

Written submission to the Universal Periodical Review [UPR]
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Human Rights Commission of Sri Lanka [HRCSL]

No. 165 Kynsey Road,
Borella, Colombo 8.

Telephone: ++ 94 112 696 470 / ++94 112 689 558
Facsimile: ++ 94 112 694 924
Email: sechrc@sltnet.lk
Web: www.hrsl.lk

The Human Rights Commission of Sri Lanka was established under Act No: 21 of 1996, comes under the purview of the 18th amendment to the Constitution of Sri Lanka and is entrusted with the broad task of promotion and protection of the rights of people.

According to Section 10 of the Act, the HRCSL inquires into and investigates complaints regarding procedures, to ensure the compliance with the provisions of the Constitution related to Fundamental Rights[S 10(a)] and infringement or imminent infringement of fundamental Rights and to provide resolutions by conciliation and mediation [S 10(b)].

HRCSL advises the Government in bringing national laws and administrative measures in accordance with Fundamental Rights guaranteed by the Constitution[S 10 (d)] and also international standards and to promote awareness and education in relation to Human Rights [S 10(f)]. Furthermore the Commission can advise and assist the Government in formulating legislation and administrative directives and procedures for the furtherance of the promotion and protection of fundamental rights [S 10(c)] and also could make recommendations to the Government on the need to ascribe to or accede to treaties that are related to Human Rights [S 10(e)].

INTRODUCTION

1. The HRCSL welcomes the conclusions and recommendations made at the 1st UPR. The HRCSL is 1st time actively participating in the UPR process by making this submission, assessing and evaluating the progress made in respect to the recommendations from the last review, and in addition, to review the human rights situation in the reviewing period.

In preparation of this submission, the HRCSL had interactive dialogues with the state authorities on implementation of the recommendations of the last review and with the civil society and I/NGO members at regional and national levels welcoming oral and writing submissions.

INTERNATIONAL OBLIGATIONS

2. Sri Lanka is party to most of the international human rights treaties, but yet to ratify and domesticate the following international human rights treaties in order to strengthen human rights framework of the country. Further HRCSL encourages Sri Lanka to fulfil obligations as per the treaties.

2.1. The HRCSL welcomes Sri Lanka's ratification of ICCPR and the OP I to the ICCPR enabling individual's access to the Committee and translates the ICCPR into domestic laws¹. Following the same, despite the ratification of CAT, the GOSL needs to reconsider the reservations made for the CAT.

2.2. Stating that the HRCSL notes the Government efforts to assure enjoyment of the ESC rights, encourage GOSL to ratify the ICECSR Optional Protocol.

2.3. While appreciating the commitment of the Government and I/NGO initiatives to uphold the rights of persons with disabilities, HRCSL encourages Sri Lanka to ratify CRPD and its Optional Protocol. HRCSL could be designated as the independent monitoring mechanism in terms with the CRPD Article 33.

2.4. HRCSL welcomes the GOSL law and policy changes, administrative arrangements and programmes to fulfil the rights promoted under the various treaties ratified. HRCSL anticipates the GOSL to take measures to submit periodical reports. The GOSL needs to designate the respective line ministries as focal points and appoint committees to monitor and submit reports on time.

2.5. HRCSL emphasizes the role of the Government in implementing and communicating the recommendations made under the UPR, it heartens the GOSL to raise awareness and to have a wide range of consultations among the Government officials including provincial councils in before, during and after the UPR.

¹ International Covenant Civil and Political Rights Act, No. 56 of 2007

DOMESTIC CONCERNS

3. Internally Displaced Persons

A total of 317,790² new IDPs and 304,000 protracted IDPs reported at the beginning of the year 2010³. Government claims that majority of the IDPs are been resettled, but needs to consider IDPs living with host families and who are in need of durable solution. Rights of IDPs in reference to food security have been ensured and they have also been facilitated in reintegration in areas of return through infrastructure building and providing of assistance for initial economic opportunities⁴. HRCSL appreciates Government's attempt to ensure housing rights of people through providing housing for returnees⁵. However, land related disputes are aggravating issues that require much attention of the Government.

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Addressing the issues of IDPs and returnees to ensure equal rights, the HRCSL suggests the GOSL [a] to implement existing programmes of providing compensation for death and injuries, and for lose and damage of land and property within a specific time period [b] initiate an appropriate Government mechanism⁶ considering the gravity and conflict sensitivity of land and property related disputes.

