, Abduction 01, employment related 15, land 06 and the others against other authorities. There were 49 cases brought forward from the previous years. The office completed 52 cases during the year balance of 62 cases to be carried forward to the next year.



### Categorization of Complaints - Trincomalee

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	07
	Harassments	09
	Arrest/Detention	06
	Disappearance/Missing	03
	Abduction	01
Employment		15
Inaction		08
Education		02
Property & Utility		08
Others		02

The office made 30 visits to the police stations, 2 to the remand prison and 01 to the IDP camp during the year.

Awareness/Education programmes were carried out as follows; 10 programmes for the benefit of the army, navy and police /01 for government officers/01 for grama niladharies and 01 for the civil society.

### 3.10 Vavuniya Regional Office

The Vavuniya office received 383 complaints during the year under review. There was only 01 concerning Torture, Harassment 18, Arrest and Detention 30, Missing 121, Government inaction 24, property 21, and others against other authorities. There were 137 within mandate and 246 outside the mandate. During the year under review the office was able to complete 209 together with the bought forward cases from the previous years. 04 cases were referred to the Head Office during the year.

### Categorization of Complaints - Vavuniya

Categorization of Complaints		No. of Cases
Personal Liberty	Torture	01
	Harassments	18
	Arrest/Detention	30
	Disappearance/Missing	121
Employment		28
Inaction		24
Education		04
Property & Utility		21
State Welfare		06
Others		130

## Human Rights Commission of Sri Lanka – Regional Offices

## Complaint Category – 2011

Type of the Complaints	Ampara	A'dhapura	Badulla	Batticaloa	Jaffna	Kandy	Kalmunai	Matara	Trincomalee	Vavuniya	Total
Torture	17	58	12	03	03	35	04	81	07	01	221
Harassment	10	26	23	41	35	25	17	34	09	18	238
Arrest and Detention	09	52	08	26	20	59	07	57	06	30	274
Missing/ Abduction/ Disappearances	-	01	01	17	30	01	06	01	04	121	182
Inaction	64	168	49	105	25	87	78	54	17	24	671
Employment	24	136	74	64	32	130	15	88	15	28	606
Discrimination/											
Arbitrary action	21	-	-	-	-	102	-	-	-	-	123
Education	-	09	03	10	15	30	10	55	02	04	138
Health	01	03	01	02	01	-	01	04	01	01	15
Property and Utilities	-	151	25	34	24	63	21	76	06	21	421
State welfare	-	10	06	-	09	-	01	05	03	06	40
Environment	-	-	01	08	03	-	06	04	01	01	24
Child	01	-	-	-	-	02	14	01	-	-	18
Women	-	-	-	-	-	-	02	01	-	-	03
Others	11	-	17	15	06	22	27	116	01	01	343
Not within HRC mandate	-	49	-	02	-	--	01	-	26	26	78
Extra judicial killing	-	-	-	-	02	-	-	-	-	-	02
Threaten by unknown persons	-	-	-	-	-	-	-	-	03	03	03
<b>Total</b>	<b>158</b>	<b>663</b>	<b>220</b>	<b>327</b>	<b>205</b>	<b>556</b>	<b>210</b>	<b>577</b>	<b>101</b>	<b>383</b>	<b>3400</b>

## Visits – Regional Office

Visits	Ampara	Anuradhapura	Badulla	Batticaloa	Jaffna	Kandy	Kalmunai	Matara	Trincomalee	Vavuniya	Total
<b>Police Station</b>	122	300	61	88	191	67	73	357	30	20	<b>1309</b>
<b>Prison</b>	-	-	01	11	09	05	-	-	02	01	<b>29</b>
<b>Detention Centers</b>	-	18	-	-	-	-	-	13	-	02	<b>33</b>
<b>Children Homes</b>	-	-	-	-	09	01	02	-	-	04	<b>16</b>
<b>Elder's Home</b>	-	-	-	-	-	-	01	-	-	02	<b>03</b>
<b>Other</b>	-	-	-	-	-	-	01	-	01	-	<b>02</b>
<b>Total</b>	<b>122</b>	<b>318</b>	<b>62</b>	<b>99</b>	<b>209</b>	<b>73</b>	<b>77</b>	<b>370</b>	<b>77</b>	<b>29</b>	<b>1392</b>

## Awareness Programmes/ Workshops/Meetings/workshops/Other Events – Regional Office

Programmes	Ampara	Anuradhapura	Badulla	Batticaloa	Jaffna	Kalmunai	Kandy	Matara	Trincomalee	Vavuniya	Total
<b>Human Rights Awareness</b>	12	24	10	31	14	23	40	19	13	08	<b>194</b>
<b>Meeting</b>	-	-	-	07	-	25	-	-	-	-	<b>32</b>
<b>Special Programmes</b>	-	-	-	-	-	-	11	01	-	-	<b>12</b>
<b>Workshops</b>	11	-	-	-	-	07	-	-	-	-	<b>18</b>
<b>Other Events</b>	-	-	-	03	-	31	-	-	-	-	<b>34</b>
<b>Total</b>	<b>23</b>	<b>24</b>	<b>10</b>	<b>41</b>	<b>14</b>	<b>86</b>	<b>51</b>	<b>20</b>	<b>13</b>	<b>08</b>	<b>290</b>

## Chapter Four

### SPECIAL REPORTS

#### 4.1 Inquiries and Investigation Division

##### **The report on the investigation by the Human Rights Commission of Sri Lanka on the clash between the Employees of the Free Trade Zone, Katunayake and the Police**

On 30.05.2011, a complaint was received over the hotline that the police had shot at a group of employees of the Free Trade Zone who were engaged in a protest and that several persons had died as a result. On 30.05.2011 this complaint was recorded under No.22. Thereafter, the Director, Inquiries and Investigations was informed and according to instructions received from the Commission and under the direction of the Additional Secretary (Legal) and Director, Inquiries and Investigations, an investigation was carried out by a team from the Commission.

The investigation team comprised Messrs K T K P Arampath (team leader), Calistus Arunakumara, Nihal Vidanapathirana, N L K Kalam and A S Nilantha.

The team obtained information on facts pertaining to the incident which resulted in the death of FTZ factory worker Roshen Chanaka. The team visited police stations concerned including the Katunayake police station and also visited hospitals where the injured were being treated. Statements of many injured workers and police officers including Senior DIG Ravi Wijegunawardane were recorded by the team.

##### **Information obtained from the Katunayake police station**

On 31.05.2011 the investigation team visited the police station, Katunayake and met its OIC who informed that an inquiry into the incident was being conducted by a team headed by the Assistant Superintendent of Police Mevan Silva. The OIC informed that before the protest commenced, 2 or 3 persons in the group had advised the protestors to behave peacefully but despite that, thousands of protestors had arrived at the police station and caused damage to its building and vehicles. Chief Inspector of Police Nishantha Perera had informed that the protestors had arrived at the police station breaking open its gates and started attacking with stones. As a result the ASP's car and the jeep belonging to the station were damaged. He had further informed that about 16 police officers had suffered injuries, that DIG Ravi Wijegu-

nawardane and ASP Gurusinghe were assaulted and injured. The Investigation team was informed that when this incident occurred there were about 400 police officers on duty, that they attempted to turn away the protestors by firing tear gas and by firing into the air but that the protestors and the police had clashed and a large number of people injured. These injured had been removed to the Ragama, Negombo and Seeduwa hospitals respectively.

The Investigation team observed the damages caused to the police station's building including broken windows. The computer in the Administration Section had been damaged. The team observed a badly damaged bus with its windows broken, a car and a three-wheeler parked within the police station, also with windows broken.

### **The situation within the premises of the police station**

Since the OIC and other officers at the police station informed the investigation team that damages had been caused to the police station, the team went round the police station and inspected its buildings and premises. In the course of this inspection the team observed the damaged police bus No.62-6819 and the damages caused to the building housing the canteen, police barracks and officers quarters.

It was evident to the team that the broken windows in buildings and other damages caused to vehicles such as broken side mirrors and dents had been caused by bricks and stones that had been thrown. The team also observed bricks stones and sticks lying within the premises. The team was informed that DIG Ravi Wijegunawardane who had intervened in this incident and about 14 other police officers were receiving treatment at the Colombo National Hospital and at the police hospital.

### **Investigation within the Free Trade Zone premises**

Thereafter the investigation team had carried out investigations within the Free Trade Zone Industries and factory premises and inspected the damages caused to various structures therein. The team had been informed that about 25 police officers had entered the FDK garments industry building by force. Its workers had not participated in the protest. However, protesters from other industries had asked the workers of this factory to come out. But they had not joined the protestors. However, when the police had passed by one or two workers had cast remarks. Then the police had come into the premises of the industry building and started assaulting the workers. The investigation team of the HRC observed damages caused to buildings in this industry including the security post. The team was also been informed that several of the factory's employees including a manager were taken to hospital and that many of them were later discharged.

Similarly the investigation team of the HRC visited the premises of many other industries within the Free Trade Zone and inspected the damages caused to these buildings. They were informed how the police had assaulted workers with batons and also that some police officers were in possession of guns as well. Those assaulted had been sent for medical treatment.

