

**JOINT CIVIL SOCIETY SUBMISSION TO THE UN UNIVERSAL PERIODIC
REVIEW (SRI LANKA)**

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Submission by organizations and individuals

ORGANIZATIONS

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| 1. Center for Human Rights & Development | 16. Mothers and Daughters of Lanka |
| 2. Centre for Policy Alternatives | 17. Movement for Defense of Democratic Rights |
| 3. Center for Promotion & Protection of Human Rights | 18. National Fisheries Solidarity Movement |
| 4. Centre for Women and Development (Jaffna) | 19. National Peace Council |
| 5. Dabindhu Collective | 20. Praja Abhilasha Network |
| 6. Equal Ground | 21. Puravasi Kamituwa |
| 7. Families of the Disappeared | 22. Red Flag Women's Movement |
| 8. Home for Human Rights | 23. Right to Life Human Rights Centre |
| 9. Human Rights Organization(Kandy) | 24. Rights Now Collective for Democracy |
| 10. INFORM Human Rights Documentation Center | 25. Savisthri Women's Movement |
| 11. International Movement Against Discrimination and Racism (Asia Group) | 26. South Asia Network for Refugees, IDPs and Migrants Sri Lanka (SANRIM Sri Lanka) |
| 12. Janaawaboda Kendrya | 27. Stand-Up Movement (SUM) |
| 13. Janatha Sanwada Kendraya | 28. Women Action Network |
| 14. Law and Society Trust | 29. Women and Media Collective |
| 15. Lawyers for Democracy | 30. Women Support Group |
| | 31. Women's Centre |

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Joint Civil Society Submission

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In the period under review Sri Lanka moved from full scale war to a post-war context. Even while the country is presented with a historic opportunity to address the underlying ethno-political grievances and there have been significant developments during this period, there are serious concerns that fundamental problems remain unaddressed. With regards to a political solution the Government has failed to fully implement the 13th Amendment¹ and to provide a more far-reaching solution². On key human rights issues, even while in terms of volume of incidents the situation may look positive, there has been little change in addressing the fundamental structures and process that facilitate violations of human rights and the culture of impunity, essentially demonstrating Government's poor record in fulfilling and implementing its existing UPR commitments.

1. GENERAL OVERVIEW OF RULE OF LAW

1. The 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 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

2. The 18th Amendment to the Constitution has undermined independent institutions and human rights protection in post war Sri Lanka,⁸ 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 General⁹. The Executive also continues to have considerable influence over lower courts through the Judicial Service Commission.¹⁰ This has left the Judiciary more vulnerable to Executive control, undermining judicial independence.¹¹ Although the Judiciary has, in a handful of cases asserted itself and challenged the acts of the Executive¹² 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 decision¹³ and long delays in proceeding with certain case.¹⁴ There are also concerns that processes which do not have the same safeguards as a judicial process are now recognized as a 'competent court'.¹⁵ Further, there are serious concerns for the lack of

implementation and disregard for judicial orders¹⁶. In addition, the lack of independence of the Attorney General's department¹⁷ coupled with threats to judicial officers¹⁸, lawyers¹⁹ and even litigants²⁰ has cast serious doubt on the ability of Sri Lankan courts to administer and deliver justice in a fair manner.

3. 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 years²¹ and more recently the resignation of one commissioner from the NHRC.²² There continue to be concerns relating to institutional issues including the financial independence²³ and the legal capacity²⁴ of the NHRC as well as the lack of timely action with complaints made to the NHRC.²⁵ Regardless of its weaknesses, the NHRC has in some instances taken measures to protect the rights of individuals.²⁶ Similar concerns are raised with other institutions.²⁷

4. In addition to existing institutions, a long list of commissions of inquiry and committees were appointed to examine human rights issues.²⁸ The lack of meaningful follow-up action on reports of commissions of inquiry²⁹ demonstrate a lack of genuine will to address human rights violations³⁰.