4. HIV/AIDS

Since the time of its discovery in Sri Lanka in 1987, the prevalence of HIV has been one of the lowest across the globe, percentaging to 0.1%. As of end of 2011, Sri Lanka reported a cumulative total of 1463⁷, while it is estimated that the number could be ranging possibly between 2000-4000 against the total country population of 20 million⁸. The GOSL STD services provide antiretroviral therapy (ART) free of charge to all eligible people living with HIV.

4.1. HRCSL observed that PLHIV availing services refer often to instances of Stigma and Discrimination. Even though many steps have been taken to sensitize hospital staff and authorities on reducing stigma and discrimination faced by PLHIV, many situations of rights violations, such as refusal to treat and breach in confidentiality of PLHIV status have occurred in the past. The GOSL strategic directions under the Health Master Plan for Sri Lanka (2007-2011) and the National Maternal and Child Health Policy relating to HIV Prevention and PLHIV Care do not specifically refer to the rights of PLHIV. The GOSL needs to take measures to ensure legal awareness and free legal aid

² During the period from October 2008 to June 2009 a total of 285,018 people have crossed to Government-controlled areas. (Refer to UNOCHA Joint Humanitarian Report June 2009)

³ Annual Report 2010, National Protection and Durable Solutions for Internally Displaced Persons Project, Human Rights Commission, n.d.
<http://www.idpsrilanka.lk/html/Project%20Reports/ProjectProposal/Reports/Annual%20Reports/2010%20Annual%20Report,%20NPDS%20for%20IDPs%20Project,%20HRCSL.pdf> , [20 February 2012]

⁴ "Food for Work" programme implemented by the Ministry of Economic Development encouraged community participation in rebuilding the villages. Village infrastructure: rebuilding of tanks, sources for drinking water and rural roads, home gardening, and building of community centers and schools were done through the programme.

⁵ 49,488 housing units have been completed by end of 2011 through North and East Housing Reconstruction Project and another 50,000 housing scheme is been initiated.

⁶ The HRCSL made recommendation in the year 2002 to establish alternative dispute resolution mechanism [page 30 -32, Legal Analysis of Property Issues of IDPs, <http://hrctl.lk/PFF/Legal%20Analysis%20of%20property%20issues%20affecting%20internally%20Displaced%20Persons%20and%20Refugees%20in%20Sri%20Lanka.pdf>

⁷ <http://www.aidscontrol.gov.lk/nsacp/> (accessed on 3rd March 2012)

⁸ [http://www.statistics.gov.lk/page.asp?page=Population and Housing](http://www.statistics.gov.lk/page.asp?page=Population%20and%20Housing) (accessed on 3rd March 2012)

for PLHIV and targeted community such as LGBTIQ, IDU, CSW communities to ensure dignified life with access to health and legal services.

Further, the Government needs to enhance the capacities of the NDDCB to rehabilitate drug users and to regulate rehabilitation centres across the country, according to the Minimum Standards drawn by the NDDCB which calls upon rehabilitation centres to ensure that the “Human Rights of the clients are protected”

4.2. The National Blood Transfusion Service Bill⁹ has not yet been passed. The HRCSL recommends the GOSL to compensate for people who contract HIV through blood transfusions at the Government hospital.

5. Freedom of Expression

HRCSL recognizes the right to expression linked with right to information as foundation of democracy and encourages the Government to ensure free and secure environment for media personnel and institutions and enact the Right to Information Bill with necessary changes.

6. Human Rights and the Society.

The HRCSL recognizes the significance value of civil society, human rights defenders, activists, educators, promoters and education institutions in promotion and protection of human rights. The GOSL needs to recognize and facilitate them for enabling their services to reach people in need meanwhile ensuring protection of persons and sustainability of human rights institutions. During the reviewing period, the HRCSL trained and deployed 1340 HRDs in conflict affected areas.

7. Rights of Prisoners

There is an increase of Prisoners at various Prison institutions, causing overcrowding at Prisons¹⁰. The overcrowding of the remand prisoners are due to the delay in prosecution, delay in concluding investigations and not providing of bail or inability of the remandee to furnish the bail conditions due to the stringent bail conditions¹¹. There are 1064 Prisoners convicted with the death sentence

⁹ The legislature drafted the National Blood Transfusion Service Bill in 2007, which refers specifically to testing blood for HIV and action to be taken if National blood transfusion standards have not been met.

