

1. INTRODUCTION.

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.¹

The Present submission is primarily based on the Joint Civil Society (JCS) submission by 31 Civil Society Organizations and 26 individuals submitted to the United Nations universal periodic review (Sri Lanka) Second Cycle, 14th Session 2012.² This submission also builds on JCS by incorporating changes which have taken place after April 2012 based on the research and publications obtained from several reputable sources. The present submission also draws upon several reports and publications produced by CPA during the review period.

2. OVERVIEW

The State party report submitted by the Government of Sri Lanka (GoSL) covering the period from 2003 to October 2012. This period witnessed a further deterioration in the rule of law in Sri Lanka, with challenges ranging from the increased centralisation of power by the Executive and politicisation of independent institutions³ to the lack of investigation and prosecution into serious human rights abuses and the introduction of draconian security laws⁴, which all contributed to the consolidation of the culture of impunity⁵. The

¹ The Centre for Policy Alternatives can be contacted via
Address: 24/2 28th Lane, off Flower Road, Colombo 7
Telephone: +94 (11) 2565304/5/6 Fax: +94 (11) 4714460,
Web www.cpalanka.org,
Email info@cpalanka.org and psara1@cpalanka.org

² See Joint Submission by Civil Society in Sri Lanka for UPR 2012,
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/LKSession14.aspx>

³ The implementation of the 18th Amendment to the Constitution in October 2010 provided substantial powers for the Executive to appoint justices to the Supreme Court and Court of Appeal, Attorney General and individuals to independent institutions. The control by the Executive over independent actors was further exacerbated when institutions such as the Attorney General's Department and Legal Draftsman's office was moved from the Ministry of Justice to be directly under the control of the Executive. The politicization of institutions such as the National Human Rights Commission (NHRC), the Judiciary and the National Police Commission, which are of paramount importance in protecting the fundamental rights of citizens and ensuring the separation of powers, was reinforced by the 18th Amendment.

⁴ The Prevent Terrorism Act and relevant regulations are discussed below.

⁵ The removal of term limits for the President through the 18th Amendment has a direct bearing on the rule of law as it provides immunity to the Executive. The blanket nature of immunity conferred by Article 35, and the

three decade old civil war has served as a justification for the steady erosion of the rule of law. Nationalist sentiments and popular militarism, which intensified during the last stages of the war, continue to disproportionately influence the public discourse and governance. Attempts to raise human rights concerns, at national or international levels, continue to be cast as undermining national sovereignty, the defeat of terrorism and the architects of the military victory.⁶ This context has facilitated the enactment of Constitutional amendments and legislation providing wide powers to the executive and defence establishment in the post war period.⁷

Some key Developments in this period include;

THE END OF THE ARMED CONFLICT

With the conclusion of the Armed Conflict in 2009 both the Liberation Tigers of Tamil Eelam (LTTE) and the GoSL have been accused of war crimes and Crimes against Humanity. Since the end of the war, there have been few domestic initiatives to address accountability.⁸ In May 2009 the GoSL assured the visiting the United Nations Secretary-General questions of accountability will be addressed⁹ but there has been no independent initiative, indictment or prosecution of alleged perpetrators nearly three years after the end of the war. The LLRC¹⁰ failed to adequately address issues regarding violations of human rights and IHL¹¹ with criticism leveled against the process and methodology used in

possibility under the new Article 31 that one person can keep getting re-elected for life, could lead to immunity for life.

⁶ With the exception of specific individuals who have fallen out with the Government and are directly seen as a threat such as the former army commander, the then Major General Sarath Fonseka and others close to him.

⁷ Raising questions why broad sweeping security legislation is required after the end of the war and with limited checks and balances of the power of the Executive.

⁸ The Government has appointed several committees and commissions of inquiry but there is no information suggesting any concrete steps have been taken including prosecutions of alleged perpetrators. Most recently, a Court of Inquiry was appointed by the military with no information publicly known regarding process and terms of reference. (For more information refer to the Rule of Law section in this submission).

⁹ "Joint Statement by United Nations Secretary General, Government of Sri Lanka", 26 May 2009, <http://www.un.org/News/Press/docs/2009/sg2151.doc.htm>

¹⁰ The LLRC has been used by the Government on several occasions to counter calls for international action by claiming that it is a 'home grown solution' to address issues of accountability among many others.

¹¹ In its final report, the LLRC essentially claims that all civilian casualties were caused by the LTTE or were the result of people being caught in the crossfire. While the LLRC calls for further investigations into specific incidents, a key finding of the LLRC is that there was no government policy with regards to committing these violations. See Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, Para 4.352, 4.359

their findings¹². In contrast, international initiatives, which have been vehemently opposed by the GoSL, have indicated the occurrence of violations by both parties during war¹³

With the end of the war, there were expectations that the state of emergency would be withdrawn and the resulting restrictions on fundamental rights would be restored, instead of the introduction of draconian security laws. While the Emergency Regulations (ERs) promulgated under the Public Security Ordinance (PSO) are no longer in force,¹⁴ immediately after the laps of the state of emergency the GoSL introduced similar measures under the Prevention of Terrorism Act (PTA).¹⁵ According to a Supreme Court decision, the PTA regulations are not subject to judicial review hence PTA regulations contain even less safeguards than the ERs¹⁶ and is a violation of Sri Lanka's obligations in terms of the ICCPR.¹⁷

¹² The LLRC reached its conclusions without examining specific information including the chain of command and the authorities' prior knowledge of the ground situation. They also seemed to have relied heavily on Government sources for their analysis, disregarding important information available with those who were witnesses of the last stage of the war. See- CPA, "Release of the Lessons Learnt and Reconciliation Commission Report", 4 January 2011.

¹³M. Darusman, S. Ratner and Y. Sooka, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," 31 March 2011 <http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf ; United States Department of State, "Report to Congress on Incidents During the Recent Conflict in Sri Lanka", October 2009, <http://www.state.gov/documents/organization/131025.pdf>

¹⁴ The state of emergency declared in Sri Lanka was allowed to lapse by non extension in August 2011.

¹⁵ Five separate regulations [Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulation No 1 of 2011; Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organization) Regulation No 2 of 2011 ; Prevention of Terrorism (extension of application) Regulation No 3 of 2011 ; Prevention of Terrorism (Detainees and Remandees) Regulation No 4 of 2011 ; Prevention of Terrorism (Surrendees care and Rehabilitation) Regulation No 5 of 2011] were promulgated under S.27 of the PTA and came into effect on 29th August 2011. See also CPA, Statement on the new Regulations under the Prevention of Terrorism Act, 26 September 2011.

¹⁶ CPA, Statement on the new Regulations under the Prevention of Terrorism Act, 26 September 2011 (<http://www.thesundayleader.lk/2011/09/25/pta-must-go-says-cpa/>); Kishali Pinto Jayawardene, "Celebrating more of Houdini's illusions?" The Sunday Times, 28 August 2011, (<http://www.sundaytimes.lk/110828/Columns/focus.html>).

¹⁷ The Prevention of Terrorism Act (PTA) itself contains provisions relating to arrest, search and seizure, detention orders and allows statements admitted to higher ranking police officers as admissible in courts of law subjected to a test as to whether the statement had been made under some form of coercion, inducement or promise. The PTA provides legal immunity for actions of public servants in acts performed under the statute, provided that they were done in good faith and in pursuance of official duties. Furthermore arrests need not be with reasons, detentions could be extended without effective judicial scrutiny and suspects have no right to independent legal counsel or medical examination. Such provisions do not meet the International Human Rights standards set by instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). See Kishali Pinto Jayawardene, "Celebrating more of Houdini's illusions?" The Sunday Times, 28 August 2011,

THE 18TH AMENDMENT TO THE CONSTITUTION AND ITS IMPACT ON THE FUNCTIONING OF INDEPENDENT INSTITUTIONS.

The 18th Amendment to the Constitution has undermined independent institutions and human rights protection in post war Sri Lanka,¹⁸ Following the introduction of the 18th Amendment, the Executive wields greater control over actors relevant to the legal system as unilateral appointments are now made to the Supreme Court, the Court of Appeal and the Attorney General¹⁹. The Executive also continues to have considerable influence over lower courts through the Judicial Service Commission.²⁰ This has left the Judiciary more vulnerable to Executive control, undermining judicial independence.²¹ Although the

(<http://www.sundaytimes.lk/110828/Columns/focus.html>); CPA, Statement on the Termination of the State of Emergency, 27 August 2011.