5. The legislative process continues to lack transparency and involves little participation or public scrutiny in a process that results in far-reaching constitutional amendments and broad sweeping legislation.³¹ A disturbing tactic used by the GOSL is to classify prospective legislation as an 'Urgent Bill'.³²

6. 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,³³ the Government has introduced similar measures under the Prevention of Terrorism Act (PTA).³⁴ The PTA regulations contain even less safeguards than the ERs³⁵ and is a violation of Sri Lanka's international obligations.³⁶

7. In addition to the judicial and legal challenges, the process for obtaining justice for victims of human rights abuses and their families is fraught with significant challenges, including security threats. A key impediment in successful and independent investigations and prosecutions is the lack of witness and victim protection safeguards³⁷, which has resulted in many witnesses and victims being reluctant to testify for fear of reprisals, thereby weakening or halting cases against alleged perpetrators.

8. The period in focus also witnessed developments related to Government 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

9. There is no public information available whether any serious human rights violations have been prosecuted in any court of law in the period in question although numerous commissions, committees and others have been initiated.⁴³ In other instances, there has been interference in the criminal justice system including recent incidents of withdrawal of charges by the AG in cases perceived to be political.⁴⁴ A disturbing trend is that perpetrators who enjoy political patronage and who have committed grave crimes continue to flout the law.⁴⁵ The lack of credible independent investigations into human rights violations which would lead to indictments and prosecutions of perpetrators of human rights, has resulted in a serious lack of public confidence and trust in the justice system.

2. DETENTION

1. 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. Apart from the Criminal Procedure Code, detentions were governed by the Emergency Regulations (ER) till September 2011 and the Prevention of Terrorism Act (PTA).⁴⁶ ERs were extensively used to detain political opponents and others engaged in dissent⁴⁷. However although ERs became inoperative as a consequence of the Government allowing the state of emergency to lapse, the PTA continues to undermine fundamental rights.⁴⁸ There a number of problems with the PTA including that it facilitates arbitrary arrests and detention;⁴⁹ 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 arrest⁵⁰ are rarely respected.⁵¹ Detaining suspects under the PTA beyond the maximum period prescribed by law⁵² and not producing them before a magistrate within the required period⁵³ is a common practice. In addition, any challenge to the legality of the arrest and detention before a court is precluded under the PTA⁵⁴ thereby also denying a right to remedy and compensation.

2. 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.⁵⁵ The Government has admitted that detention facilities are inadequate and overcrowded.⁵⁶ In spite of the commitment to address these issues by the end of 2012, no steps have been taken to date⁵⁷ and there is information that secret or unofficial detention centers continue to be used⁵⁸.

3. SURRENDEES

1. 'Surrendees' is a term used by the state to refer to persons who were sent to government-run rehabilitation centres for alleged involvement with the LTTE.⁵⁹ The approximately 12,000 Surrendees include individuals who were forcibly recruited and others who served the LTTE in administrative positions, hence there are issues as to the identification of these persons as ex-combatants.⁶⁰ Key problems include the lack of legal safeguards⁶¹ and the security of the Surrendees. While held at Protective Accommodation and Rehabilitation Centres (PARCs) Surrendees are denied a right to legal representation and due process rights. Although rehabilitation is meant to be for a maximum of 2 years⁶², there are multiple cases where Surrendees have been held for much longer and/or where Surrendees have been transferred to detention centres or detainees sent for rehabilitation.⁶³ Hence, by transferring an individual from a detention centre to a PARC or vice versa, a person can be detained without judicial oversight for a period of 3 ½ years.⁶⁴

2. Since July 2009, no independent protection agency has had access to Surrendees.⁶⁵ Hence, it is very difficult to ascertain whether Surrendees have been held for more than the maximum period or under what conditions. As of February 2012, PARCs⁶⁶ remained operational with a reported total of around 1,000 persons, both men and women.⁶⁷ Following their release⁶⁸ Surrendees face intimidation, harassment and increased levels of surveillance by security officials from a number of state agencies,⁶⁹ in addition to problems relating to social and economic reintegration.