¹⁰ There were around 32,128 convicted Prisoners and 100,491 unconvicted Prisoners at the various Prison institutions in the year 2010; Overcrowding of the convicted Prisoners are around 194.6% and unconvicted Prisoners are around 275.9% at the end of the year 2010. The authorized daily accommodation at various prison institutions for convicted Prisoners is 6,728 and 5,034 for unconvicted Prisoners as at year 2010. Daily average population of convicted Prisoners is 13,094 and unconvicted Prisoners are 13,890 at the Prison institutions in the year 2010. Due to the overcrowding the facilities at the Prisons, especially the water and sanitation facilities are not as per the international Prison standards and in accordance with the standards of the Ministry of health. See annexure 1, Table 1, Table 2 and 3 for direct admissions of convicted and unconvicted Prisoners by institution, source: <http://www.prisons.gov.lk/Statistics/Statics/Title4/4.1.pdf>, accessed on 21.04.2012 at 4.00pm and <http://www.prisons.gov.lk/Statistics/Statics/Title3/3.1.pdf>, accessed on 21.04.2012 at 4.02 pm

¹¹ As at the end of year 2010, 3367 (25.5% of the total remandees) remandees have been in custody for a period of below 14 days, 2894 (21.9%) remandees for a period of 14-30 days, 2460 (18.6%) remandees for a period of 1 month to 6 months and 509 (3.9%) remandees for more than 4 years¹¹; See Annexure 1, Table 4 on length of period spent in custody of all remandees as of 31.12.2010, source <http://www.prisons.gov.lk/Statistics/Statics/Title3/3.10.pdf>, accessed on 21.04.2012 at 4.30 pm.

On 31.12.2010 there were 462 remandees awaiting for the trial for 6 months at the High Court, 248 from 6-12 months and 269 remandees awaiting trial for over 2 years at eh high court. 7186 remandees were awaiting trial at the Magistrate courts up to 6 months and 909 remandees awaiting trial at Magistrate courts for more than 2 years. See Annexure 1, table 5 on Period spent on remand by Prisoners awaiting trial, source: <http://www.prisons.gov.lk/Statistics/Statics/Title3/3.8.pdf>, accessed on 21.04.2012 at 5.00 pm.

from the year 2000 to 2010¹², but from the year 1977, Prisoners were not executed. They are living with minimum facilities¹³.

There is no system of crediting the time in detention when the final prison sentencing is made. The Department of Community Based Corrections is contributing in a high scale to mitigate the number of convicted prisoners being imprisoned; hence the scope of the crimes that are able to be referred to the community based corrections are very minimal. While respecting the Government's efforts in expanding the facilities in the Prisons and increasing the number of court houses to expedite prosecution, HRCSL encourages the GOSL to take appropriate measures¹⁴ without delay.

8. Right to Remedial Action

There are judicial, quasi judicial and other institutions created in order to hold the administrators accountable for their actions and inactions by empowering them to receive public complaints and to provide relief and redresses. The HRCSL recognizes the importance of those institutions¹⁵, especially in post conflict era, and observes that availability and accessibility of those services at the district and divisional levels are not in satisfactory. Hence, HRCSL encourages the GOSL to capacitate those institutions to establish district and divisional levels mechanism.

9. Land, Housing and Property Rights

Ensuring equal rights for land, housing and property is under the purview of the Government. HRCSL wishes to see that GOSL implements of due procedures¹⁶ in distributing lands for the poor and landless people and 2nd generation of IDPs¹⁷ as an approach to poverty alleviation. HRCSL also

¹² See Annexure 1, table 6, source: <http://www.prisons.gov.lk/Statistics/Statics/Title6/6.1.pdf>, accessed on 21.04.2012 at 6.00 pm

¹³ 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 time sentenced prisoners.

¹⁴ The HRCSL recommends the GOSL to [a] increase of the scope of the crimes in the Community Based Corrections Act to reduce the number of convicted prisoners being imprisoned, [b] introduction of a system to consider the time spent in detention, as well as any other deprivation of liberty in relation to a criminal offence is necessary in pronouncing the final prison sentence or the fine, [c] expedite prosecution/ trial, and reduction of the density of cases for a court/ judge/ officer to expedite the conclusion of the cases, [d] a referral mechanism to provide legal aid support for the prisoners from the LAC14, [e] abolition of the death penalty and substitution of the death sentences with life sentence and [f] establishment of a centralized information centre with details of all detainees and Prisoners.

¹⁵ [a] Mediation Boards - Mediation Boards were introduced by Act No 72 of 1988 and later amended as Act No 15 of 1997, and Mediation (Special Categories of Disputes) Act No 21 of 2003. The mediations boards constitute of mediators for each Divisional Secretariats. Out of 329 Divisional Secretariats in Sri Lanka, 80% of the Divisional Secretariats has established Mediation Board Commission. In 2011, the Act was amended and increase the monetary limit of disputes which compulsorily referred to the Mediation Board to LKR 250,000 or below when committed by a person under the age of 18 years, shall compulsorily referred to the Mediation Board. Accordingly, people can enjoy their justice speedy. The advantages in seeking remedies through Mediation Board is that it avoids further grievances and disputes between the disputing parties since it is not adversarial in nature. In addition, the Mediation process is inexpensive and not time consuming. [b] National Transport Board Commission, [c] Consumer Affairs Authority, [d] Sri Lanka Bureau of Foreign Employment etc.