## **Interviews with injured workers and police officers**

Next, the investigation team visited the Negombo hospital and spoke to several persons who were warded at the hospital due to injuries suffered in the course of the clash. They had been assaulted by the police. Some were subjected to surgery. Some had received stitches on their wounds.

All in all the team was informed that over 200 people had been taken to various hospitals for treatment as a result of having been injured during the clash, that over 100 of that number had received treatment at Negombo hospital. Many of them had been discharged by the time this investigation was carried out.

The investigation team then visited the Colombo National Hospital and spoke to several police officers who were receiving treatment as a result of injuries caused during the clash. Among those spoken to were Senior DIG Ravi Wijegunawardane, and ASP Gususinghe.

The team next visited Ragama hospital.

The team made a complaint against its investigation being obstructed by a Deputy Directress at this hospital in not allowing the team to meet patients warded after the incident. Subsequently, when the Director of the hospital and the Deputy Directress who was acting for the Director at the time in question were summoned before the HRCSL, the Director tendered an apology.

The team in the course of its investigations also visited the Negombo prison and spoke to several police officers who were remanded in connection with the clash.

The team also interviewed the DIG (Western Province-North) and the OIC of the Police Station, Katunayake who had been on duty on the day of the incident.

The team finally submitted its findings. It stressed the necessity to protect the rule of law by acting immediately on evidence revealed against all, ranging from officers of highest ranks as well as lower ranks and ordinary people who violate the law.

## **The findings of the investigation team**

The investigation team has analyzed in its report the events that had led to the clash between FTZ workers and the police at the height of the workers' protest, on several days prior to May 30, 2011, against the government's proposal to introduce a pension scheme for private sector workers in place of the Employees' Provident Fund (EPF) scheme operating at present.

In the conclusions reached on the basis of its findings, the investigation team of the HRC has pointed out that it was revealed the pelting of stones at unarmed police officers was first done by a group that took part in the protest, causing injuries to some police officers, including the Senior DIG, Inspectors of Police (IPs) and ordinary police officers and their hospitalization.

The team further states in the course of its conclusions that the police officers had defied the



order of the then Inspector General of Police (IGP), taken out weapons from the police station and opened fire. The Officer-in-charge (OIC) of police station, Seeduwa and an IP had been arrested for causing culpable homicide by shooting, and produced before Court and remanded.

However, the investigation team also states in its findings that although some workers were hospitalized with serious injuries, no police officer has so far been taken into custody for causing such injuries.

There is also evidence, the team's findings states, that workers were dragged out after entering their work places and assaulted. But it had not been found during the investigation as to who those officers responsible were. So far it has not been revealed whether a criminal offence was committed by such assault or whether cases will be filed for those offences.

So far, no officer who caused damage to vehicles parked or to equipment fixed inside factories has been identified and the law has not been enforced against any of them. The team also refers to the fact that photographs in CCTV cameras of the factories have not been utilized so far by inquiring officers. Enforcement of the law should not be delayed and its enforcement must have transparency.

The HRCSL's investigation team has emphasized that although tear - gassing is a case of using minimum force, causing damage to property by going inside the FTZ, assaulting workers and using live bullets on any group of workers should not have been done. It is a case of exceeding powers.

The investigation team of the HRCSL concluded its findings by stressing that "In providing facilities or benefits to the ordinary people, the working people, it is the responsibility of a State to act with their consent. If that does not happen it is the responsibility of the State to bridge the losses and damages caused by the resultant protest. Accordingly, the government should pay for the losses and damages thereby caused".

## 4.2 Monitoring and Review Division

"Media Monitoring" under the caption of Grieving Parents Plead" regarding long term detainees (remand prisoners who had been held in detention more than 3 – 15 years.)

The Commission immediately called for a comprehensive report from the Commissioner General of Prisons, of persons who have been held in detention without indictment or charges served on them for a period over 3 years from the commencement of their detention both upon orders made by a court of law or by any other authority. After perusing the details of the report sent by the Commissioner General of Prisons it was decided to carry out a sample study on the above issue within 3 months and the findings of the report was launched during the commemoration celebrations of the International Human Rights Day 2011.



## The Primary Study

It was observed by the Commission that there is a humanity issue with the condemned prisoners, human rights issues with the long – term remanded prisoners and detainees under the Immigration and Emigration Law. The Commission initiated a preliminary study on the followings areas;

- i. Conditions of long – term remanded prisoners
- ii. Conditions of detainees under the Immigration and Emigration law
- iii. Conditions of condemned prisoners,

to initiate a dialogue among the respective authorities, to ensure a dignified life and the basic human rights for them. It especially focuses on the institutional delays which lead to unreasonable remand custody of suspects. The plight of these persons was more intensified with the conditions of detention.

The study does not focus its attention on other convicted prisoners and persons under rehabilitation, because the study was done within a short period (3 months) of time. It is targeted to addresses some of the human rights issues and some recommendations have been made to ensure their rights, especially the right to life of the condemned prisoners, fair trial of long-term remand prisoners and the detention conditions of detainees under Immigration and Emigration law.

## Long – Term Remand Prisoners

It was reported that there were 13,196 remand prisoners as at 31st December 2010. Remand prisoners includes persons awaiting trials and un convicted prisoners, out of which, 66.1% [ 8,721] are less than six months, 12.1% [1,603] are six months to one year, 6.4 % [ 844] are one to one and half years, and 15.4% [ 2028] are more than one and half years in remand prisons.

Having understood the gravity of the human rights issue of long – term remand prisoners, the Commission called for a report from the Department of Prisons in respect of remandees who have spent more than 3 years in the remand prison. On analyzing the report it was revealed that 53 of these persons have spent more than 3 years in remand prison, as is shown in the chart below;

Rimand Prison	Duration					Total	Percentage %
	More than 15 Years	15y-10y	10y-5y	5y-3y	3y		
Colombo			1	3	2	6	11.3%
Magacine	1	7	8	9	4	29	54.8%
Anuradhapura				5		5	9.4%
Boqambara				3	3	6	11.3%
Badulla				2		2	3.8%
vavuniya				3	2	5	9.4%
Total	1	7	9	25	11	53	
%	1.9	13.2	17	47.2	20.7		100

In its further study, the team studied the selected case briefings in order to find the causes and reasons for the unreasonable long remand periods. Three case studies are produced below for more clarification.

### Case Study No: 01

The person concerned was arrested in 1996 under the Prevention of Terrorism Act and the Emergency Regulations and imprisoned in December of the same year.

The Attorney General's Department had taken time till the end of the year 1998 to serve indictment on the suspect. Towards the end of the year 1998, indictments had been served against 6 other accused for the same case and the matter had been taken up for hearing on more than 165 occasions since 1998 to date. In 2003, the Attorney General's Department had revoked the charges against 2 of the said 7 accused and they had been released. By that time the said 2 accused had spent nearly 7 years in remand prison.

During that period the case had been postponed for reasons of delay in issuing summons and also as a result of asking for dates. It was observed that notice issued on the Police Department on 30.04.2002 had failed to be carried out for different reasons. Therefore, notice had been issued once again and on 07.03.2003 after a delay of one (1) year reports had been filed. The translation to Tamil of indictments filed in 1998 had not taken place till 2003. The explanation of charges to the accused had begun in 2003. It was observed that hearing of evidence for the plaintiff was delayed as a result of asking for dates.

It had been required to issue warrants for failure on the part of witnesses for the plaintiff to appear before court. Due to all of the aforesaid reasons set out the accused has been in remand prison for the last 15 years, from the time of his arrest in 1996.

#### Summary

Year of arrest	-	1996
Serving of indictment	-	1998

The number of years spent in remand prison up to now as the case has not been concluded – 15 years.

### Case Study No: 02

In the second case, the 1st accused was arrested on 12.10.2001 on suspicion of an offence committed on 24.07.2001 and indicted on 14.03.2005, in respect of 311 charges. This case was first called on 26.04.2003 and has been called on 28 occasions since then.

Evidence was first heard in this matter on 25.04.2007. While there had been four accused persons named in this matter at the beginning of the case, apart from the 1st accused, it had been reported that the 3rd and the 4th accused had expired. While the 5th accused in this matter had failed to appear before the court continuously, the plaintiff had failed to produce her before court. It had also been reported that the 2nd accused in this matter had been abducted and it was observed that there have been many orders made to relevant police officers to produce reports in connection with the said abduction.

However, as a result of failure on the part of the said officers to produce before court any reliable information relating to the whereabouts of the said accused, it was observed that there was a continuous delay in the hearing of evidence in this case.

It has to be specially mentioned in this matter that the charges remaining to be proved are only in respect of those against the 1st accused as the 3rd and the 4th accused are deceased and the whereabouts of the 2nd and the 5th accused are not known and they are not to be found.

A matter observed in this case is that on 07.01.2011 when this case was last called it was necessary to obtain the services of a Tamil translator to translate evidence of the witnesses but as there was no translator available in court the case was postponed to 15.02.2012.

### Summary

Date of arrest	-	12.10.2001
Serving of indictment	-	14.03.2005
The last occasion case called	-	07.10.2011
Next calling date	-	15.02.2012

The number of occasions the case was fixed for trial - 28

The number of years spent in remand prison up to now as the case has not been concluded – 10 years.