4. TORTURE

1. The practice of torture is widespread and commonly resorted to by police and army personnel.⁷⁰ The methods of torture commonly used include severe levels of violence⁷¹ and sometimes includes sexual abuse. The practice of extracting confessions under torture continues and there is a heavy evidential burden to challenge such confessions.⁷²

2. The detection of torture is rendered difficult as medical examinations remain at the sole discretion of the police. Malpractices by Judicial Medical Officers (JMOs) due to a lack of competence and fear of police and army personnel are frequent.⁷³ Magistrates too fail to act diligently to detect torture and protect victims from further abuse.⁷⁴ The Attorney General's Department has not demonstrated a zero tolerance policy for torture⁷⁵, has not since 2009 referred complaints of torture to the Special Investigation Unit of the Criminal Investigation Department, and does not inform victims of steps taken to investigate complaints of torture or prosecute alleged offenders. The NHRC too has no duty to provide victims with written reports of follow-up action taken.⁷⁶ Victims of torture often do not initiate or pursue fundamental rights cases before the Supreme Court due to threat and intimidation.⁷⁷ Even lawyers of victims have been threatened.⁷⁸ Emphasis on professional sanctions for alleged perpetrators rather than criminal prosecutions is insufficient.⁷⁹ In addition compensation awarded to victims, is insufficient.⁸⁰

5. HUMAN RIGHTS DEFENDERS

1. During this period, human rights defenders (HRDs) have been threatened⁸¹, physically attacked⁸², arrested⁸³ disappeared⁸⁴ and killed⁸⁵. In addition, HRDs have been systematically denigrated and their work disrupted, which has made the climate for engaging in human rights work both challenging and dangerous. Threats aimed at HRDs were published in the media including the state-owned media, which in some cases amounted to the incitement of violence by Government politicians⁸⁶. The vulnerability of HRDs has increased as a result of accusations of being traitors⁸⁷ and having links to the LTTE or pro-LTTE groups⁸⁸, both by the media and Government actors⁸⁹. HRDs have also been subjected to interrogation⁹⁰, surveillance and harassment by the State⁹¹. The disruption of work has also included attacking human rights meetings and training programmes.⁹² The situation for groups based in the North is particularly acute as they find it increasingly difficult to secure permission from the Presidential Task Force (PTF) to engage in specific activities relating to protection or empowerment, or to work in particular areas such as in Killinochchi and Mullaitivu. There was no effective investigation of complaints of threats, intimidation and attacks against HRDs,⁹³ and no alleged perpetrators connected to such incidents have been prosecuted.

6. FREEDOM OF ASSOCIATION AND ASSEMBLY

1. Peaceful protests perceived to be anti-government and meetings, particularly those organised by human rights activists⁹⁴ and opposition political parties,⁹⁵ have been consistently disrupted or prevented through a variety of methods including judicial action⁹⁶, use of the police and security forces⁹⁷ and attacks by armed gangs,⁹⁸ which has also created a context of fear constraining the space for dissent.⁹⁹ Public and even some private events in the North are supervised and controlled by the military and official circulars have been issued by the Government insisting that military officials and government politicians be given notice of events and participate at such events. Conspicuously, there have been no such restrictions or difficulties in relation to protests organised by the government or pro-government groups.¹⁰⁰ As in the case of HRDs there has been a concerted effort by specific media organisations to portray protests against undemocratic actions by the Government as ‘unpatriotic’ and ‘attempts to destabilize the country’. Violence against political activists continues to be a key problem for political opponents¹⁰¹ and university student groups.¹⁰² In addition, religious and cultural events organised by Tamil communities in memory of those killed during the war were cancelled by the military and organisers of the events were threatened.¹⁰³ Families of disappeared persons and religious leaders in the North who meet visiting foreign representatives have also been questioned and intimidated by the military.