¹⁶ Land Development Ordinance No. 19 of 1939 emphasizes on distributing Government-owned land among the poor and landless in order to eradicate poverty. It also explains standard procedures of distributing lands among the people. It is under this procedure, the Government held *Land Kachcheri*.

¹⁷ Land or a house is given as a replacement to a loss of them due to war and displacement. Hence, the Second-generation IDPs who have had lived with parents at the time of displacement are not qualified to obtain land or house under the current system.

observes acquisition of land for security¹⁸ establishments and developmental purposes. Some areas which have been acquired as high security zones during the conflict are being turned into Special Economic Zones¹⁹. The HRCSL emphasizes that the GOSL should implement standard procedure in land acquisition that people have to be informed, consulted, provide with alternative lands, and compensate prior to land acquisition.

10. Freedom from Torture and Custodial Deaths

The deaths of persons in the state custody and incidents of torture have been reported to the HRCSL²⁰. There is no provision to penalize or impose strict liability on the OIC of the Police Station, in case of a death in custody and torture²¹. While appreciating the initiatives taken by the Government to minimize the death in custody and torture, the HRCSL stresses the GOSL to take appropriate actions on imposing the liability of torture and death in custody on the OICs of the Police stations, SPs of the Prisons and head of other places of detentions when the sufficient evidence are established. Compensation schemes needs to be introduced to the dependants of the person demised in custody in case of torture. The repeal of the legislations to ensure that a victim or an accused is able to represents with his or her Attorney at the Police stations, as per the directions of the Supreme Court²².

11. Witness and victim protection

Witness and victims are coming through enormous threats due to the non availability of a legislative protection mechanism and non availability of securing the identities of the witnesses through different methods of submission of witnesses. HRCSL recommends that a comprehensive legislation be enacted to safeguard the victims and witnesses as proposed by the Protection of Victims and Witness Bill.

12. Peace and Reconciliation

12.1. Three decades of war ended in 2009 bringing new hopes for lives. Elections were held in conflict affected areas²³. The HRCSL notes the development programmes taking place in the Northern Province, but since the conclusion of war, transition of these areas from situation of war to

¹⁸ "Large amount of area of the Mullikulam GN Division of Musali DS Division of Mannar District has been occupied by the Sri Lanka Navy to establish its camps. Study Report on Private Land occupied by the Security Forces in Mullikulam DS Division, National Protection and Durable Solutions for Internally Displaced Persons Project, Human Rights Commission of Sri Lanka

¹⁹ Sampur, in Trincomalee which had been a high security zone during the conflict time have been turned into a Special Economic Zone. About 1,262 families of 4,000 persons are displaced for several years and living in temporary shelter, not being able to return to their native places.

²⁰ From the year 2008 to 2011, around 51 complaints on death in custody and 2462 complaints received on incidents of torture to the Human Rights Commission, source: Complaint Management System Database, Human Rights Commission of Sri Lanka.

²¹ The liability is imposed on the respective officer who was responsible to look after the person in custody or the officer who committed the alleged torture.

²² Supreme court case No. 527/08 in the case of Mohotti vs. Inspector General of Police

²³ The Provincial Election for the Eastern Province and the local Government election for both the conflict affected north and East provinces were held. Northern Province Election is to be held.

normalcy is not much visible with the high military presence²⁴, influence and participation in public administration and public programmes. The GOSL needs to have the Provincial Council Election in NP to ensure democracy and voting rights of people in the North.

12.2. The HRCSL recognizing the necessity of durable peace encourages the GOSL to implement a sustainable peace building and reconciliation programme. While appreciating the appointment of LLRC, the HRCSL encourages the GOSL to implement recommendations related to reconciliation.

²⁴ According to the military own statistics [www.cimicjaffna.com/main.php], in Jaffna, there are more than 35,000 troops for the estimated population 626,329 people [www.cimicjaffna.com/population.php], an average of one military persons to 18 civilians.

List of Acronyms

CAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities
GOSL	Government of Sri Lanka
HRDs	Human Rights Defenders
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
NDDCB	National Dangerous Drugs Control Board
NP	Northern Province
OIC	Officer In charge
PLHIV	People Living with HIV
LLRC	Lessens Learn and Reconciliation Commission
SP	Superintendent of Prison
UPR	Universal Periodical Review