¹⁸ The 17th amendment was enacted to depoliticize key government institutions, by replacing the more apolitical Constitutional Council (under the 17th Amendment) with a Parliamentary Council -consisting of political party representatives- which can only make non binding observations on certain appointments by the President.

The independent institutions include the National Human Rights Commission (NHRC), the Judiciary, the National Police Commission, the Elections Commission, the Delimitation Commission and the Commission to Investigate Allegations of Bribery or Corruption. Appointees to the NHRC and Police Commission have been criticized for their close affiliation to the Government. Even before the 18th Amendment was enacted there was a clear intention to undermine the independence of these institutions. This was evinced by the President appointing members to these institutions without constituting the Constitutional Council. See also The Centre for Policy Alternatives (CPA), Public Statement on the 18th Amendment Bill, September 2010, (<http://www.adaderana.lk/news.php?nid=9649>); Rohan Edrisinha and Aruni Jayakody (eds), “The 18th Amendment to the Constitution: Substance and Process”, CPA, 2011.

¹⁹ The 18th Amendment to the Constitution removed the role of the Constitutional Council in relation to appointments to key institutions, thereby removing an important checks and balance in the possible abuse of Executive power. Further, the Executive can influence judicial officers even after retirement. This is because of the power it has to appoint persons to Col’s and other government appointments which are the only means of employment for most retired Judges [See Nihal Jayawickrama, A Breach of Faith, The Island, 23 July 2011 available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=30811] There is a general practice of appointing retired Judges to Col’s.

“No Judge of the Supreme Court or Court of Appeal shall perform any other office (whether paid or not) or accept any place of profit or emolument, except as authorized by the Constitution or by written law or with the written consent of the President.”

“No person who has held office as a permanent Judge of the Supreme Court or of the Court of Appeal may appear, plead, or practise in any court, tribunal or institution as an attorney-at-law at any time without the written consent of the President.” (Article 110 of the Constitution).

²⁰ The Chief Justice of Sri Lanka who is appointed by the President is the *ex officio* chairman of the Judicial Service Commission (JSC). Article 41 (A) (1) read together with part 1 of the II schedule to the 18th amendment to the Constitution permits the President to appoint the Members of the JSC. According to Article 111 (E) (6) the President has the power to remove any member of the JSC. The JSC in turn has the power to appoint, promote, transfer, exercise disciplinary control and dismiss judicial officers and transfer judges of the High Court (Article 111 (H) of the Constitution)

²¹ See recent public statements of retired High Court Judge T.M.P.B. Warawewa on the politicization of the Judiciary. See Ishara Ratnakara, “Judges should deliver justice”, Ceylon Today, 11 January 2012,

Judiciary has, in a handful of cases asserted itself and challenged the acts of the Executive²² there is a general unwillingness to challenge executive fiat. This has also led to the courts dismissing some cases without giving (adequate) reasons for its decision²³ and long delays in proceeding with certain case.²⁴ There are also concerns that processes which do not have the same safeguards as a judicial process are now recognized as a 'competent court'.²⁵

(http://www.ceylontoday.lk/news-detail.php?news_id=1560&news_category_id=27); Ayesha Zuhair, Interview with retired High Court Judge T.M.P.B. Warawewa, 19 April 2012, (<http://dbsjeyaraj.com/dbsj/archives/5679>)

²² Most such cases were towards the end of the tenure of Chief Justice Sarath N.Silva. Justice Silva himself was considered a person who politicized the functions of Judiciary. For more recent cases see SC FR 111/10 (Where The Supreme Court directed the Elections Commissioner to ensure that the identification document allowed for voters during the 2010 Presidential election should be adhered to at the Parliamentary elections too for the IDPs and to provide adequate transport facilities); Writ 620/2011 (petition filed seeking an interim order restraining the Land Commissioner General and other respondents from implementing the Land Circular No. 2011/04. The Court of Appeal issued a stay on the operation of the Public Notice requiring people from the North and East to register lands by 20th November 2011.) SC SD 03/2011 (The petition challenged Parliament's authority to enact a Bill in respect of the subject of land without first obtaining the views of the Provincial Councils, besides a number of arguments alleging the Bill's inconsistencies with the fundamental rights guaranteed by the Constitution. the Supreme Court upheld the objections and declared that the Bill cannot become law until the views of the Provincial Councils were obtained; SC FR 351/2008 (The Petitioner challenged the regulation made in terms of Section 5 of the Public Security Ordinance (published in gazette no 1561/11 of 5 August 2008) which purported to increase the period of detention under ERs to 18 months and to require magistrates to obtain the written approval of the Attorney General (AG) prior to releasing a person arrested (under ERs) on bail. The Court stayed the operation of the impugned regulation.

²³ SC SD 5/10 (The Supreme Court determination recorded in the Hansard dated 07 September 2010 states that the 18th Amendment complies with the provisions of the Constitution, it requires only to be passed by a special majority in parliament and that a Referendum is not necessary); SC FR 291 and 292/2011 (The Petitions regarding the failure to hold elections for the Colombo Municipal Council were dismissed without reasons being stated after the petitions were supported in open court); SC FR 453/2011 (The Petition challenged the introduction of new regulations under Section 27 of the 1978 Prevention of Terrorism Act. The case was dismissed by the Supreme Court without reasons being stated after the Petition was supported in open court).

²⁴ See SC FR 457/09 (The case concerning the detention of IDPs in welfare villages immediately after the end of the war. The Supreme Court has not made a decision on leave to proceed even though almost 3 years have lapsed after the initial hearing of the case); SC FR 387/11, 388/11, 389/11, 394/11, , 391/11,396/11,395/11,407/11,408/11, 399/11, 397/11, 398/11, 402/11, 405/11, 406/11, 400/11, 401/11, 384/11, 385/11, 392/11, 393/11, 414/11 (22 FR applications in the Supreme Court in September 2011 related to the Navaanthurai incident in Jaffna. The Petitioners who were assaulted and arrested filed seeking relief and effective redress in respect of the infringement of their fundamental rights and language rights. Leave to proceed is yet to be granted); SC FR 267/11 , 270/11 (The Petitioners alleged that security forces and police entered the Katunayaka Free Trade Zone during a protest against a proposed Pension Bill and proceeded to severely assault protesters resulting in one death and several injuries. Among the Petitioners some sustained severe injuries, including fractures. Leave to proceed was granted 9 months after the filing of the case on 5 March 2012)

²⁵ SC Ref No: 1/2010 (Supreme Court ruling that a Court Martial is a court in terms of Article 89 (d) of the Constitution), See Centre for Policy Alternatives, Statement on the Supreme Court's Ruling recognizing Courts Martial to be "Courts" within the meaning of the Constitution,

Further, there are serious concerns for the lack of implementation and disregard for judicial orders²⁶. In addition, the lack of independence of the Attorney General's department²⁷ coupled with threats to judicial officers²⁸, lawyers²⁹ and even litigants³⁰ has cast serious doubt on the ability of Sri Lankan courts to administer and deliver justice in a fair manner.

The lack of independence and effectiveness of the National Human Rights Commission (NHRC) stems from multiple reasons including the unilateral appointment of commissioners to the NHRC by the Executive which was followed by the failure to appoint new commissioners for almost two years³¹ and by the resignation of one commissioner

(http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=452%3Aconcerned-over-scs-courts-martial-verdict-cpa&Itemid=56)

²⁶ The Supreme Court in December 2007 ordered the dismantling of all permanent security checkpoints stating they were illegal and a violation of the fundamental rights to the freedom of movement and the equal protection of the law as guaranteed by the constitution. *See* Judgement that restored sanity in the city, Sunday Leader, 16 December 2007, (<http://www.thesundayleader.lk/archive/20071216/issues.htm>). But the executive did not implement this order and most permanent checkpoint continued to be operational.

²⁷ The Attorney General's Department was brought under the direct control of the President in May 2010.

²⁸ In May 2010 the Chavakachcheri Magistrate, J. Pirabakaran received death threats, after the magistrate ordered the arrest of a suspect in a high profile ransom killing of student. The suspect was a member of the Eelam People's Democratic Party (EPDP) which is a coalition partner of the Government. After a court boycott by the Northern Bar the then Chief justice and defence officials guaranteed that judges will not face threats to the proper carrying out of their duties in the North. On 17 June 2010 the said Magistrate was transferred for no specific reason.