2. The clamp down on civil society and human rights activists has been enforced by the introduction of a variety of legal measures, policies and practices, and a visible increase in control by the defence establishment. Non-Governmental Organisations (NGOs) have come under increased scrutiny by entities such as the Parliamentary Select Committee, to investigate NGOs working on peace and human rights.¹⁰⁴ Legislative developments include the issuing of

PTA regulations¹⁰⁵ and the proposed amendments¹⁰⁶ to the NGO Act,¹⁰⁷ which were mooted after allegations were made -following the 2010 Presidential election -about ‘foreign interference’¹⁰⁸ to bring international and local NGOs under greater control and supervision of the State. A number of new laws and regulations to further control NGOs are being contemplated by the State. Additionally, the mandate of the defence establishment has been expanded to supervise and monitor NGOs, with the NGO Secretariat falling under the purview of the Ministry of Defence,¹⁰⁹ which has also resulted in increased scrutiny of NGO activity by intelligence agencies, security forces and police.

7. FREEDOM OF EXPRESSION

1. Media freedom in Sri Lanka continues to be restricted. Reporting of events was restricted during the war with the GOSL imposing a blackout on media coverage of the war effort and restricting access to conflict zones to independent and foreign news agencies during its military offensive against the LTTE.¹¹⁰ Any attempt to provide reportage on human rights issues, particularly pertaining to the military offensive, national security policy and any critique of the government risked severe reprisals resulting in violent attacks¹¹¹, intimidation¹¹², abduction¹¹³ and killing of journalists,¹¹⁴ as well as outright violence against media institutions.¹¹⁵

2. Hate speech and threats of violence, including death threats, against journalists and HRDs have been publicised by state media institutions, which are indirectly owned or managed by the state. There is one instance of a government minister publicly admitting responsibility for the death of and attacks on journalists.¹¹⁶ The failure of the government to intervene has given rise to concerns about a clamp down on dissent and creating a fear psychosis amongst media actors, despite the government’s pronouncements and commitments with respect to media freedom and democracy.¹¹⁷ In most cases, the alleged perpetrators have not been investigated and even in the few cases in which arrests were made there have been attempts to manipulate/subvert the judicial process.¹¹⁸ This intimidation forced some media workers into exile¹¹⁹ and resulted in Sri Lanka being listed as one of the most dangerous places in the world for media workers.

3. In the post-war context, while some exiled journalists have returned to the country, threats to media freedom persist with several cases of journalists being assaulted¹²⁰ and one disappearance.¹²¹ A sense of insecurity continues largely due to government inaction even after complaints of threats to and intimidation of media actors have been made. This has exacerbated the degree of self-censorship within mainstream media, and has, as a result, led to the preclusion of critical reportage on post-war cases of human rights violations, corruption and governance issues. The government has encouraged the exercise of self-censorship within media institutions¹²² and continues to stall on enacting right to information legislation.

4. The reintroduction and enforcement of draconian legislation in 2009 included the reactivation¹²³ of the Press Council Act, which allows journalists to be convicted and imprisoned

for a maximum period of two years without any judicial process.¹²⁴ In September 2009, the Prevention of Terrorism Act (PTA)¹²⁵ was used to sentence a journalist to 20 years of hard labour¹²⁶. Over the course of 2010 and 2011, the restrictions on freedom of expression have extended to web-based media including the arbitrary and extra-legal blocking of online news websites¹²⁷, the request for registration of news websites¹²⁸, arson attacks¹²⁹ and arrests of online journalists.¹³⁰ Even SMS news alerts related to the security establishment now require prior approval by the Media Centre for National Security (MCNS).¹³¹