### Case Study No: 03

In another case, a person was arrested on 23.06.2003 under the provisions of the Prevention of Terrorism Act, on suspicion of murder and indicted on 09.02.2005. After the said indictment the accused had appeared before the courts on 44 occasions and the case had been fixed for trial on 25 occasions.

The Government Analyst's reports were called for when the matter was taken up for hearing on 03.10.2004, but as the reports were not received even till 11.01.2008, notice was issued. Thereafter, warrant was issued on the Government Analyst on 08.02.2008 after which the Government Analyst's reports dated 22.02.2008 were tendered by him.

### Summary

Date of arrest	-	23.06.2003
Serving of indictment	-	09.02.2005
The last occasion case called	-	14.10.2011
Next calling date	-	10.01.2012

The number of occasions the case was fixed for trial - 25

The number of years spent in remand prison up to now as the case has not been concluded – 09 years.

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial. A speedy trial is the basis of right to liberty. The speedy trial is to serve two purposes; first, it is sought to prevent defendants from languishing in jail for an indefinite period before trial which would hinder employment, financial resources, family relations, and innocent persons are forced to suffer prolonged injury to reputation and secondly, a right to a fair trial.

Further it was observed that most of the long – term remand prisoners are below age of 34 and are Tamil persons. Overcrowding is one of the affiliated issues identified with long-term remand prisoners. They are produced before the Magistrate within every 14 days. It was generally observed that causes of such delay is linked to the other authorities such as Attorney Generals Department, Department of Police, Government Analyst, Judicial Medical officers etc. It was proved that another reason for delay is lack of Tamil interpreters in the Courts on the respective dates. Further it was revealed that there are other reasons for delays, for example the government witnesses and lawyers appearing for suspects not being in the country, most of the suspects having several cases against them and having to appear for them, excessive bail or no persons to give bail for them, lack of legal Aid etc.

It is not only the issue of fair trial that leads to the issue of overcrowding in prisons. As a result of overcrowding, many serious health and security issues are prevailing. The existing conditions fails to adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Considering above situation, it is suggested hereby,

01. Review legal, administrative and institutional causes which lead to a delay the trials of prisoners who have been held in detention without indictment or charges served on them and take necessary judicial and administrative measures to ensure justice without a delay.
02. Appoint a Committee, comprising of officers from of Attorney General Department, Department of Government Analyst, Department of Police, Ministry of Health, Ministry of Justice and other respective authorities, in order to find out causes which lead to delays to serve charges or indictment, to receive communications on such delays and to monitor the process.
03. Create a database and network, comprising relevant details of all prisoners with access to the authorities to monitor such delays.
04. Supervise prisons regularly to verify whether prisoners are being treated in accordance with the Standard Minimum Rules and basic principles for the treatment of prisoners. It needs to ensure regular supervision of the prisons by the Magistrates by executing their legal powers to supervise the standard of prisons.
05. Foster awareness among prison officers on Standard Minimums Rules and basic principles for the treatment of prisoners which have been adopted by the United Nations.

### **Detainees under the Immigration and Emmigration Law**

The Mirihana Detention Centre which is located at the Mirihana Police premises and comes under the supervision of Controller of Immigration and Emigration detains foreigners under the section 48 of the Immigration and Emigration Act No. 68 of 1961. There were 16 detainees as of October 2011 and out of them 5 were Pakistanis, 4 were Indians, 2 were Somalians, with one each from China, Canada, Bangladesh, Yemen and New Zealand respectively.

The Commission after observing the condition of the said detention centre made the following recommendations to the appropriate authorities.

- Relocate the detention centre considering the existing condition of it and respecting the gender sensitivity and addressing the requirements of persons with disabilities.
- Assign required staff to manage the centre effectively by the Controller of Immigration and Emigration and ensure protection of such detainees.
- Coordinate with respective country Embassies/ High Commission offices/ Consular offices and facilitate the deporting process.
- Collect and maintain a data base on such detainees

As a result of the Commission initiative on improving the condition of detention, several discussions were held with officials of the Ministry of Defence, Department of Police and the Controller office of Immigration and Emigration and the following were agreed upon;

- To establish a permanent detention centre at Minuwangoda;
- Establish the detention centre at a suitable place on rent with required facilities and security arrangements until proposed construction is completed. International Organization on Migration [IOM] agreed to provide financial assistance. The Department of Police agreed to provide necessary security for the temporary arrangement.
- Renovate the existing buildings and upgrade the condition of detention at the Mirihana detention centre until relocation to a temporary place or the proposed permanent building at Minuwangoda. The IOM expressed its willingness to provide required financial assistance for such reconstruction.

### **Condemned Prisoners**

Article 3 of the Universal Declaration of Human Rights as well as the article 6 of the International Covenant on Civil and Political Rights emphasize the value of the Right to Life, that every human being has an essential right to live, particularly that a human being has the right not to be killed by another human being. The concept of right to life is central to debates on the issues of capital punishment. Sri Lanka is a party to the International Covenant on Civil and Political Rights [ICCPR], but has not yet ratified the 2nd Optional Protocol to the ICCPR on abolition of death penalty.

Under the categorization of prisoners, the Department of Prisons categorizes convicted prisoners as [1] Civil Prisoners, [2] Prisoners not previously convicted, [3] Prisoners convicted to death, [4] prisoners previously convicted, [5] prisoners under 22 years of age and [6] un-convicted prisoners.

After suspending the capital punishment in 1956, in 1959 a Commission was appointed on the death penalty and it was re-introduced in 1960. The Death penalty is a law of the country since then, but the last execution was carried out on 23rd June 1976. Though the sentence of death is imposed by the Courts, it has not been carried out for last 35 years.

According to the Department of Prison there were 339 persons who have been sentenced to death during the year 1997 to 2010.

Year	Gender		Presentatge to the Total	Ethnicity			Period
	Male	Female		Sinhala	Tamil	Muslim	
1997	2	0	0.5	2	0	0	14
1998	6	0	1.8	6	0	0	13
1999	19	0	5.6	19	0	0	12
2000	16	0	4.7	16	0	0	11
2001	35	0	10	34	1	0	10
2002	38	0	11	37	1	0	9
2003	42	1	13	41	0	1	8
2004	23	0	6.8	23	0	0	7
2005	33	0	10	33	0	0	6
2006	40	0	12	39	0	1	5
2007	36	1	11	29	5	3	4
2008	13	0	3.8	7	2	4	3
2009	6	0	1.8	4	1	1	2
2010	25	3	8	13	14	1	1

The table shows that 36.6 % of the condemned prisoners are less than five years, 50.8% of them are five to ten years and 12.6% are more than 10 year in prison, counting days with uncertainty of life, daily suffering with minimum facilities and with fear of death. It was revealed that the condemned prisoners are taken only for one hour per day out of their rooms for open air. This situation is totally deferent from the life sentenced prisoners.

### Suggestions :

As Sri Lanka has already ratified the International Covenant on Civil and Political Rights, that abolition of death penalty contributes to enhancement of dignified life and progressive development of human rights, and also the fact that one does have right to take another life under whatever the circumstances, it is proposed to ratify the Second Protocol to the ICCPR and amend the domestic law to meet the requirement.

Furthermore the death penalty is not accepted by the many religions and culture of our country. The Commission also does not believe that the death penalty is the answer for the growing crimes in the country. Therefore it is proposed to take all necessary measures to abolish the death penalty, to take necessary administrative and judicial measures to revoke the sentence of death of all condemned prisoners and to sentence them for life imprisonment.



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• Chapter Five •

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## CO-OPERATION WITH CIVIL SOCIETY ORGANISATIONS

In any country civil Society organizations play an important role in the protection of human rights as most of these organizations work closely with the public at grass root level and are aware of the problems faced by people in the lower strata of society in their daily life. Therefore it is very necessary for the HRCSL to have a regular interaction and discussion with these organizations in order to fulfill its mission more effectively. It is with this objective that the Commission organized two meetings after the appointment of the new Board in February 2011. It is hoped that in the year 2012 the Commission will be able to arrange at least four meetings with these organizations.

The first meeting was held on was held in July 2011 with several civil society organizations. As this was the first meeting after the appointment of the new members to the Commission the Chairman welcomed those present and said that HRCSL was established as an independent body to promote and protect human rights of the people of this country. Commissioner Mrs Ismail stressed the importance of a partnership with the civil society in achieving the mission of the Commission. Commissioner Mr Mendis stated that steps are being taken to improve the quality of investigations at present and the necessity of having trained staff was also a concern of the Commission. Certain organization expressed that knowledge of human rights was lacking among public officers and that there was a need for more awareness programmes to be carried out among these officers. Concerns were also expressed regarding the non attendance by public officers at the HRCSL inquiries, non implementation of recommendations by government authorities and whether any action could be taken to enforce the recommendations. The fact the Commission was downgraded to 'B' status in the ICC grading was also pointed out by one of the participants who asked the Commission to look into reasons for the downgrading and stated further that necessary steps should be taken to restore it to position to 'A'. The meeting ended with Commissioner Mrs Ismail thanking the members of the organizations for attending the meeting and requesting them to send suggestions for the betterment of the Commission's activities.