²⁹ On 27 September 2008 the house of Mr. J.C. Weliamuna, a senior lawyer, came under attack when two grenades were thrown at it. One grenade exploded while the other was later discovered inside the house by the police. He has a long record of representing clients against the government in cases relating to human rights abuses such as torture, extrajudicial killings, forced disappearances. At the time of the attack he was the executive director of Transparency International Sri Lanka. No suspects have been arrested to date. In July 2009 an article was published in the defence ministry website criticising a group of lawyers who appeared for a media organization in a defamation case filed by the Secretary of defence. The article quoting an unnamed senior lawyer called the group of lawyers "traitors of the nation" and described their behaviour as "an insult to the whole (legal) profession".

³⁰ On 11 February 2012, Mr. Ramasamy Prabakaran, a Tamil businessman was abducted by armed men. He was due to appear at the Supreme Court on 13 February 2012, where he is pursuing legal redress for torture inflicted on him while in state custody. He had brought a case against the Sri Lankan police for torture, unlawful arrest and detention.

On 20 September 2008, Mr. Sugath Nishantha Fernando was shot dead on the road in broad day light. He was pursuing a fundamental rights application relating to the torture of himself and his family by 11 police officers working in the Negambo area.

³¹ Appointments to the NHRC since 2006 were made directly by the President. When the three-year term of those members ended on 17 June 2009 the new appointments were not made and only the Chairman continued in office until the expiry of his term in December 2009. The current NHRC was appointed in February 2011. *See* B. Skanthakumar, *Atrophy And Subversion: The Human Rights Commission of Sri Lanka*,

from the NHRC in 2012.³² There continue to be concerns relating to institutional issues including the financial independence³³ and the legal capacity³⁴ of the NHRC as well as the lack of timely action with complaints made to the NHRC.³⁵ Regardless of its weaknesses, the NHRC has in some instances taken measures to protect the rights of individuals.³⁶ Similar concerns are raised with other institutions.³⁷

Law and Society Trust, 2010.

(<http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf>)

³² Some media sources claim resignation was based on personal grounds, (“New crisis- HRC writes..”, The Island, 24 January 2012 http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=43883) while other media reports suggest that the resignation was on grounds of conscience (“I leave HRC with a clear conscience”, *Ceylon Today*, 05 February 2012, <http://www.ceylontoday.lk/e-paper.html>).

³³ The available annual reports of the NHRC indicate that as of 2009 it entirely depended on “Grants from the Government of Sri Lanka” (Human Rights Commission of Sri Lanka, Annual Report 2009, page 168). However in previous years there have been substantial grants from UN agencies and other INGOs (Human Rights Commission of Sri Lanka, Annual Report 2006-2007, page 42; Human Rights Commission of Sri Lanka, Annual Report 2009, page 41). This financial dependence on Government undermines the ability of the NHRC to act independently.

³⁴ The NHRC mandate is limited to the Fundamental Rights guaranteed by the Sri Lankan Constitution. This makes it impossible for the NHRC to inquire into situations of arbitrary deprivation of life or involuntary disappearances of persons. The Annual Reports of the Human Rights Commission indicate that in 2007 out of the 7611 complaints received 2996 were not within the mandate of the commission whilst in 2009 out of the 3674 complaints received 672 were not within the mandate of the commission. Unfortunately a breakdown of this figure is not available so as to ascertain the nature of these cases. Also see B. Skanthakumar for a narration of how a senior investigating officer was initially reluctant to accept the complaint of Sandya Eknaligoda regarding the ‘disappearance’ of her husband as the right to life is not expressly protected in the Sri Lankan Constitution B. Skanthakumar, “Atrophy And Subversion: The Human Rights Commission of Sri Lanka”, Law and Society Trust, <http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf>.

³⁵ B. Skanthakumar, “Atrophy And Subversion: The Human Rights Commission of Sri Lanka”, Law and Society Trust, <http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf>

The role of the NHRC was further undermined by *ad hoc* mechanisms appointed even when the NHRC had initiated investigations into an incident. A Special Committee was appointed by the NHRC to investigate the 30 May 2011 clash between workers in the Free Trade Zone (FTZ) Katunayake and the police. The President also appointed a one-man committee (Retired High Court Judge Mahanama Tilakaratne) to probe the same.

³⁶ See B. Skanthakumar “Atrophy And Subversion: The Human Rights Commission of Sri Lanka”, Law and Society Trust, <http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf>

³⁷ The powers of the National Police Commission which existed under the 17th Amendment under Articles 155(G), (H), (I), (K) and (L) have been repealed by the 18th Amendment. Thus, the powers of appointment,

The period in focus also witnessed developments related to GoSL plans and policies such as the National Human Rights Action Plan (NHRAP).³⁸ While the NHRAP contains some important recommendations and timelines for implementation, there are serious questions of process including the formulation and consultation relating to the policy³⁹, omissions⁴⁰ and feasibility of implementation.⁴¹ There are also concerns as to the suitability of some of the lead agencies in implementing the recommendations.⁴²

promotion, transfer, disciplinary control and dismissal of Police Officers other than the Inspector General of Police, which were vested in the Commission, including the exercise of its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police as mandated by Article 155G (1) (a) have been removed.

³⁸ "Sri Lanka will continue its efforts to strengthen its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all its citizens through the adoption and implementation of the proposed National Plan of Action which will set targets to be achieved during the five years commencing 2009, facilitate a holistic approach to human rights protection and promotion and lead to greater cooperation between Government and civil society." (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 87)

³⁹ Contrary to the claim of an inclusive process put forward by the Government several civil society individuals who were part of the consultations for the NHRAP indicated that not all of their suggestions were incorporated and that the finalisation of the NHRAP was solely done by the Government; See also CPA, *The Sri Lankan Case: Rhetoric, Reality and Next Steps?*, March 2012; Voluntary pledges and commitments made by Sri Lanka when presenting its candidature for membership of the Human Rights Council 31 March 2008, page 5.

⁴⁰ Some important omissions in the NHRAP include (i) To amend the constitution so as to ensure all Rights enumerated in the ICCPR are guaranteed under the Fundamental Rights Chapter (ii) Amend the restriction clause (Article 15) to bring it in conformity with applicable and obligatory international norms, including Articles 12.3, 19.3, 21, 22.2, and 25 (which are necessary in a democratic society) of the ICCPR.

⁴¹ Despite the Government making a voluntary pledge to adopt and commence implementation by 2009 (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 87) considerable time was taken to formulate the NHRAP with the Cabinet only approving the NHRAP in September 2011 (Dinouk Colombage, "Progress on NHRAP Expected by the End Of The month", *The Sunday Leader*, 8 April 2012. <http://www.thesundayleader.lk/2012/04/08/progress-on-nhrap-expected-by-the-end-of-the-month/>)

Even though there is a timeline laid out in the plan, it is not clear how much has been achieved apart from the establishment of a committee to oversee its implementation. An official who was involved in drafting the NHRAP recently stated that the necessary instructions have still not formally gone out to all ministries (Prof. Rajiva Wijesinha, "Human Rights and the pronouncements of Minister Mervyn Silva", 17 April 2012, <http://dbsjeyaraj.com/dbsj/archives/5643>, last accessed 21 April 2012.

⁴² For an example the Ministry of Defence has been identified as the lead government agency in implementing the specific provisions related to torture.

THE IMPEACHMENT OF THE CHIEF JUSTICE

Even though this falls outside the time period covered by the GoSL Report this is of seminal importance as it is directly related to a representation made by the GoSL to the Human Rights Committee (CCPR) that any inquiring body which would investigate the allegations against a sitting judge would be subject to judicial review if such body “**were to misdirect itself in law or breaches the rules of natural justice its decisions.**”⁴³ However despite this undertaking the GoSL purported to pass a resolution impeaching the Chief Justice disregarding a ruling of the Supreme Court and the Court of Appeal that the procedure adopted was flawed and violated the principles of natural justice.⁴⁴

The impeachment of Chief Justice Dr. Shirani Bandaranayake took place in a context in which the Supreme Court had delivered several judgments (by the Chief Justice herself), which were considered unfavourable to the government. Several issues have been raised regarding the legality of the impeachment and the flawed process, particularly with regards the lack of a fair hearing and a ruling by the Supreme Court that the Chief Justice could not be impeached through the process which was being followed.⁴⁵ Subsequently the Court of Appeal quashed the report presented by the government members of the Parliamentary

⁴³ UN Human Rights Committee (HRC), UN Human Rights Committee: Fourth Periodic Report, Sri Lanka, 18 October 2002, CCPR/C/LKA/2002/4, available at: <http://www.refworld.org/docid/3efb5b894.html> [accessed 15 December 2013] at Para 302.