8. HUMANITARIAN ISSUES

1. The intensification of the war in the North¹³² resulted in a further deterioration of the humanitarian crisis in the country with the displacement of over 300,000 persons -almost all Tamil - in the Vanni. This was in addition to the 200,000 Internally Displaced Persons (IDPs) from previous years.¹³³ The Government and the LTTE were accused of carrying out a series of violations including forced movement and restrictions on movement for IDPs,¹³⁴ shortages of food, medicine and other essential goods to displaced populations,¹³⁵ and other human rights violations against IDPs including forcible recruitment¹³⁶ and the abduction of individuals.¹³⁷ Following the end of the war there has been significant progress, at least in terms of the number of 'resettled' IDPs. Although there is progress in some areas, there are continuing problems including the issue of who is classified as an IDP and the lack of durable solutions for those officially resettled.¹³⁸

2. While the Government claims that only 6,567 persons remain to be resettled,¹³⁹ the actual number of displaced persons is much higher with 34,671 'new IDPs',¹⁴⁰ living with host families and a further 1,114 living in 'transit situations',¹⁴¹ and at least 141,074 officially registered refugees.¹⁴² The Government does not refer to statistics of 'old IDPs', hence it is not clear if all members of this population roughly numbering 180,000 at the end of the war, had returned, opted for local integration, relocated elsewhere or continue to live as displaced persons without officially being identified as such, especially given that some areas have not been opened up for resettlement.¹⁴³ The currently proposed solution of relocation to another area raises questions about its voluntary nature and access to livelihoods in that area.¹⁴⁴

3. As a result of limited assistance and multiple challenges on the ground those returning to their areas of origin face a fundamental problem in rebuilding their lives, which in turn raises the question as to whether these persons have found durable solutions.¹⁴⁵ The Government's own policies such as those regarding land have resulted in uncertainty whether those who have returned to their land or continue to live in displacement will be able to fully own, access and control their land.¹⁴⁶

4. Despite the Governments commitments¹⁴⁷ there is no new legislation dealing specifically with displacement.¹⁴⁸ In addition to the absence of a policy framework related to displacement

Humanitarian actors also face a number of restrictions.¹⁴⁹ The military's interference in humanitarian activities was continued by placing the NGO Secretariat under the aegis of the Ministry of Defence, the presence of military officials in the Presidential Task Force¹⁵⁰ and the control it has over areas humanitarian actors can access and the implementation of work in areas.¹⁵¹ There are also concerns regarding the safety of humanitarian workers.¹⁵² These measures directly contradict the commitment made by the GOSL.¹⁵³

9. NORTHERN MUSLIMS AND OTHER 'OLD IDPS'

1. The Northern Muslim community that was expelled by the LTTE from the northern province in 1990,¹⁵⁴ like other old IDP populations were not a priority for post war resettlement in 2009.¹⁵⁵ Each set of old IDPs have their specific set of problems¹⁵⁶ Like other protracted IDP populations, many Northern Muslims have established strong ties in their places of displacement and some may wish to become residents of those areas.¹⁵⁷ The state needs to recognize and support local integration as a durable solution.¹⁵⁸

10. ACCOUNTABILITY

1. Accountability has been a fundamental problem in Sri Lanka over the last three decades¹⁵⁹ with specific relevance in post war Sri Lanka due to allegations of serious violations of human rights and international humanitarian law during the last stage of the war.¹⁶⁰ Although several initiatives have been introduced by successive Governments¹⁶¹ to address violations, the inability and unwillingness¹⁶² to hold to account perpetrators has impacted day-to-day dispensation of justice and enforcement of law and order¹⁶³ and exacerbated the culture of impunity.

2. Since the end of the war, there have been few domestic initiatives to address accountability.¹⁶⁴ In May 2009 the Government assured the visiting the United Nations Secretary-General questions of accountability will be addressed¹⁶⁵ but there has been no independent initiative, indictment or prosecution of alleged perpetrators nearly three years after the end of the war. The LLRC¹⁶⁶ failed to adequately address issues regarding violations of human rights and IHL¹⁶⁷ with criticism leveled against the process and methodology used in their findings¹⁶⁸. In contrast, international initiatives, which have been vehemently opposed by the Government, have indicated the occurrence of violations by both parties during war¹⁶⁹.