The second meeting was held on was held in December 2011 with the Law & Society Trust and several other civil society organizations at the Head Office of the Commission. The Heads of the Divisions spoke about their respective activities and the Additional Secretary also highlighted some aspects of the work carried out by the Commission. The representatives of the civil society brought up several issues which required the attention of the Commission such as delay in issuing recommendations in respect of certain cases, the importance of issuing a final report on the FTZ



incident, non implementation of the recommendations. The Chairman promised to look into these issues and requested the organizations to send in writing the specific issues which were raised at the meeting. Finally he promised the fullest cooperation of the HRCSL to work with the civil society organizations.

In addition at regional level several civil society meetings were arranged by the regional offices to strengthen corporation of the civil society with the HRCSL.

## Chapter Six

### FOREIGN FUNDED PROJECTS

#### 6.1 National Protection and Durable solutions for IDP Project.

This project which was started in the year 2002 was funded by the UNHCR. The objective of the project was to promote and protect the rights of all IDPs. During the year under review the project completed 66 Human Rights Monitoring Missions, in Jaffna, Vavuniya, Mannar, Puttlam, Killinochchi and Mullativu respectively and held 528 consultations. During these missions 51 complaints were received. In the year under review 210 complaints that were received during the period as well as 285 complaints received in respect of previous years were disposed of granting necessary relief and redress.

Mobile legal and state service clinics were conducted and 2345 legal consultations were held.. Awareness programmes on gender Based Violence for IDPs, Host Community and returnees were conducted. A training programme was held for Senior government officers and heads of NGOs in Mullativu District on responses to SGBV. A two day training programme was held for field officers of government institutions and officers of INGOs in Mullativu district on prevention of SGBV and remedial actions. Awareness programmes on the elimination of SGBV was conducted for Police officers in Kalpitiya and Mundel Police stations.

The project also conducted programmes for 278 Human Rights Defenders. In the year 213 Human Rights Defenders who had successfully completed the course graduated. Thirty seven Human Rights Defenders were given internships in various districts in the Northern Province. The Human Right Defenders conducted 91 awareness programmes targeting 4754 IDPs, returnees and Host communities.

Programmes on Human rights, Fundamental rights and domestic laws relating to the respective areas were conducted for government officers in the Vavuniya district. Teachers in Mannar and Killinochchi were trained on human rights values through a two day workshop, Five Training Programmes on land and property rights for government officers in Kilinochchi, Mullativu and Trincomalee were conducted and 217 government officers were trained. The Project facilitated the Mediation Boards Commission to establish Mediation Boards in several areas in the North. Several research studies were conducted on areas such as vulnerable women, land rights, availability of police officers proficient in Tamil language.

The project completed its work in the year 2011.

**Project Manager – Mr. Senaka Dissanayake.**

## 6.2 UN Joint Human Rights Programme funded by the UNDP.

This project was started jointly by UN agencies, in November 2009 at the request of the government, following the commitment made by government at the 2008 Universal Periodic Review process to upgrade the national HR institution. The main goal of the project is to enable the HRCSL to reach status A in ICC grading for National Human Rights Institutions in the world by strengthening the functional capacity of the Commission so that it is able to deliver its mandate more effectively and efficiently. The project is jointly designed and planned by the HRCSL and UNDP and implemented by the HRCSL through a UNDP project monitoring unit (PMU) established within the HRCSL.

After the appointment of the Commissioners, at their request an overall action plan for the Commission and a curriculum for HR training was developed and the annual report of the HRCSL to the Asia Pacific Forum was written and submitted by UNDP Project Monitoring Unit. During the year under review the project extended its support to the Commission to transfer the Disappearance Data Base from the Attorney General's Dept to HRCSL and for its further development, to conduct 4 residential meetings for Head Office staff and regional office coordinators and staff on experience sharing and review of their work in order to strengthen the coordination mechanisms within the HRCSL. Support was provided for training on basic psycho social skills, monitoring & evaluation, psycho social counseling, attitude building, language training in English and Sinhala or Tamil as appropriate for the regions. Support was provided for monitoring visits by HRCSL during the provincial council elections in western & northern provinces. Monitoring visits to regions by HRCSL commissioners was supported by the project.

The project supported the translation and publication of HRCSL's 2009 and 2010 Annual reports. Project supports to translate and host the Commission website in all 3 languages. Project supported HRCSL to obtain services of legal/media persons to respond to nationally important HR issues.

Project supported international trainings for HRCSL staff and for HRCSL Chairman to attend the 24th Annual meeting of International Coordination Committee on human rights in Geneva.

Project supported & organized to hold 29 numbers of meetings between the HRC regional offices and civil society actors to ensure consultation with the public on important human right matters. 1 meeting was organized at national level with civil society. 12 numbers of 2 day residential trainings on human rights was conducted under the project for civil society actors at regional level through HRC regional offices, each providing training for over 50 civil society activists. An establishment of a committee within the HRCSL for regular consultation with the civil society on human right matters was also supported.

The project was successful in obtaining approval from the President and the Speaker to hold a series of dialogues on human rights within Parliament between members of Parliament, HRCSL and UN country office, which is planned for 2012.

HRCSL's 2011 celebrations for the international Human Rights day was also sponsored by the project.

**National Project Co-ordinator – Ms Tanuja Navaratne**

### **6.3 Project on “Increasing Confidence of Communities in Reporting and Responding to Violations of Children’s Rights” funded by the UNICEF**

This project is carried out in the Batticaloa District and relates to increasing confidence of communities in reporting and responding to violations of child rights in the District.

The following activities had to be carried out under the project;

- I. Meetings to be held with government officials in 14 Divisional Secretariates.
- II. Holding awareness programmes for selected persons.
- III. Preparing a booklet in the Tamil medium.

Three activities stated above have been completed. To finally end this project it is necessary to arrange a seminar for those who attended the meetings and the awareness programmes stated above and prepare a report.

At present 99% of the work under the project is over.

The Project is handled by Ms Shirani Rajapakse, Director – Education & Special Programmes

### **6.4 Project on “Building Capacity of the HRCSL Staff relating to Women’s Rights and Gender” funded by the UNFPA**

This project is for HRCSL staff officers.

The following activities had to be carried out under the project

- (i) Consultation to assess the capacity of the HRCSL staff.
- (ii) Based on the assessment report to prepare a training manual.
- (iii) For training to be done in the future.

In this project the capacity of the staff has been assessed after the necessary consultation and a report has been prepared. Based on this report a manual on training is being prepared.

The Project is handled by **Ms Shirani Rajapakse**, Director – Education & Special Programmes.



## • Chapter Seven •

### STATUS OF HUMAN RIGHTS IN YEAR 2011

The conclusion of the separatist war has opened a new vista for a stable and peaceful Sri Lanka. Almost one and a half years have elapsed since the end of the war. The people can move about without fear or apprehension of sudden terrorist attacks in any part of the country. Nevertheless, their yet remains allegations of violations of fundamental rights and freedoms of the people.

Sri Lanka has been a party to the following core international human rights instruments and have given effect to the obligations under these Conventions through legislative measures, including the Constitution as well as executive and administrative measures:

1. International Convention on the Elimination of All Forms of Racial Discrimination;
2. International covenant on Civil and Political rights;
3. International Covenant on Economic, Social and Cultural Rights;
4. Convention on All Forms of Discrimination Against Women;
5. Convention Against torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment;
6. Convention on the Rights of the Child;
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **HUMAN RIGHTS ISSUES THAT IMPACT ON CIVIL AND POLITICAL RIGHTS**

##### **Alleged Disappearances/Abductions**

For the year 2011 the total number of reported cases received by the HRC with regard to torture was 221, arrest/detention 274, missing persons 181 and harassment 218. The largest number of reported cases on torture came from Anuradhapura (58) and Matara (81). A arrest and detention Kandy (59) , Anuradhapura (52) and Matara (57). The largest number of missing persons, namely 121 cases, were reported from Vavuniya. It is heartening to observe that in the case of arrest and detention there is a positive improvement from 2010.

However, despite the withdrawal of emergency laws and the possibility of returning to governance under the normal laws of the country, there still exists fear and insecurity both in the South and in



the conflict affected areas in the North and East. Disappearances have occurred following surrender/arrest, abductions and arbitrary detention under the Prevention of Terrorism Act.

The LLRC when it visited the conflict affected areas heard a large number of representations from people who had stated that the whereabouts of their loved one's were still unknown as a result of abductions by illegal armed groups, unlawful arrest, arbitrary detentions and involuntary disappearances.

Formal complaints had been made to police stations, Human Rights Commission of Sri Lanka and to the ICRC. However, the next of kin have alleged, "that the whereabouts of these missing persons still remain unknown".

It is the responsibility of the state to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest. It is imperative that applicable legal provisions are adhered to by the law enforcement authorities when taking persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention. Furthermore, such persons should be detained only at formal places of detention declared under the law. Adequate publicity should be given to such authorized places of detention with access to next of kin.

There are allegations that a number of persons have been taken into custody and detained under the Public Security Ordinance, although the facts of some of these cases do not disclose any offence related to public security. The relatives of missing persons have a right to know the whereabouts of their loved one's to bring the matter to a closure and enable them to perform their religious rites.