⁴⁴ CPA, “Statement on judgments by Court of Appeal and Supreme Court on impeachment process of Chief Justice”, 8 January 2013, available at <http://www.cpalanka.org/statement-on-judgements-by-court-of-appeal-and-supreme-court-on-impeachment-process-of-chief-justice/>; See also SC Ref. 3 of 2012 to SC Ref. 9/2012, available at <https://www.colombotelegraph.com/wp-content/uploads/2013/01/S.C-Referance-No.-358-2012.pdf>; C.A. (Writ) Application 411/2012 available at <https://www.colombotelegraph.com/wp-content/uploads/2012/12/411-2012.pdf>

⁴⁵ The Chief Justice was not given a proper opportunity to answer the allegations against her. She was not given adequate time to go through the documents on which some of the charges were being based. The government members of the Parliamentary Select Committee (PSC) probing the allegations were numerically superior (7 as opposed to 4 members representing the opposition) with no scope for the opposition members to raise objections. At least two of the members of the PSC had personal conflicts of interest which should have precluded them from sitting in judgment of the Chief Justice. Reports also indicate that some government members of the PSC verbally abused the Chief Justice during the proceedings. After the Chief Justice and her lawyers and the opposition members had walked out of the PSC in protest of its manifestly unfair and improper procedure, the remaining members of the PSC (all government MPs) heard evidence from witnesses and published a report within 48 hours which found the Chief Justice guilty of 3 of the 5 charges probed by the PSC. The Supreme Court which has the sole and exclusive jurisdiction to interpret the Constitution held that Parliament could not impeach a judge based on a procedure set out in standing orders which provided for the establishment of the PSC.

See for more information Groundviews, “A legal primer: The impeachment of the Chief Justice in Sri Lanka”, 10 January 2013, available at <http://groundviews.org/2013/01/10/a-legal-primer-the-impeachment-of-the-chief-justice-in-sri-lanka/>

Select Committee (PSC) finding the Chief Justice guilty of the charges. This meant that there was no legal basis for the impeachment of the Chief Justice.⁴⁶

In these circumstances the impeachment process was both manifestly unfair and unconstitutional. However the GoSL used the powerful state media to attack the creditability of the judges of the Supreme Court, the Court of Appeal and any one in the legal community who opposed the impeachment process. Further, the GoSL used the overwhelming majority it possessed within Parliament to pass the resolution calling for the removal of the Chief Justice, disregarding the order given by the highest court in Sri Lanka. This episode has had a chilling effect on the judiciary. This was reinforced by the appointment of Mohan Peiris as Chief Justice. This appointment is presently being challenged in court, citing the above mentioned orders by the Supreme Court and Court of Appeal.⁴⁷

3. INFORMATION RELATING TO STATE PARTY SUBMISSION

OVERVIEW OF THE LEGAL FRAMEWORK ⁴⁸

The GoSL in its report relies on judicial decisions of the Supreme Court of Sri Lanka from the late 1990 to the early 2000's in order to address concerns expressed by the CCPR in its concluding observations in 2008. In light of the passage of the 18th Amendment to the Constitution and the impeachment of the Chief Justice in January 2013 it is questionable as to whether the Supreme Court will engage in such creative interpretation of the existing constitutional provisions as was done by the Court in the late 1990's and early 2000's. In any event judicial decisions are not a substitute for legislative reform- in particular constitutional amendments.

⁴⁶ See Niran Anketell and Asanga Welikala, 'A Systemic Crisis in Context: the Impeachment of the Chief Justice, the Independence of the Judiciary and the Rule of Law in Sri Lanka', CPA Policy Brief April 2013, pp. 5-14 available at [https://www.colombotelegraph.com/wp-content/uploads/2013/04/A-SYSTEMIC-CRISIS-IN-CONTEXT.final3 .pdf](https://www.colombotelegraph.com/wp-content/uploads/2013/04/A-SYSTEMIC-CRISIS-IN-CONTEXT.final3.pdf)

⁴⁷ CPA and its Executive Director filed a Fundamental Rights application (SC FR 23 of 2013) on 15th January 2013. See Daily mirror online, "CPA files FR against Mohan Peiris", 15 January 2013, available at: <http://www.dailymirror.lk/news/24999-cpa-files-fr-against-mohan-peiris.html>; Colombo Telegraph, Sara Refuse To Participate In De Facto CJ Appointment FR Case Because Bench Fixed By Respondent Mohan Pieris, 31 October 2013, available at <https://www.colombotelegraph.com/index.php/sara-refuse-to-participate-in-de-facto-cj-appointment-fr-case-because-bench-fixed-by-respondent-mohan-pieris/>

⁴⁸ CPA has made extensive submissions regarding compliance by the Sri Lankan with its obligations under the ICCPR. See Rohan Edrisinha and Asanga Welikala, "GSP Plus and the ICCPR: A Critical Appraisal of the Official Position of Sri Lanka in respect of Compliance Requirements", in "GSP+ and Sri Lanka: Economic, Labour and Human Rights Issues", CPA and Friedrich Ebert Stiftung, October 2008 pp. 80- 142 available at http://library.fes.de/pdf-files/bueros/sri_lanka/08684.pdf

ICCPR Act⁴⁹ contains only four main substantive rights-conferring provisions in Sections 2, 4, 5 and 6 (viz., the right to be recognised as a person before the law; entitlements of alleged offenders to legal assistance, interpreter and safeguard against self-incrimination; certain rights of the child; and right of access to State benefits, respectively), and these provisions are formulated in terms substantially and significantly different from the corresponding provisions of the ICCPR. Therefore the special determination by the Supreme Court of Sri Lanka that subsequent to enacting the ICCPR act Sri Lanka has fulfilled its obligations in terms of the ICCPR is hugely problematic.⁵⁰

DETENTION

Recommendation 13: The State Party is urged to ensure that all legislation and other measures taken to fight terrorism are compatible with the provisions of the Covenant. (Para. 13 of the concluding observations)

GoSL in its fifth periodic report to the Human Rights Committee responded to the committee's follow up recommendation 13 as follows:

"...the validity of an arrest, the legality of detention, the period of detention, and a decision of a lower court made under the PTA can be subject to judicial review. Additionally the right to seek the issuance of the writ of Habeas Corpus and recourse to the fundamental rights jurisdiction of the Supreme Court are also available to any person aggrieved by measures taken under the Act."

Despite the end of the war, the basic issues relating to detention remain including the failure to provide a list of detainees and detention centres and the lack of basic legal safeguards governing detention. The GoSL's asserts that next of kin are provided with information regarding detainees however in the absence of publicly available list of detainees many family members who contact the Terrorist Investigation Department or Criminal Investigation Department are simply told that no such person is in detention.

⁴⁹ ICCPR Act no 56 of 2007, available at

[http://www.documents.gov.lk/Acts/2007/International%20Covenant%20on%20Civil%20&%20Political%20Rights%20\(Iccpr\)%20-%20Act%20No.%2056/English.pdf](http://www.documents.gov.lk/Acts/2007/International%20Covenant%20on%20Civil%20&%20Political%20Rights%20(Iccpr)%20-%20Act%20No.%2056/English.pdf)

⁵⁰ For a detailed critique of the Supreme Court determination and in particular an article by article analysis of the gap between Sri Lanka's international obligations in terms of the ICCPR and its existing legal framework See Rohan Edrisinha and Asanga Welikala, "GSP Plus and the ICCPR: A Critical Appraisal of the Official Position of Sri Lanka in respect of Compliance Requirements", in "GSP+ and Sri Lanka: Economic, Labour and Human Rights Issues", CPA and Friedrich Ebert Stiftung, October 2008 pp. 93- 140 available at http://library.fes.de/pdf-files/bueros/sri_lanka/08684.pdf

Apart from the Criminal Procedure Code, detentions were governed by the Emergency Regulations (ER) till September 2011 and the Prevention of Terrorism Act (PTA).⁵¹ ERs were extensively used to detain political opponents and others engaged in dissent⁵². However although ERs became inoperative as a consequence of the GoSL allowing the state of emergency to lapse, the PTA continues to undermine fundamental rights.⁵³ There a number of problems with the PTA including that it facilitates arbitrary arrests and detention;⁵⁴ suspects held in custody have no statutory right either to inform a family member or to promptly access a lawyer; and the non binding Presidential Directives requiring that arrestees are informed of the reasons for arrest⁵⁵ are rarely respected.⁵⁶ Detaining suspects under the PTA beyond the maximum period prescribed by law⁵⁷ and not producing them before a magistrate within the required period⁵⁸ is a common practice. In addition, any challenge to the legality of the arrest and detention before a court is

⁵¹ One such PTA Regulation ensures the continued detention of persons previously held under ERs (Gazette No.1721/4 dated 29 August 2011- Regulations No. 4 of 2011 deal with detainees and remandees, and converts of detentions under emergency regulations into detentions under the PTA). The regulations violate several fundamental rights guaranteed by the constitution and facilitate the arbitrary arrest and detention of persons on 'preventive' grounds—which the PTA itself makes no provision for.