3. It is uncertain whether information on exact casualty numbers during the war will ever be publicly available due to lack of independent monitoring, destruction of documentation and flaws within existing mechanisms¹⁷⁰. The triumphalism since the military victory and the growing nationalist sentiments have all contributed to polarizing the discourse of accountability, with limited space to discuss anything related to the last stage of the war and accountability.¹⁷¹ While there are significant differences in opinion as to whether accountability is required and what it involves, a significant population, mainly from but not restricted to the North and East are determined to identify the whereabouts or the fate of those missing and to

secure some form of acknowledgement¹⁷², making clear the importance of this issue for achieving sustainable peace and reconciliation.

11. DISAPPEARANCES AND ABDUCTIONS

1. There are no accurate figures of how many civilians were killed or disappeared during the war, including during the final stages of the war. The civilian deaths were estimated to be around 40,000¹⁷³ whereas some other sources estimates the missing persons between October 2008 and July 2009 were around 146,000¹⁷⁴.

2. The phenomenon of abductions and disappearances, including the ‘white van abductions’¹⁷⁵ was a dominant feature of the war but continues in the post-war context. The LLRC, pointed to the alarming number of ‘abductions, enforced or involuntary disappearances, and arbitrary detentions.’¹⁷⁶ In addition to the suffering caused to families, the phenomenon intensified the culture of fear and impunity.¹⁷⁷ While in some cases the person who was abducted was released through paying of ransom, or the use of persuasion and influence, the fate of many of those who were abducted is still unknown.

3. During the war, this problem was particularly concentrated in the North and East, with Tamil civilians in particular being targeted by armed actors. Abductions, however also took place in other parts of the country, including in the capital Colombo.¹⁷⁸ Various armed State actors, including the military have been accused of carrying out abductions, as have the largely Tamil paramilitary groups who are allied to the State.¹⁷⁹

3. The LTTE is also accused of carrying out abductions, including the forcible recruitment of civilians.¹⁸⁰ In addition, both the LTTE and the TMVP were involved in the abduction and recruitment of children as combatants.¹⁸¹ While the Government initiated programs to assist the rehabilitation of child combatants from both groups, it has failed to prosecute individuals, including some who hold prominent positions in the current administration, accused of being involved in child recruitment.¹⁸²

4. Significant numbers of abductions¹⁸³ 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.¹⁸⁴ Areas such as Jaffna and Vavuniya have witnessed sharp spikes in incidents during specific time periods.¹⁸⁵ Individuals targeted in abductions include those seen to be critical of the Government such as activists and journalists.¹⁸⁶

5. 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 strengthened suspicions of the Government’s complicity, if not involvement in these violations.¹⁸⁷ The LLRC has recommended Government direct law enforcement authorities to investigate disappearances properly and to hold perpetrators accountable for their actions¹⁸⁸, and

that domestic legislation be passed specifically to criminalize enforced or involuntary disappearances.¹⁸⁹ In addition, a mechanism to help family members and others to register details of the missing and for the State to help them trace the fate of these individuals is urgently required.¹⁹⁰

12. EXTRA JUDICIAL KILLINGS

1. Extra Judicial Killings (EJK) continued unabated during the war and post war periods. Apart from the killings in the battle fields, there was a high incidence of EJKs reported from the conflict affected areas¹⁹¹ during the period of the war, but also a number of incidents reported from other parts of the country. There is no comprehensive data available on exact numbers.¹⁹² Armed actors including the State forces,¹⁹³ the LTTE and paramilitary groups¹⁹⁴ have been accused of carrying out EJKs.¹⁹⁵

2. Direct military hostilities can be attributed to a significant number of the killings reported during the period but there were also multiple cases of EJKs including civilians being executed by armed actors¹⁹⁶ and allegations of persons who surrendered to the military during the last stage of the war and soon thereafter being shot dead.¹⁹⁷ Similarly, testimony by survivors who left the war zone reported of alleged EJKs by the LTTE including killing civilians who were suspected of attempting to flee the war zone and protested the recruitment of family members especially during the last stage of the war, in addition to using civilians as human shields.