In this regard it is to be noted that the amendment to the Registration of Deaths (Temporary Provisions) Act No 19 of 2010, provides for the next of kin to apply for a certificate of death in respect of a person who is reported missing and not been heard of for a period exceeding one year by those who would naturally have heard of him/her or his/her disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place in Sri Lanka. It is necessary to take all measures for the effective implementation of this law at the administrative level within a published time frame. Furthermore, adequate publicity needs to be given to the relevant provisions of this Act through the media, Grama Niladharis etc. especially in the conflict affected areas, in order to facilitate access to the procedures and remedies provided under the Act.

### **Activities of Illegal Armed Groups**

It is widely accepted that illegal armed groups are still active and are responsible for abductions, wrongful confinement and extortion in the North and East. They move around freely creating fear, threatening the safety and security of the people and denying them their space for peace.

These groups need to be disarmed and criminal proceedings must be taken against offenders found guilty. It is the general allegation that crimes committed by criminal elements have not been pursued even though there is sufficient evidence to institute criminal proceedings and prosecute the offenders.



## Treatment of Detainees

Even though it is nearly one and a half years since the conclusion of the war there still remains issues with regard to detainees. The issues of detainees focus on:-

- a) Whereabouts of detainee, especially those who have surrendered voluntarily;
- b) The difficulty of getting definitive information for the family members with regard to the place of detention;
- c) Particular need of young detainees to complete their formal education;
- d) Breadwinner who is in detention;
- e) The need to expedite the investigations and legal process as some of the detainees have been detained for a long period of time without a formal charge.

In this regard the Ministry of Defence has taken positive steps to establish a centralized comprehensive database containing a list of detainees, which is being made available to the next of kin with name, place of detention as well as record of transfers to enable families to have access to that information.

The number of persons in detention for suspected involvement in terrorist activity has been reduced to 225 out of a total of over 4,000. As many detainees as possible have been released or forwarded for rehabilitation and eventual release. The initiative to draw down the numbers had commenced with the interim recommendations of the LLRC. There were several cases still being investigated which are pending trial before the ordinary courts of law.

## Rehabilitation of Ex-combatants

With regard to rehabilitation of ex-combatants out of nearly 12,000, less than 900 remains in rehabilitation centres. Psycho-social care has been provided to all, including counseling, drama, dance and music therapy. Spiritual and religious programmes have also been conducted. Adult cadres have been provided with extensive vocational training making them employable and potentially useful members of their communities.

Those combatants still to complete the process of rehabilitation remain in the Protective Accommodation and Rehabilitation Centres (PARC) established by law.

The 595 LTTE child soldiers who were in government custody have been rehabilitated under a UNICEF assisted programme without setting in motion any criminal procedure and returned to their families within one year. Several have successfully passed their Advanced Examination in 2011 and some have gained entry to under-graduate programmes.

## Re-settlement of Internally Displaced Persons

Out of over 290,000 internally displaced persons (IDPs) housed in Welfare Centres at the end of May 2009, only 6,647 IDPs remained to be re-settled by the end of 2011. However, the people who have been re-settled and are in the process of rebuilding their lives yet requires state intervention with regard to infrastructure, medical and education facilities. Much progress has been made

through the grant of financial and other assistance packages. In relation to livelihood support, a self-employment loan scheme has been put in place in the North and East and to date beneficiaries have been apportioned USD 318 million. The beneficiaries are also provided with Enterprise Development Services (EDS) including the establishment of organizations for the self-employed. Nevertheless re-settlement packages are still pending in some cases due to difficulties in providing the requisite documents for eligibility. Many families still live in makeshift structures and needs assistance to rebuild their lives and have access to gainful employment.

The United Nations OCHA Joint Humanitarian and Early Recovery Update for November and December 2011, records that by the end of December 2011, 421,056 people (belonging to 126,524 families) had returned to the Northern Province. This figure includes 223,754 people (70,625 families) displaced after April 2008, 197,311 persons (55,899 families) displaced before April 2008. Further efforts to identify and assist IDPs in situations of protracted displacement to achieve a durable solution are ongoing.

### **Demining**

The government has demined 1,412 Sq Km out of the 2,046 Km that were contaminated with land mines. More than 42,000 anti-personnel mines, 227 anti-tank mines and more than 15,000 items of unexploded ordnance have been recovered from these areas. The de-mining was concentrated in areas where civilians are to be resettled, to expedite the resettlement process. The Sri Lanka army is responsible for around 80% of the de-mining operations and is supported by other agencies. It may be noted that with the establishment of the National Mine Action Centre under the Ministry of Economic Development, all coordinates related to mine action and mine risk education come under the purview of the civil administration.

### **High Security Zones**

A large number of the High Security Zones have been vacated and re-opened to civilians. By the end of the conflict in 2009, the High Security Zones (HSZs) covered 4,098.36 Hectares. At present it has been reduced to 2,582.45 Hectares. With regard to lands under former HSZs Palaly and Trincomalee-Sampur, the area covered has significantly diminished in terms of both land area and restriction of movement. It had been stated before LLRC that about 5,000 acres of land had been taken for the HSZ in Sampur which had displaced about 10,000 people and that about 1,600 people were still living in welfare camps in various parts of the Eastern Province. It is imperative that this land should be restored to the original settlers and that if that is not possible alternative land or adequate compensation should be paid to them.

It has also been alleged that fishing has been restricted in certain parts of the Kalpitiya sea for security reasons, depriving the fisher folk of their livelihood.

### **National Census 2011**

A national census was commenced in 2011. This has enabled an enumeration to ascertain the number of persons in the northern and Eastern Provinces and to scientifically identify the number of persons who lost their lives in the conflict.

Due to the unlawful presence of the LTTE no proper census had been carried out since 1981. A household survey of the dead and injured civilians as well as damage to property was also carried out by the Census Department in the conflict affected areas.

Among the people not accounted for and classified as deceased are people killed as a result of the conflict, including those who carried arms for the LTTE, civilians killed by the LTTE as they tried to flee from the hostage situation, persons caught in the cross-fire and people who migrated out of the Northern Province, either to the South and who left by sea to India and other countries seeking asylum. As a further step the government has decided to put in place a structure to further analyze and verify the data gathered in order to arrive at definite conclusions as to civilian mortalities and casualties.

The Census and Statistics Department has released the Enumeration of Vital Events (EVE) 2011 which records 22,329 deaths in Jaffna, Mannar, Vavuniya, Mullaitivu and Kilinochchi districts during 2005 to 2009. The number of deaths due to natural causes stood at 9,341 while 11,032 were mentioned as other deaths. The Census had not differentiated deaths as to whether they were LTTE combatants or civilians. The enumeration of vital events in the Northern Province was carried out by the Census and Statistics Department from June 10 to August 15, 2011.

### **Formulation of a Land Use Plan for Each District in the Northern and Eastern Provinces**

The government has adopted a programmatic initiative to resolve issues related to state land ownership. The initiative aims at the construction of over 78,000 houses in the North including those built by the North East Housing Reconstruction Programme (NEHRP) constructed with donor assistance. A Land Task Force has been established at provincial and district levels to deal with land issues and seek expeditious solutions.

The Government policy is to ensure that all those who have been dispossessed of their land, are given the opportunity to return to the lands they have once owned.

A majority of internally displaced persons have returned to their own land or re-settled in alternate land. However, there still remains the complicated task of providing legal documents of ownership/user right to the land occupied by them, as a majority of internally displaced persons have lost their documents due to the conflict. The resolution of land conflicts due to secondary occupation, forged documentation etc. are problems faced by the internally displaced persons.

The government, based on settlement experiences, has sought to provide a practical less bureaucratic and flexible solution to solve difficulties of displaced persons on land restitution. Public Administration Circular No 04/2011 has been gazetted by the Ministry of Public Administration giving policy directives on 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces'. The Circular inter alia has approved the establishment of a programme to regularize state land management in the North and East. The programme advocates the use of semi-formal and flexible methods to resolve land problems including the use of community leaders to monitor the transparency of the implementation process.

However, apprehensions have been caused with regard to provisions in the Circular which specify the setting up of two Committees comprising the Area Civil Coordinating Officer and a

representative of the relevant Security Commander. Nominees of the police or of the three armed forces have also been appointed under the Circular to an Observation Committee, which is established to assist the Committees of Inquiry. It is alleged that the new Circular compromised and eroded the rule of law and adherence to constitutional provisions. A petition has been filed in the Court of Appeal seeking an interim order restraining the Land Commissioner General from acting upon the impugned Circular.

### **Establishment of Normalcy and Re-Democratization of the Northern and Eastern Province**

It is vitally important that the Northern and Eastern provinces revert to civilian administration in matters relating to the day to day life of the people.

The following actions have been taken by the Government to bring about normalcy in the conflict affected areas:-

1. Holding of Provincial Council elections and local government elections in the North and East;
2. Restoration of civil administration including the network of 33 Divisional Secretaries and 912 Grama Niladharis in the North.
3. Development related work which during the conflict situation and immediately thereafter came under the purview of the Presidential Task Force for Resettlement, Development and Security in the Northern Province, is now under the supervision of the relevant Line Ministries, in coordination and in consultation with the provincial and local Government representatives.