⁵²Pethuru Jesuthasan arrested in 2009, J.S. Tissainayagam arrested in March 2008, K. Wijesinghe arrested in March 2008, Shantha Fernando arrested in March 2009, Jayampathy Bulathsinhala, the owner of a printing house that printed posters opposing the 18th Amendment, was charged under the Prevention of Terrorism Act in September 2010. His wife, Kumudu Wijeyawardena, and her two younger brothers were also arrested, though later released and Aruna Roshantha and Marcus Fernando, two activists protesting against a sea plane project, were arrested and charged with 'anti-government behaviour'

⁵³In August 2011, the Minister of Defence issued five new regulations under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA), which respectively deal with the proscription of the LTTE; the proscription of the Tamil Rehabilitation Organization (TRO); the extension of application of certain emergency regulations; detainees and remandees; and surrendees care and rehabilitation.

⁵⁴As it provides for arrest and detention for wide a range of offences either at the discretion of the Minister or the police (Section 6 and 9 of the Prevention Terrorism Act of 1979). Magistrates have no discretionary power to order the release of suspects on bail

⁵⁵The Presidential Directives on Protecting Fundamental Rights of Persons Arrested and / or Detained issued in July 2006.

⁵⁶ See SC FR 51/2012

⁵⁷Section 9 of the Prevention of Terrorism Act of 1979 states that the detention of a suspect can be extended for maximum of 18 months. An example of lengthy periods of detention is demonstrated in the fundamental rights application to the Supreme Court by Suleiman Lebbe Nijam who was detained for a period of 3 and a half years. See S.S Selvanayagam, "SC Directs State Counsel to get advice from AG", The Daily Mirror, 12 October 2011, achieved at <http://www.infolanka.com/news/IL/dm12.htm>

⁵⁸Section 7 of the Prevention of Terrorism Act of 1979 states that a suspect must be produced before a magistrate within 72 hours of the arrest in the absence of a detention order. However there is no provision for court supervision of an arrest made pursuant to a detention ordered by the Minister.

precluded under the PTA⁵⁹ thereby also denying a right to remedy and compensation. Furthermore after the end of the armed conflict and despite there not been a single incident relating to a terrorist attack the GoSL continues to use PTA to detain persons for prolonged periods of time without a formal charge, especially in the Northern and Eastern provinces.⁶⁰

The Code of Criminal Procedure continues to lack provisions for the right to a lawyer during interrogation, to confidential communication with the lawyer and to an interpreter. The NHRAP recognizes the right to a lawyer but recommends that the right be available only after the recording of a statement of the suspect.⁶¹ In 2012 the GoSL introduced an amendment to the Criminal Procedure Code which authorises a person to be detained for 48 hours without charge, raising further concerns about the broad powers provided to the security establishment and as to when rule of law will be restored.⁶²

The GoSL has admitted that detention facilities are inadequate and overcrowded.⁶³ In spite of the commitment to address these issues by the end of 2012, no steps have been taken to

⁵⁹ National Action Plan for the Protection and Promotion of Human Rights: Sri Lanka 2011-2016 (NHRAP), p 21 ;See Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 82 (16). Implement the recommendations of the Special Rapporteur on the question of torture . One of the recommendations of the Special Rapporteur on Torture on the 26 February 2008 is to “ Ensure that detainees are given access to legal counsel within 24 hours of arrest” [A/HRC/7/3/Add.6]

⁶⁰ See Groundviews, “Updates on ground situation in Jaffna” 10 December 2012, available at <http://groundviews.org/2012/12/10/updates-on-ground-situation-in-jaffna/>; Colombo Telegraph, “Civil Society Condemns Unlawful Detention Of Jaffna University Students”, 7 December 2012, available at <https://www.colombotelegraph.com/index.php/civil-society-condemns-unlawful-detention-of-jaffna-university-students/>

⁶¹ Sections 11 and 26 of the Prevention of Terrorism Act of 1979. See Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 82 (16) “Implement the recommendations of the Special Rapporteur on the question of torture. One of the recommendations of the Special Rapporteur on Torture is that “(d) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings

⁶² Kelum Bandara, “New law to detain suspects for 48 hours”, Daily Mirror, 17 January 2013, available at: <http://www.dailymirror.lk/news/25054-new-law-to-detain-suspects-for-48-hours.html>

⁶³ National Action Plan for the Protection and Promotion of Human Rights: Sri Lanka 2011-2016, p 22.

date⁶⁴ and there is information that secret or unofficial detention centers continue to be used⁶⁵.

DISAPPEARANCES AND ABDUCTIONS

Recommendation 9: Giving effect to relevant recommendations made by the UN Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigations into Enforced or Involuntary Disappearances (Para. 10)

Significant numbers of abductions⁶⁶ continued in the post war context despite the interim recommendations made by the LLRC in September 2010 to strengthen law and order to stop these abductions.⁶⁷ Areas such as Jaffna and Vavuniya have witnessed sharp spikes in incidents during specific time periods.⁶⁸ Individuals targeted in abductions include those seen to be critical of the GoSL such as activists and journalists.⁶⁹

The absence of effective institutional and legal mechanisms to deal with cases of disappearances and a highly militarized context in which these incidents take place has

⁶⁴ “Improve and upgrade detention facilities” (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 109).

⁶⁵Poonhottam Maha Vidyalaya, 211 Brigade headquarters, Vallikulam Maha Vidyalaya, the PLOTE paramilitary detention centre and Dharmapuram as five camps in Vavuniya while two camps were named from Mullaitheevu

⁶⁶ There were twenty-nine cases of disappearances (including an attempted abduction) reported during February and March this year (There have been fifteen in March 2012 and fourteen in February 2012) which brought the total number of disappearances reported in the last six months to 56- Watchdog, “Latest victims of a heinous trend: Abduction of political activists Premakumar Gunaratnam and Dimuthu Attygalle,” *Groundviews*, 7 April 2012, (<http://groundviews.org/2012/04/07/latest-victims-of-a-heinous-trend-abduction-of-political-activists-premakumar-gunaratnam-and-dimuthu-attygalle>).

⁶⁷ See Interim recommendations of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Interim Report), September 2010, (<http://llrclk.files.wordpress.com/2011/02/interim-recommendations.pdf>).

⁶⁸ See Civil Society List of Incidents in Jaffna (December 2010-February 2011); Civil Society Field Report to Vavuniya, September 2008; A profile of human rights and humanitarian issues in the Vanni and Vavuniya, CPA, 2009.

⁶⁹ See sections on human rights defenders, freedom of expression, freedom of assembly and association in present submission.

strengthened suspicions of the GoSL's complicity, if not involvement in these violations.⁷⁰ The LLRC has recommended the GoSL to direct law enforcement authorities to investigate disappearances properly and to hold perpetrators accountable⁷¹, and that domestic legislation be passed specifically to criminalize enforced or involuntary disappearances.⁷²

In August 2013 The GoSL appointed a Commission to Investigate Missing Persons which was tasked with investigating cases of persons from the Northern and Eastern Provinces who went missing during the three-decade long war. The GoSL has appointed several commissions to investigate human rights violations, however the reports issued by these commissions have rarely been made public.⁷³ Furthermore the mandate of the said commission does not allow it to investigate cases of persons disappeared outside the Northern and Eastern province, particularly victims “white van abductions”.