Development activities in the 5 districts in the North are channeled through the relevant Line Ministries at the Central government level; Provincial administration and the District Secretaries at the District level, and Divisional Secretaries at Divisional level.

The District Secretary or Government Agent functions as the coordinating or executing officer of the District.

The civil service in the North and East is largely representative of Tamil and Muslim communities. The Chief Secretary/Northern Province and 3 out of the five district Secretaries /Government Agents in the North, i.e. Jaffna, Vavuniya, and Kilinochchi are Tamil women civil servants, whilst the other two are Tamil males. The Chief Secretary of the Eastern Province is also from the Tamil community.

It is also imperative to de-militarize and to phase out all involvement of the security forces in civilian activities in the North and East, particularly in agriculture, fisheries and land utilization.

In this regard it is heartening to note that the Military has been withdrawn from all aspects of civilian life, and are now confined only to security related matters.

## Language Issues

The official language policy gives equal place to Sinhala and Tamil language by the Constitution. The right of all persons to function and communicate in a language of their choice is therefore constitutionally entrenched.

However, the administrative machinery is slow in the implementation of the parity of status accorded to both Sinhala and Tamil. The grievance of many Tamil citizens as borne out by their representations before the LLRC is that very often they receive official letters only in the Sinhala language, which has made the Tamil people having the perception of being second class citizens.

It is encouraging to note in this respect the steps taken by the government to recruit more than 1,600 Tamil speaking police officers. In addition, for the purpose of training police officers in the Tamil language a special Police Training College has been established in Avissawella district by the government.

## Issues of Governance that Impact on Human Rights

There are several inhibiting features that diminish the quality of democracy in the country.

The violation of democratic rights by the State, the administration and by powerful individuals with political patronage is a recurring phenomenon. The incidents of the grease devils is a case in point. These incidents spread throughout the country particularly, in the North and East in sporadic occurrences. In Jaffna it had resulted in about hundred villagers been taken into custody by the police. The villagers alleged that when they chased the grease devils they had run towards the army camp. The villagers had demanded that the Security Forces should not give sanctuary to the grease devils. This had led to the army firing warning shots at the agitated villagers who had started pelting stones. No proper investigations had taken place into these incidents to apprehend the culprits. People naturally become restive when authorities fail to take prompt action in cases of crime and other incidents. The propensity of the public to storm the streets and take the law into their hands results in an erosion of the rule of law.

## Media Freedom

In a democratic society media is considered the guardian of the people's interest. Freedom of expression and the right to information are universally regarded as basic human rights. In this respect the incidents of human rights violations such as physical attack, killing and kidnapping of media personnel and destruction of media property are still very frequent in the country. Almost all of the investigations into these incidents remains unresolved, with the perpetrators continuing to be free without any serious attempt made to subject them to the judicial process. It is vital that investigations, prosecutions and disposal of cases should be relentlessly pursued to build public confidence.

The News Editor of the Uthayan Newspaper, Gnanasunderam Kuganathan was assaulted by a group of unidentified persons when he was returning home from work on 31st July 2011. He was critically injured with head injuries due to blows from iron bars. The attack on the journalist had



taken place in close proximity to a military sentry point on a main road in Jaffna, which has a very heavy presence of military personnel. To this date no arrests have been made with regard to the perpetrators of this crime.

The failure of the law enforcement authorities to apprehend the assailants indicates an erosion of the rule of law. A code of silence and a façade of investigations and a failure to prosecute suspects are the main characteristics of this impunity. It is vital that the fundamental freedoms guaranteed by the Constitution are protected by the Government.

### **Politicization of Public Institutions**

The politicization of public institutions, especially the police, has resulted in a deterioration of the rule of law, especially in instances where crimes have been committed by persons with political patronage. This has created a high degree of inequity and impunity in the system. The failure of the authorities to conduct conclusively investigations of criminal actions, is due to the politicization of the law enforcement process particularly in police administration.

Political interference by politicians preventing the police from performing their duties is a frequent phenomenon. This was evident during the Provincial Council Elections which were held on a staggered basis throughout 2011. There were many instances of politicians storming into police stations to get their supporters involved in illegal acts released.

On the positive side, it must be stated that at the Local Government polls held in July 2011 all the mainstream political parties UPFA, UNP, JVP and the TNA had contested the Northern elections. The people in these districts were voting after nearly twenty years. The voter turnout in Mullaitivu and Kilinochchi districts had been 65%.

In the area of tertiary education, the confrontation between the Minster concerned over issues involving trade union action by university teachers and student unrest in universities should have been resolved through dialogue, not by issuing threats or by attempts to intimidate the stakeholders as happened. The autonomy of universities is a fundamental prerequisite of a democratic society. Dialogue and willingness to compromise are the surest way to retain the support and respect of the people. It is necessary to encourage the building up of a society where peaceful dissent is seen as an enriching experience and a democratic challenge and not as an act of treachery or treason.

On February 4th Independence Day UNP protest march was attacked at Punchi Borella. This act of ruling party terrorism was met with inaction by the police.

In order to ensure the protection of fundamental rights guaranteed in the Constitution it is imperative that all allegations of violations of human rights are investigated and wrongdoers prosecuted and punished irrespective of their political links.

Concerns have been raised with regard to the military intruding into meetings organized and held by civilian organizations. First was a function being held at St Charles' School, the second was the meeting of the Noolaham Foundation (a private organization of academics engaged in collecting

preserving historical documents and monuments) and thirdly a meeting of the Tamil National Alliance. It was alleged that soldiers barged into a meeting of the TNA, into the hall where a closed door meeting of the TNA was being held in the Tellippallai police area. The soldiers who had been armed with poles had begun to beat up the participants, with an officer claiming that the meeting was illegal as military/police permission had not been obtained. It is possible that this was a genuine mistake and not a deliberate one. However, closed door meetings of political parties do not require any permission unlike public meetings. The violent attack indicates it was pre planned as the assailants had come armed with poles etc.

The Provincial Council elections held in October 2011 ended in multiple tragedy in Mulleriyawa a suburb of Colombo. The police were caught flat footed, unable to prevent gun toting thugs from committing murder. The shoot out was a result of a vicious internecine warfare between two factions of the ruling political coalition. In such circumstances a politicized police, who consider security of the ruling party politician more important than serving the people by upholding the rule of law, were unable to take any preventive action.

There is wide spread public perception that the Firearms Ordinance is observed in the breach and the police turn a blind eye to the many unlicensed guns in the possession of undesirables who enjoy political patronage. It is imperative that the provisions of the ordinance is strictly enforced.

The police were helpless because the hierarchy in recent years were willing tools of the political establishment. The officers and even the rank and file who wanted to do an honest job are not able to do so, because they know they cannot rely on the backing of their superiors. The politician treated police as his or her private security service. The police culture is to serve the politician and not the people by upholding the rule of law and tackling lawlessness. A change in the political culture is of the utmost priority if Sri Lanka is to gain the peace dividend, after successfully eradicating terrorism from her soil.

The government and police must treat the murder at Mulleriyawa as a wake-up call to change the way they deal with dissent or with protests, in addition to upholding the rule of law at all times. They need to be firm with all those who break the law, irrespective of whether they have political or any other clout.

The other issue that fundamentally affects the civil and political rights of a citizen is police torture and mistreatment of 'suspects' in their custody. The police must learn that the end never justifies the means, that they must adhere strictly to the guidelines encompassed in the legal system of the country, as they play vital role in upholding the rule of law in a democratic society.

### **Absence of Witness Protection**

The absence of witness protection is a grave lacuna in our law. The government has indicated its intention to table in Parliament a witness protection Bill in the foreseeable future.

### **National Action Plan for the Promotion and Protection of Human Rights**

A National Action Plan for the promotion and protection of Human Rights has been approved by the Cabinet of Ministers in September 2011.



The Action Plan presents a structured framework to monitor the implementation of existing laws, policies and practices and to enhance a better understanding and respect for human rights.

It addresses the following eight areas. Namely –

1. Civil and Political rights
2. Economic, Social and Cultural rights.
3. Children's Rights
4. Migrant Workers' Rights
5. Prevention of Torture
6. Women's Rights
7. Rights of IDPs
8. Labour Rights

A Cabinet Sub-Committee has been appointed to oversee its implementation. At the operational level the Minister for Human Rights will chair a body of senior officials of institutions that will be charged with implementation.

## Overview

### Need for a Pro-active Role by the HR Commission

A recurring phenomena that continues to cast their shadow, even three years after the conclusion of the war, are the disappearances and abductions that are taking place throughout the country with impunity. In this regard the Human Rights Commission has to take a pro-active role to inquire into these incidents and pressure the law enforcement agencies to take expeditious action. It is to be noted that the Human Rights Commission Act specifically states,

***“that the function of the Commission shall be inter alia 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 promoting respect for and observance of fundamental rights”.***

The Human Rights Commission Act further enumerates its functions as –

1. *To advise and assist the Government in formulating legislation And administrative directives and procedures in furtherance of the promotion and protection of fundamental rights;*
2. *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.*
3. *To promote awareness and provide education in relation to human rights.*

Therefore, it is incumbent on the Human Rights Commission to take the vanguard when incidents of disappearances and abductions are reported to inquire and keep in focus such developments, to ensure that the law enforcement agencies adhere to the due process of law.