EXTRA JUDICIAL KILLINGS

⁷⁰ There were even instances where persons were abducted from the court premises during daylight when they were brought for hearing. See Sanjana Hattotuwa, “Our Own Bermuda Triangle, The Nation, 15 April 2012, (<http://www.nation.lk/edition/biz-news/item/4996-our-own-bermuda-triangle.html>); On 26 March 2012 Sagara Senaratne an in law of a Cabinet minister was abducted from the outskirts of Colombo and was released within a few hours. According to Mr. Senaratne he was released without harm because of timely intervention from the President and the Inspector General of Police. However the abductors have not been arrested to date. See Nirmala Kannangara, “They Were Very Professional” Says Minister’s Abducted Brother-In-Law, The Sunday Leader, 1 April 2012, (<http://www.thesundayleader.lk/2012/04/01/they-were-very-professional-says-ministers-abducted-brother-in-law/>). A Chairmen of an Urban Council Ravindra Udaya Shantha claimed that Army personnel in a white van attempted to abduct him. The Army personnel were detained and handed over to the police but were later released. Army spokesmen claimed that they were engaged in official duty in the area at the time. See Mandana Ismail Abeywickrema, “A Mayor – The Army, And White Van Abductions”, 18 March 2012, (<http://www.thesundayleader.lk/2012/03/18/a-mayor-the-army-and-white-van-abductions/>)

⁷¹ LLRC Report, Para 5.37

⁷² Ibid. Para 5.46

⁷³ CPA, A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006 – 2012), March 2012, (<http://www.scribd.com/doc/85007346/A-List-of-Commissions-of-Inquiry-and-Committees-Appointed-by-the-Government-of-Sri-Lanka-2006-%E2%80%93-2012>)

Article 6 of ICCPR asserts the inherent right to life. This right is protected by law to avoid the arbitrary deprivation of life even where the death penalty is still practiced.

Due to the lack of an independent monitoring mechanism, there is no comprehensive list of killings, especially during the last stages of the conflict. Channel 4 documentaries⁷⁴ have provided evidence of extrajudicial killings time and time again, which the GoSL have claimed is fabricated.⁷⁵

Extrajudicial killings were not only prevalent during the war, but are still prevalent in the post-conflict context⁷⁶ as seen in the politically motivated killings of Government politician Baratha Lakshman Premachandran by a Government MP and his associates in October 2001. Critics of the government too are victims of extrajudicial killings with the high profile murder of the editor in chief of the Sunday Leader, Lasantha Wickramatunge who was brutally murdered in January 2009.

Continued militarization in the north only exacerbates the issue with high a number of incidents occurring where security forces operate.⁷⁷ The lack of proper investigations into these killings and crackdown on armed groups, make extrajudicial killings a continuous issue that continues unabated.

TORTURE

⁷⁴ "Sri Lanka's Killing Fields", Channel 4, <http://www.channel4.com/programmes/sri-lankas-killing-fields>

⁷⁵ "Channel 4 does it again!" Ministry of Defence and Urban Development, 18 June 2011, http://www.defence.lk/new.asp?fname=20110618_06

⁷⁶ "Murders and extrajudicial killings", Asian Human Rights Commission, 27 November 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-219-2013>

⁷⁷ On 9 September a soldier attached to the Special Forces of the Sri Lanka Army was tortured and killed complaining about sexual harassment by a superior officer. It is believed that he was tortured to death by the said superior officer. See List compiled by Civil Society of Killings, Disappearances and other serious human rights violations in Jaffna (December 2010-February 2011).

Torture is practiced in various forms in varying degrees of violence in Sri Lanka.⁷⁸ The low conviction rate of torture cases provide for added concern in issues related to arbitrary arrests and detention. Mounting evidence of ill treatment of detainees while in custody⁷⁹ suggest that torture is endemic in Sri Lanka and is widely practiced at police stations and detention centres. Torture is used for investigating crimes and is often used to implicate innocent people by fabricating charges against them.⁸⁰

Recommendation 4: Investigations into Allegations of Torture, Abduction and Illegal Confinement by State Security Forces (Paragraph 9 of the Concluding Observations)

In response to Recommendation 4 the GoSL claims that:

“The fact that not too many cases end up in convictions is a result of the adversarial system of criminal justice that is practiced in Sri Lanka. The adversarial system has certain salutary safeguards such as presumption of innocence, burden of proof beyond reasonable doubt, and the possibility of impeaching the credibility of witnesses, which make it imperative that a Court acquit an accused, unless the prosecution proves its case beyond a reasonable doubt. Therefore in some cases the accused may not have been convicted due to the lack of evidence to meet the standard of proof required for a conviction.”

“In accordance with Sri Lanka’s legal system the cases filed against police and/or members of the armed forces on allegation of torture require a degree of proof that is “beyond reasonable doubt”. Either due to lack of evidence or witnesses going back on their statements in certain instances the perpetrators go unpunished.”

Freedom from torture under Article 7 is a non-derogable right under the ICCPR which states that

⁷⁸ Examples of common methods of torture are hanging from hands, kicked, beaten by wooden poles, metal pipes, chilies being put into eyes and nose, plastic bag soaked in petrol tied over the head causing suffocation, walking on hot coal and severe beating to soles of the feet. (See for instance SC FR 9/2011, SC FR 180/2011, SC FR Application No. 51/2012; SC FR 602/2010) Also see: <http://www.youtube.com/watch?v=0FppYUla1vI>

⁷⁹ In 2011 there were 96 reported complaints of torture. As a mode of punishment (SC FR 180/2011, HRC/2282/2011, SC FR Application No. 51/2012), in response to attitudes challenging authority (HRC/2282/2011), to obtain information (SC FR 9/2011, SC FR 310/2010), at the instigation of superior officers and private individuals (SC FR 9/2011), as habitual treatment of persons in their custody SC FR 180/2011, HRC/2282/2011, SC FR 963/2009.

⁸⁰ “Torture in Sri Lanka”, Asian Human Rights Commission, <http://www.humanrights.asia/countries/sri-lanka/torture-in-sri-lanka>

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” It is also recognised in the Constitution of Sri Lanka as a Fundamental Right under Article 11. Furthermore Sri Lanka has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Continued and consistent allegations of the widespread use of torture and other cruel, inhuman, or degrading treatment of suspects in police custody is a clear contravention in implementing the standards set out in ICCPR. Given the high threshold of proof required in cases of torture, full implementation of ICCPR Article 7 demands commitment to conducting thorough investigations in order to prosecute those responsible for ongoing cases of torture, and to prevent further cases in the future.

Amidst the international uproar regarding the Commonwealth Heads of Government Meeting (CHOGM) held in Colombo in November 2013, the Human Rights Commission of Sri Lanka announced that a Torture Commission would be established to investigate allegations of torture, however the current status of the commission is unclear with reports of a possible indefinite postponement of the Commission’s establishment.⁸¹

FREEDOM OF ASSOCIATION AND ASSEMBLY

Article 21 of ICCPR asserts the right to peaceful assembly.

Although there have been no restrictions on pro-government protests, opposition parties and human rights advocates have been consistently blocked from staging dissenting protests through a number of means that include judicial intervention and the use of police force.

While Article 14(1)(c) of the Constitution of Sri Lanka reiterates this point, the GoSL most recently went on to clampdown on dissent during CHOGM. Apparently responding to a request by the Police, the Colombo Magistrate court issued an order restricting protests during CHOGM.⁸² The CHOGM period is emblematic of the visible increase in control by the defence establishment.

⁸¹ “HRC Postpones set up of Torture Commission on alleged requests by CSOs- Rights Now asks Chairman to name the Orgs”, Colombo Telegraph, 14 December 2013, <https://www.colombotelegraph.com/index.php/hrc-postpones-set-up-of-torture-commission-on-alleged-requests-by-csos-rights-now-asks-chairman-to-name-the-orgs/>

⁸² “CHOGM 2013/Sri Lanka: Police obtains Court order to ban protests in Colombo on 14 & 15”, Sri Lanka Brief, 15 November 2013, <http://www.srilankabrief.org/2013/11/chogm-2013-sri-lanka-police-obtains.html>

David Cameron's visit to Jaffna during CHOGM too portrayed how restrictions are placed on ordinary and peaceful groups of people. The group of people in his scenario were in fact holding up photos of their loved ones gone missing during and after the conflict.⁸³ The Police went on to use force to prevent families from getting close to the British PM.⁸⁴

Meanwhile pro-government supporters faced no issues protesting to stop the train carrying journalists from Channel 4 from reaching the north of the country.⁸⁵ Furthermore a human rights related event organized at Sri Lanka's main opposition party (UNP) headquarters was blocked during CHOGM by a mob, which led the UNP (United National Party) to boycott all CHOGM related events.⁸⁶

On 1 August 2013 local residents of Weliveriya in the Gampaha district of the Western Province held a protest demanding clean drinking water after a glove-making company, Dipped Products PLC (a subsidiary of Hayleys Group) was implicated in contaminating the drinking water supply.

The army that arrived at the scene fired at unarmed protesters with live ammunition and as a result three fatalities were recorded with a number of others seriously injured. A number of serious concerns arise from the incident.⁸⁷

It is the democratic right of citizens to protest and seen here is a recent and blatant violation of citizens' right to peaceful assembly. Furthermore the deployment of army personnel as opposed to the Police to deal with civil matters is by itself an example of the deterioration of the rule of law and order with complete disregard for the legal and constitutional framework that governs the circumstances where the armed forces may legitimately be called out in aid of the civil power.

⁸³ "Sri Lankan security forces detain protesters to stifle all dissent during CHOGM", The Sydney Morning Herald, 14 November 2013, <http://www.smh.com.au/world/sri-lankan-security-forces-detain-protesters-to-stifle-all-dissent-during-chogm-20131114-2xhh3.html>

⁸⁴ "British Prime Minister and TNA leaders shun families of disappeared in Jaffna", Groundviews, 16 November 2013, <http://groundviews.org/2013/11/16/british-prime-minister-and-tna-leaders-shun-families-of-disappeared-in-jaffna/>

⁸⁵ "Protesters block train carrying Channel 4 crew to North", Financial Times, 14 November 2013, <http://www.ft.lk/2013/11/14/protesters-block-train-carrying-channel-4-crew-to-north/>

⁸⁶ "Drama at Sirikotha as BBS storms into human rights festival", The Republic Square, 14 November 2013, <http://www.therepublicsquare.com/politics/2013/11/14/drama-at-sirikotha-as-bbs-storms-into-human-rights-festival/>

⁸⁷ "Sri Lanka: Investigate 'Clean Water' protest deaths", Human Rights Watch, 9 August 2013, <http://www.hrw.org/news/2013/08/09/sri-lanka-investigate-clean-water-protest-deaths>

Moreover it should be noted that the response of the army was utterly disproportionate to the circumstances. Not only did the army shoot at unarmed civilians using live ammunition (without using a non-lethal alternative), they also felt the need to shoot to kill.

This alarming incident only further accentuates the need for an impartial inquiry into the incident that the public is yet to see results of, and judicial repercussions for the perpetrators, where the State has failed in its primary duty to protect its citizens.

HUMAN RIGHTS DEFENDERS AND FREEDOM OF EXPRESSION

There is a stark climate of fear attached to human rights work in Sri Lanka. Human Rights Defenders (HRDs), journalists and civil society members are regularly threatened, harassed, physically attacked, arrested, disappeared, disrepute and even killed for their work.

HRDs are commonly treated by the GoSL as “traitors”. In the run up to HRC’s March 2012 session, the GoSL and State media outlets engaged in threatening HRDs and journalists who supported the adoption of the resolution by publishing their photographs and names on State media, branding them LTTE sympathizers who side with the Diaspora.⁸⁸

Article 19 of ICCPR asserts the right to hold opinions and the right to freedom of expression. However there are no effective investigations into complaints of these human rights violations nor are alleged perpetrators prosecuted. Impunity strongly persists in such cases.

Article 17 of ICCPR states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation” and “Everyone has the right to the protection of the law against such interference or attacks.”

On November 4, 2013 the State owned media channel Sri Lanka Broadcasting Corporation (SLBC) launched a public smear campaign to humiliate and harass the well known human rights activist Ms. Nimalka Fernando. The radio programme titled Rata Yana Atha (the way country is forging ahead) was based on a voice cut of an interview given by Nimalka Fernando to another media channel. The broadcast titled “Stoning the Sinner Woman” was presented by the Chairman of SLBC where members of the public had the opportunity to call in to express their views. The Chairman made little to no effort to stop the callers in

⁸⁸ “Sri Lankan government calls journalists ‘traitors’”, Committee to Protect Journalists, 22 March 2012, <http://www.cpj.org/2012/03/sri-lankan-government-calls-journalists-traitors.php>

their offensive and violent statements that included threats to her life, and even seemed to encourage them.⁸⁹

Ethical and moral standards of respectful journalism are important traits of civilized society. In Sri Lanka, State media has routinely been abused by the GoSL to conduct smear campaigns against human rights activists and to cut down dissent in order to further political ends.⁹⁰ It has become the norm of Sri Lanka's state media and other media organisations under the influence of the GoSL to defame and dishonour the reputation of human rights defenders.

Earlier in 2013 the Ministry of Mass Media and Information revealed plans to introduce a voluntary code of conduct for media institutions and journalists.⁹¹ The formulation of this code of ethics at its inception was meant to be an inclusive process with stakeholder participation, however this was not the case in practice. The draft proposal sought to curtail the scope of free media by adopting broad and vague provisions such as publishing information that would "mislead the public" and contained "criticism affecting foreign relations."⁹² Due to strong criticism of the code of ethics, it has thus far not been adopted.⁹³

Recommendation 19: The State Party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in Article 19 of the Covenant. The State Party should take measures to ensure the impartiality of the Press Complaints Commission. (Para. 17 of the concluding observations)

⁸⁹ "AHRC condemns the state media attack on Nimalka Fernando", Asian Human Rights Commission, 19 November 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-214-2013>

⁹⁰ The Centre for Policy Alternatives (CPA) and its Executive Director filed a complaint (Complaint No: HRC/3083/13) before the Human Rights Commissions of Sri Lanka (HRCSL) on 12/08/2013 against the Independent Television Network of Sri Lanka (ITN) and its Chairmen. The complaint was on the basis that a fabricated news item appeared on the 7:00pm Sinhala language news broadcast of ITN on 14/07/2013 which violates several fundamental rights of both CPA and its Executive Director which are guaranteed under the Constitution to all citizens of Sri Lanka. More information on this complaint can be found here: <http://www.cpalanka.org/human-rights-commissions-of-sri-lanka-hrcsl-complaint-against-the-independent-television-network-of-sri-lanka-itn/>

⁹¹ "New ethics code for media", Ministry of Defence and Urban Development, 19 January 2013, http://www.defence.lk/new.asp?fname=New_ethics_code_for_media_20130119_05

⁹² "Govt.'s proposed Code of Media Ethics", Daily Mirror, 5 June 2013, <http://www.dailymirror.lk/news/30466-govts-proposed-code-of-media-ethics.html>

⁹³ "Move to impose standards on media thwarted", The Sunday Times, 23 June 2013, <http://www.sundaytimes.lk/130623/news/move-to-impose-standards-on-media-thwarted-49939.html>

Responding to Recommendation 19, the GoSL made the numerical claim that the majority of media outlets in the country are privately owned and are therefore not manipulated by the GoSL. However even privately owned media institutions are not independent as owners of these institutions in some instances have close affiliations to the Rajapaksa family.⁹⁴ Moreover attacks on media outlets and journalists who are critical of the GoSL are so frequent that self-censorship is common practice in the media industry. GoSL claims that it “is committed to taking necessary steps to ensuring safety of media personnel and institutions” however the grievance mechanisms in place to ensure media freedom are unreliable due to the inherent nature of impunity.

Recommendation 20: The State Party should take appropriate steps to prevent all cases of harassment of media personnel and journalists and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted (Para. 18)

In response to Recommendation 20 the GoSL claimed that it remains committed to “pursuing investigation into the current cases on alleged attacks on media personnel and institutions.” There has thus far been no progress in these cases.

LIBERTY OF MOVEMENT AND FREEDOM TO CHOOSE HIS RESIDENCE

Four and a half years after the end of the war several Internally Displaced Persons (IDP) communities remain without access to durable solutions. Although the GoSL’s official statistics indicate that only 23,568 persons remain to be resettled⁹⁵, there are several serious concerns regarding the veracity of this figure. The primary concerns raised by CPA and other actors are the basis on which persons are de-registered as IDPs⁹⁶ and concerns as to “who” was initially registered as an IDP⁹⁷.

⁹⁴ “Overview of Sri Lanka media sources, including affiliation or association with government or opposition parties (2011-2012)”, European Country of Origin Information Network, http://www.ecoi.net/local_link/240926/350357_en.html

⁹⁵ Ministry of Resettlement, ‘Resettlement Figures’, <http://www.resettlementmin.gov.lk/idps-statistics>, 2013, (accessed 30 November 2013).

⁹⁶ Mirak Raheem, ‘Protracted Displacement, Urgent Solutions: Prospects for Durable Solutions for Protracted IDPs in Sri Lanka’, Centre for Policy Alternatives, 2013, <http://www.cpalanka.org/wp-content/uploads/2013/09/Protracted-Displacement-Urgent-Solutions-Prospects-for-Durable-Solutions-for-Protracted-IDPs-in-Sri-Lanka.pdf>, p. 19.