The Paris Principles adopted by the UN Human Rights Commission in Resolution 1992/54 and by the General Assembly in Resolution 48/134 of 1993 specifically states that national institutions inter alia have the following responsibilities.

“To submit to the Government, Parliaments and any other competent Body on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them, these opinions, recommendations, proposals and reports relating to –

- (a) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
  - ii. Any situation of violation of human rights which it decides to take up;
  - iii. Preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
  - iv. Draw the attention of Government to situations in any part of the country where human rights are violated and making proposals for initiatives to put an end to such situations and where necessary expressing an opinion on the positions and reactions of the government.
- (b) to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.
- (c) To encourage ratification of the above mentioned instruments or accession to those instruments, and to ensure their implementation.
- (d) To contribute to the reports which States are requested to submit to United Nations bodies and Committees, and to regional institutions, pursuant to their treaty obligations and

where necessary to express an opinion on the subject, with due respect for their independence.

- (e) To cooperated with the United nations and any other organization in the United Nations system, the regional institutions and other national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist the formulation of programmes for the teaching of, and research into, human rights and to take part in the execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs."

It is therefore manifest that the Paris Principles envisage a dynamic, pro-active role for national human rights institutions.

Since the Human Rights Commission of Sri Lanka is an independent institution, it is of the very essence that it functions apolitically. Therefore, the Commission needs to be more assertive and pro-active vis a vis incidents of violations of fundamental rights. It behoves the Human Rights Commission to act with more vigour to take up these issues with the relevant government authorities. Such commitment on the part of the Human Rights Commission would create confidence in the public mind of its impartiality and independence.

An emerging trend in the post conflict era is the politicization of public institutions resulting in an erosion of the Rule of Law. The frequent incidents of assaults on media personnel and the inability of law enforcement institutions to conduct investigations to a conclusion speaks for themselves.

It is however, heartening to note an opportunity has presented itself to revitalize democracy and human rights by the formulation of a National Action Plan for the promotion and protection of human rights.

The National Action Plan for the promotion and protection of human rights encompasses all the key segments of human and fundamental rights. Since the National Action Plan will be initiated and monitored by a Cabinet Sub-Committee, public institutions would of necessity have to follow its policy directives.

In promoting awareness and sensitization to the observance of human rights, the Human Rights Commission has a vital role to play in spearheading programmes specifically targeting members of Parliament, political authorities in tiers of government, public officers and the personnel of the law enforcement agencies, namely the police and the three armed services. The Human Rights Commission will also have to be actively engaged in monitoring the performance of public institutions in accordance with the National Action Plan.

Though Sri Lanka has ratified the Covenant on Economic, Social and Cultural Rights no legislation has been passed by the Parliament to give legal effect to these rights unlike in the case of civil and political rights which are enshrined in the Fundamental Rights Chapter in the Constitution.

However, the Directive Principles of State Policy and Fundamental Duties as laid down in Chapter V1 of the Sri Lanka's Constitution provide that the legislature and the executive shall be guided by the objective of promotion of social and economic welfare of the people by securing an adequate standard of living including adequate food, clothing and housing and the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities in the governance of the country. The eradication of illiteracy, the assurance of all persons of the right to universal and equal education and the equitable distribution among all citizens of the material resources of the community are also contained in this Chapter. Therefore it is seen that many of the rights contained in the Covenant on Economic, Social and Cultural Rights are in the guidelines laid in Chapter V1 of the Constitution.

During the year under review vast strides were made in the development of the infrastructure of the country including housing, roads, bridges, schools, hospitals and irrigation schemes and in this effort emphasis was placed in the Northern and Eastern parts of the country. Hospitals and schools have been repaired, new wards and class rooms and other facilities have been provided to help in the progression towards normalcy and improving the quality of life of the people in the area as well as those of the resettled persons. Though both the Northern and Eastern areas have great potential for growing of paddy and other food crops the three decades of terrorist domination had caused almost a complete collapse of agricultural activity. However with life returning to normal conditions the residents are growing vegetables and other food stuffs and the transport of these to the South is generating an income for the farmers.

Roads have been repaired and in villages most of the roads have been concreted and today the road development figure for the whole island stands at 1.6km for every square kilometer which is very high compared to other regions in South Asia <sup>4</sup>. In 2011 Sri Lanka opened its First Expressway connecting Colombo to the Galle. The Hambantota harbour was also opened this year and it is hoped that this harbour will generate a large income from transshipment in the coming years and also generate an income for the people from various livelihood programmes that have been started in this area with the development of the harbour. Hambantota District has been a neglected area for years though there has been continuous infrastructure development in the adjoining districts Galle and Matara and as such the income level of the people in this area is low as compared with those in the adjoining sea bordering districts.

The literacy rate in Sri Lanka is 90.8%<sup>5</sup> as primary and secondary education has been free and compulsory for over 40 years, Even university education is free in the state universities The state policy is to teach both Sinhala and Tamil in schools thus promoting ethnic harmony from the young days. The lack of qualified teachers for this project is causing problems at present. Emphasis is also placed on teaching English and computer education in schools. One hundred and twenty English teachers have undergone training at the English Institute of the Hyderabad University in India and have qualified as Master Trainers in English. They are at present training the English teachers numbering approximately 23,000 Sri Lanka in the new methods of teaching English which they have acquired in India. Under an Asian Development Bank funded project almost all secondary schools in the island have been provided with fully equipped computer labs in order to facilitate studies in computer science. It is the vision of the government to have a tri lingual, computer literate secondary school student by the year 2016.

<sup>4</sup> Central Bank Report 2011

<sup>5</sup> Human Development Report 2011

There is a severe lack of accommodation in state universities as only 22,000 of the 150,000 students who get qualified for admission are unable to secure placement in the universities. Admission to various technical colleges too has not so far solved this problem. It is in this context that the government is considering a proposal to grant permission for foreign universities to establish branches in Sri Lanka on the undertaking that 20% of the placements will be offered free to those who qualify for local admission. In order to suit education to the labour market the government hopes to direct students who enter universities in the Arts stream to courses of study such as Nursing, Information Technology, English Language, and Tri Lingual degrees.

In Sri Lanka State hospitals and health clinics are free and accessible to all persons including even foreigners. A recent survey conducted by the Department of Health has shown the life expectancy of Sri Lankan women and men to have increased to 80 and 76 years respectively, thus reflecting an improvement in the health care services and living standards of the people. During the year 2011 there was a significant improvement in the health care system as steps were taken to remedy the acute shortages of essential drugs and necessary equipment which had roused much public criticism in the earlier year. The free issue of the nutrient meal termed "Thripasha" to the expectant mothers for a period of 8 months and for lactating mothers for 6 months after the birth of the baby from the hospitals and health clinics has helped to bring the maternal mortality to 33.3 per 100,000 live births and Infant mortality to 10.2 per 1000 live births<sup>6</sup>. Thripasha is also issued till the baby is 2 years old to provide the necessary nutrition required for the growth of the infant. There are also Family Health Workers in all villages who attend to minor health problems of expectant mothers and infants.

Yet having taken all these measures the malnutrition figures are high today. It is in this context that today the government is considering the provision of a more nutritious mid day meal in schools soon.

Measures are to be taken to introduce Prof. Senake Bibile's drug policy to prescribe drugs by their generic names to provide accessibility to reasonably priced drugs and also to provide essential drugs of the highest efficacy at the lowest possible price. Dengue precaution and awareness programs as well as house visits are regularly carried out by the local authorities under the supervision of the health authorities to check whether the environment is kept clean and that there are no breeding grounds for mosquitoes. In police stations there is an environment desk for the public to make complaints so that spread of disease due to the pollution of the environment is kept under control.

In the former conflict areas in the North, the UN-Habitat has initiated several permanent housing projects in partnership with foreign funding, thus helping in the return of displaced persons and enhancing the resettlement efforts of the government. There are also housing programmes to help poorer sections of the urban population who live in semi permanent shelters in very unhygienic environment to move in to better shelters.

The government proposes to provide electricity to the whole island by end of year 2012 and at present 92% of the area of the country has electricity. During the year under review the Jaffna grid was constructed and supplies to Vavuniya was increased to 75%, Mannar to 67% Killinochchi to

<sup>6</sup> Family Health Bureau - Ministry of Health



27% and Mullativu to 23% respectively. The government has also decided to provide electricity connections free of any charge to those who come back to resettle in the districts after fleeing from the area due to terrorist activities. The cost of electricity has been going up yearly and the government is studying alternative energy sources such as solar power, sea waves, wind and nano technology related energy as well as opening another coal power plant at Sampur in order to keep the cost per unit of electricity at the lowest rate possible. Water and sanitation is another area of concern especially in the areas which were under terrorist domination and foreign funded projects have provided some assistance in these areas. With urbanization and change of lifestyle of the people the demand for pipe born water is also rising in all cities.