⁹⁷ Ibid pp. 20-27

Whilst it is acknowledged that the GoSL has resettled a vast majority of persons who were displaced as at 19th May 2009, it is still a cause for concern as to why many of the remaining IDP populations are not resettled. In this regard many of these IDPs are unable to return because their land is being occupied by the Security Forces and has been earmarked for economic and military purposes. Furthermore, even those considered by the GoSL to be already resettled have not found durable solutions to persistent issues such as lack of livelihood opportunities, housing and shelter and in fact some of their situations have worsened in light of problems that have emerged in light of resettlement.

Furthermore whilst the GoSL has opened up some areas which were previously considered to be High Security Zones, there are several continuing cases where de facto military occupation of civilian land is sought to be regularised by appropriating them for military purposes.⁹⁸

The GoSL is attempting to acquire 6380 acres of largely private land to build a purported military cantonment. It is abundantly clear that the stated purpose of a 'military cantonment' is a guise for other commercial enterprises, and in any event, there is absolutely no justification for requiring such a large amount of land for a military cantonment purported to hold 13, 200 personnel, a figure provided by the GoSL. This figure is in addition to land being acquired in several other parts of the Northern Province to establish cantonments and commercial ventures for the Sri Lanka Army.⁹⁹

In Sampur (Eastern Province), the GoSL is appropriating land with no regard for due process under the guise of development. The area in question has had a contentious history shifting from a Special Economic Zone to a High-Security Zone and finally in May 2012, to a 'Special Zone for Heavy Industries'. Families displaced from the area have received mixed messages from local officials and have yet to see any formal acquisition procedures, with the exception of a small area of land allocated to a Coal Power Plant.

⁹⁸ See Bhavani Fonseka and Dharsha Jegatheeswaran, "Policy Brief- Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka," CPA, November 2013, available at <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> ; Bhavani Fonseka and Mirak Raheem, "Land in the Northern Province – Post-War Politics, Policy and Practices," CPA, December 2011, available at <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>

⁹⁹ Land from the following GN Divisions in Jaffna were issued notice of acquisition in April 2013: Valikamam North, Valikamam East, Kopay, Telipellai, Kankasanthurai West, Kankasanthurai Central, Wimannamum South, Theiyyaddi South, Palali South, Ottampulam and Walallai

Both in Sampur and in Jaffna a majority of persons unable to return to their homes because of these activities are still languishing in welfare camps often with minimal support being provided for their sustenance by GoSL officials.

RELIGIOUS AND CULTURAL RIGHTS

Sri Lanka's multi-ethnic and multi-religious communities have a significant role to play in post-conflict state-building. Mutual respect and understanding of religious and cultural identity must be at the heart of ongoing reconciliation processes in order to bring about lasting peace and harmony.

While the post-war context offered an opportunity for consolidating peace and reconciliation, and there have been a number of positive developments, there are increasing concerns relating to violence targeting places of worship and religious intolerance. Since the end of the war there have been high-profile incidents such as the attack on the Mosque in Dambulla in April 2012, however other incidents have received little or no public and media attention.¹⁰⁰ This has resulted in a limited understanding of the scale and nature of these incidents. The continuing acts of violence against places of religious worship coupled with a culture of intolerance, is threatening to undermine efforts to consolidate peace, emphasising the need for immediate action by all actors, especially the GoSL. The Secretary of Defence (brother of the President) himself has been seen publicly endorsing the Buddhist religious extremist organization 'Bodu Bala Sena',¹⁰¹ which is well known for the attack on the Dambulla Mosque¹⁰², for launching an anti-halal campaign and for generally inciting anti-Muslim sentiments to avoid what they claim is Muslim extremism.¹⁰³

Article 20 of ICCPR asserts that advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. GoSL has thus far not made any official statements to disassociate itself from the

¹⁰⁰ *Attacks on Places of Religious Worship in Post-War Sri Lanka*, Centre for Policy Alternatives, March 2013, Accessible at: <http://www.cpalanka.org/attacks-on-places-of-religious-worship-in-post-war-sri-lanka/>

¹⁰¹ "Gotabhaya Rajapaksa and his Bala Sena", Colombo Telegraph, 14 March 2013, <https://www.colombotelegraph.com/index.php/gotabhaya-rajapaksa-and-his-bala-sena/>

¹⁰² "Dambulla Mosque attack: Is there a hidden hand?", Groundviews, 24 April, 2012, <http://groundviews.org/2012/04/24/dambulla-mosque-attack-is-there-a-hidden-hand/>

¹⁰³ ""This is a Sinhala country, Sinhala Government": Bodu Bala Sena", Financial Times, 18 February 2013, <http://www.ft.lk/2013/02/18/this-is-a-sinhala-country-sinhala-government-bodu-bala-sena/>

organization, or denounce its violence. This is particularly alarming against a post-war backdrop where protecting the rights of minorities is central to sustainable peace and reconciliation.

In a further development during this time when religious sensitivities and anti-Muslim sentiments have made headlines, the University of Moratuwa has taken the decision to ban the face veil worn by female Muslim students within the university premises.¹⁰⁴ This recent decision taken for apparent security reasons by the State's most sought after technological university is detached from National laws which do not have any provisions preventing Muslim students from covering their faces.¹⁰⁵

The ICCPR Article 27 clearly states that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

LANGUAGE RIGHTS

The 13th amendment to the Constitution of Sri Lanka made Tamil along with Sinhala the official languages of the country. Similarly following the cabinet decision on 3 February 2009, the 2009 /9/ 25 Gazette notification number 1620/27 declared it compulsory that all state institutions carry out work and make available official documents in both languages. However some state institutions including local government institutions and provincial councils do not practice this. Their work is still primarily carried out in Sinhala and English. In the North and the East the practice is the opposite where local authorities work primarily in Tamil and English.

Implementing GoSL's Language Policy has thus far been ineffective. The general attitude towards accommodating the language rights of minorities has not been one that is forthcoming. It is imperative that government institutions abide by the official language policy in order to cultivate sustainable peace and reconciliation.

The state report to CCPR states the following:

¹⁰⁴ "The niqab and the University of Moratuwa", Groundviews, 9 December 2013, <http://groundviews.org/2013/12/09/the-niqab-and-the-university-of-moratuwa/>

¹⁰⁵ "Controversy surrounds face veil ban", The Sunday Leader, <http://www.thesundayleader.lk/2013/12/08/controversy-surrounds-face-veil-ban/>

“Tamil language training is also being provided to additional numbers of Police personnel. 3,424 Police Officials have been given Tamil language training in the period 2009 – 2012 and 409 Police Officials have been given English language training during this same period. This is in line with the GoSL’s overall policy of promoting trilingual competency among public officers including military and the police. It may be noted that all public officials recruited after May 2007 are now required to be competent in both national languages Sinhala and Tamil.”

Also,

“In order to address the language issue, the Government has announced its Trilingual Language Policy in January 2012. As a component of the reconciliation process, and taking into account the important focus of the LLRC recommendations in this regard Tamil speaking police officers have been deployed in the country including the North and East. Civil Service in the North and East is largely represented by the Tamil and Muslim communities.”

Whilst the GoSL has made progress with regard to the language rights through language classes, translation services, and promoting trilingual competence in government institutions. These are undoubtedly positive steps towards implementing the language policy, however by itself these mechanisms are insufficient to promote language rights of minorities.

For example in Police stations, signage for the crimes section, minor complaints section, charge room where you obtain extracts of complaints, traffic department etc. are not displayed trilingually or sometimes even bilingually. The same issue persists in national hospitals. In fact even signages within the premises of the Supreme Court of Sri Lanka are predominantly in Sinhala and English.

The need for tangible change in the operation policy of the Police and Military is now more important than ever.

In order to analyse the extent of implementation of the GoSL’s language policy it is important to carry out a comprehensive systematic language audit in all state institutions beginning at the Divisional Secretariat level, aimed at getting a realistic idea of the current state of affairs. Resulting data should be utilized in order to formulate short and long term solutions.

Furthermore there is a need for a media strategy promoting language rights. The media has a very important role to play in raising awareness of language rights among citizens as well as in promoting social cohesion. For example Sinhala audiences should be provided the opportunity to understand and be able to reach the media that is currently exclusively

available to Tamil audiences and vice versa. Reaching out to Tamil audiences is especially important so viewers do not feel the need to seek out Indian media channels.

At national education levels there needs to be a focus on promoting language rights. This will have the effect of promoting attitudinal change so that future generations will understand the importance of equal language rights in a multi ethnic country.

The Human Rights Commission and the Official Languages Commission (OLC) require more manpower and resources to effectively carry out their duties. The powers accorded to the OLC insufficient to issue orders and to implement the national language policy. As it currently stands the OLC is a Colombo centric institution that needs to disperse its attention beyond the capital territory.