Sri Lanka has seen a very high growth for telecommunication services and usage of mobile phones has seen a sharp increase in the last few years. At the end of 2011 there were just over 18 million mobile phone connections. According to the Telecommunication Regulatory the fixed line connections have increased both in 2010 and in 2011. There is also a noticeable increase in the use of internet and broad band services which are available at reasonable and affordable prices. This is considered as a sign of growth of commerce and trade.

To guard against the World Food crisis the government has adopted a programme called " Divi Neguma" the aim of which was to provide food security, eradicate hunger and poverty and help improve the nutritional standards of the people. Under this programme households were promoted to grow vegetables and fruit items with the plants and seeds provided free, in the First stage of the programme. Milk cows and chicks were also provided under this program and assistance was given for fish breeding. This programme aims at connecting the households to the national economy and thereby help towards creating self sufficiency in a number of food items. In the 2011 the First stage of the programme exceeded the target of 1million and set up 1.4m domestic economic units. With fertilizer available at a subsidized price paddy growing has recommenced on a large scale and country is almost self sufficient in its staple food –rice.

In society women, children, migrant workers, physically and mentally handicapped and the aged are considered vulnerable groups who are in need of special care and attention. Landmark changes in the Penal Court has provided legality for abortions in case of certain types of pregnancies and the Prevention of Domestic Violence Act 2005 has afforded women some protection, However violence against women is sadly quite prevalent. as is seen for example by the ' Grease ' scenario which spread to several rural areas of the country frightening women and young girls in the nights, the murder of several women in Kahawatte in Ratnapura District and a female tourist in Tangalle.. The most unfortunate factor in these types of cases is that the delay in bringing the perpetrators to justice, makes the public wonder whether there is a certain influential coverage for the perpetrators of such crimes and the absence of the rule of law. Legislation to legalize abortions in case of pregnancies due to acts of rape and in case of congenital defects of the foetus is also much needed. Though Sri Lankan women enjoyed voting right as far back as 1931 there is lack of participation of women in the political process. The cause for this has to be identified by a study which would help to get more women representation in decision making bodies. However women are very well represented in the administrative sector of the governance of the country. Problems faced by war widows who are heading single parent households and have become the sole breadwinners of the family is another area where attention regarding areas such as empowerment, livelihood skills training is of urgent concern.

Sexual exploitation of children keeps rising yearly according to the available statistic at the National Child Protection Authority. Even in the northern region child abuse is rising. The NCPA maintains a 24 hour hot line to help to a person to inform of any child abuse cases. A study on the causes for the rise in these figures have attributed the phenomena to reasons such as the change of life style of the family with both parents been employed and children left to the care of neighbors or ageing elders, parents having little or no time for any dialog with the children, availability of access to internet without any restriction of age. This is an urgent problem which needs immediate attention of the authorities.

Migrant workers problems is another area of concern. According to the 2011 statistics the ratio of women to men are 49% to 51%.<sup>7</sup> The women migrant workers are those with very little education and are generally unskilled and go as housemaids. They are subjected to much abuse and harassment in many places of employment. In 2011 the government passed legislation which stipulated that a for employment abroad as a housemaid one has to be over 21 years, in the hope that maturity would be helpful in facing dire hardships. Sri Lanka has failed to fill skilled female job cadres such as trained baby sitters, nannies, nurses, sales girls.<sup>8</sup> In the recent years the Ministry of Foreign Employment has entered into several bi lateral agreements with Middle Eastern labour receiving countries to provide for the welfare and protection of these migrant workers. However the problems faced by the society as a result of migration of domestic workers such as school drop outs, sexual abuse of children, husbands entering into extra marital relationships and thus neglecting the children or taking liquor and wasting money remitted by the wife are immense. Though studies have been done it is questionable whether any effective remedial measures have been put in operation.

Sri Lanka has a fair percentage of persons with physical disability considering that there has been terrorist activity for 30 years with bombing of several public places and public transport. These persons too have a right to the full participation in the social and cultural life of the community. However they have to face many impediments even in their day to day existence. Thus for example the restricted access of such persons to public buildings and public transport is a barrier to their enjoyment of the normal life of the community. The Protection of Persons with Disabilities Act No28 of 1996 and the Accessibility Regulations made therein provide that new buildings at least should be made accessible to persons with disabilities. At present the Social Service Department conducts various vocational training programmes for disabled persons at five vocational training centres maintained by the Department with the aim of empowering these persons. The Department is also trying to obtain private sector assistance towards securing employment for these persons.

The ageing population shows a significant increase with the increasing life expectancy and improving health care facilities and living standards of the people of Sri Lanka. This phenomenon is seen in other Asian countries too. The change in lifestyle of the present generation has shown that the children are unable to care for their parents since they are either living abroad or do not have the time nor the means to do so like in the old days. Therefore caring for the elderly would be a matter which may need the attention of planners and policy makers as well as those in the health sector.

<sup>7</sup>Annual Report of the SLBFE 2010

<sup>8</sup>Annual Report of the SLBFE 2010

<sup>9</sup>Central Bank Report 2011



Poverty alleviation schemes like the samurdi subsidy, nutrition allowance and disability allowance programs continued during this year too. There are also various income generating programmes, community development programmes, as well as capacity building programmes which continue to enable the samurdi beneficiaries to escape from poverty. Poverty alleviation schemes have been extended to the northern regions as well after the end of the internal conflict. Today the poverty head count index is 7.2% according to the latest figures available.<sup>9</sup>

Sri Lanka today has a growth rate of 8.3%, a per capita income of 2300 US \$ and has already achieved some MDGs and is on track in achieving some others by 2015. According to the UN Development Report 2011 Sri Lanka is in the Medium Human Development category as it is ranked 97. It is nearly three years since the end of the terrorist war which caused untold misery to people and heavy damage to the country. During the last couple of years though there has been massive infrastructure development as well as a very significant economic growth in the country, the political issues that led to the terrorist activity have not been fully addressed as yet. Some parts of the LLRC recommendations are in the process, of implementation and have reached a very high percentage in the process such as in resettlement, rehabilitation and relief. It is hoped that with the full implementation of these recommendations, the multi ethnic, multi religious groups in Sri Lanka would be able live in peace, exercising democratic rights and freedoms. It is only then that we can have a dynamic society with unity in diversity.

**Annexure I:****Official Travel Abroad – Conference / Meetings / Workshops Year 2011**

No	Name & Designation	Country & Conference / Seminars / Meetings / Workshops	Period
1	Mr. K K Villavarajan - Education Officer (E&S Programmes)	Bangladesh - Regional Seminar on UPR follow up and imple- mentation for commonwealth Asian and European Countries	08.02.2011
2	Justice Priyantha R P Perera - Chairman	Switzerland - 24th Annual Meeting of the International Coordi- nating Committee of National Institutions for the promotion and protection of Human Rights (ICC)	16.05.2011 - 19.05.2011
3	Ms. S Rajapakse – Director (E&S Programmes)	Malaysia - APF-UNFPA Regional Consultation	20.06.2011
	Mr. A C A Azeez - Investigating Officer (I&I)		
4	Dr. M A J Mendis - Commissioner	Bangkok Thailand -	06.09.2011
	Mr. Thangarajah Edward Anandarajah - Commissioner	16th Annual meeting and Biennial conference of the Asia Pacific Forum of National Human Rights Institutions	08.09.2011
5	Mr. W P Nihal – Investigating Assistant (I&I)	Nepal -	19.09.2011
	Mr. W N S Bandara – Investigating Assistant (Ampara R/O)	Blended learning course on “Torture Prevention” for NHRIs in South Asia	23.09.2011
	Mr. R L Vasantharajah – Investigating Assistant (Jaffna R/O)		
	Ms. Ellangeswary Ravisoody – Investigating Assistant (Kalmunai R/O)		
6	Dr. M A J Mendis – Commissioner	Seoul-Korea - Asia Pacific National Conference on Business and Human Rights	11.10.2011 13.10.2011
7	Mrs. S Thambydurai – Actg. Secretary	Bangkok Thailand - Migrant Workers Training Programme	17.10.2011 21.10.2011
8	Mr. A W A Ahamed – Legal Assistants (I&I)	India-Kerala -	14.11.2011
	Ms. P M M Sujeewa Kumari – Legal Assistants (I&I)	Sub Regional Workshop on National Human Rights Institutions in South Asia	- 18.11.2011
	Ms. S S Rathnayake – Legal Assistants (I&I)		

**Annexure II:****Local Training Obtained by the HRCSL staff in the Year 2011**

No	Name & Designation	Programme / Workshops/ Training	Period
1	Mr. MA Nihal Chandrasiri – Research Officer (M&F)	Workshop on “Qualitative Research Methodology in Social Sciences”	12.06.2011
2	Mr. A M T H B Atapattu – Administration Officer	Workshop on Transport Management	30.06.2011
	Mr. MC Pradeep – Clerk (A&F)		
3	Mr. B A R Bamunusinghe – Director (A & F)	Administration Law and Human Resource Development	04.03.2011
4	Ms. W A U S Wijesooriya – Documentation Officer	Management of Basic Library System	26.09.2011 - 30.09.2011
5	All Executive Staff	Evaluation and Participation Appraisal Rules	05.10.2011 06.10.2011 07.10.2011



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