3. Even after the conclusion of the war, extrajudicial killings have continued with numbers demonstrating a significant problem.¹⁹⁸ In the post war context, there have been several cases of extra judicial killings and other deaths of criminals and detainees in suspicious circumstances and 49 reports of death in custody between 2009 and 2011.¹⁹⁹ There have also been incidents of political violence resulting in killings,²⁰⁰ where there are significant concerns relating to the breakdown of the rule of law. Other trends related to EJK during this period include the discovery of bodies in abandoned wells²⁰¹ and killing of protestors and critics of the Government and their allies.²⁰²

4. Several reasons can be cited for the high incidence of EJK including high levels of militarization, impunity with which security forces operate²⁰³, the active role of armed groups²⁰⁴ and lack of an effective process to control arms and hold persons to account.²⁰⁵ There is an almost systematic lack of adequate investigations in reported killings during the period under review.²⁰⁶

13. RIGHTS OF LESBIANS, GAYS, BISEXUAL AND TRANSGENDER (LGBT) PERSONS

1. The Government has not made significant progress in promoting and protecting the LGBT community.²⁰⁷ Consensual same-sex sexual activity between adults is criminalized, even in private spaces, by Section 365(a) of the Penal Code.²⁰⁸ Although there have been no convictions

under this provision, police stations have received complaints on this ground.²⁰⁹ This criminalization opens the door for harassment and abuse by police and anti-gay groups. Homophobic and transphobic articles are common in the media,²¹⁰ including in some State owned newspapers, and some newspapers have even ‘outed’ individuals as homosexuals.²¹¹

2. Persons of diverse sexual orientation and gender identities are not explicitly protected from discrimination by the provisions of the Constitution regarding non-discrimination,²¹² thereby contributing to their vulnerability.²¹³ The inclusion of sexual orientation and identity within the scope of Article 12 of the Constitution is not part of the NHRAP, although this recommendation was made in initial drafts.²¹⁴ Nor have any recommendations been made by the NHRC to bring national law in accordance with international standards on this issue.²¹⁵

14. WOMEN’S HUMAN RIGHTS

1. Despite the advances made in women’s rights,²¹⁶ there remain a number of concerns including an increasing regressive socio-political environment where it is difficult to advance women’s issues. This is in the context of limited movement on the policy front.²¹⁷ Despite very low representation of women in all levels of government²¹⁸, which adversely impacts the design and implementation of policy,²¹⁹ no affirmative action measures have been initiated.

2. There is also a high incidence of crimes against women. The Police Bureau for the Protection of Women and Children received 714 complaints of grave and violent crimes and 2,391 minor crimes against women in 2009.²²⁰ Yet, there is very limited use of the Prevention of Domestic Violence Act.²²¹ The intransigence of the police to file complaints under the Act and initiate effective follow-up may also be traced to opinions at the highest levels of government that domestic violence is a ‘family matter’ to be resolved in private.²²² Women also often face arbitrary penalization under the Vagrancy Ordinance and sex-workers face harassment under the Brothels Ordinance.²²³ There are also several problems regarding sexual violence against women²²⁴ and abortion²²⁵. Furthermore Muslim women have unequal rights in marriage and divorce under Muslim personal law.²²⁶

3. The increased military presence in the North and the East has been accompanied by a large number of women, particularly from women-headed households, reporting violations of their physical security.²²⁷ There is an apprehension among women in the region that approaching law-enforcement agencies with complaints of rape, murder, trafficking or disappearance will only invite further abuse.²²⁸ Three years after the war, women in the region lack livelihood options, educational opportunities and psychosocial healing spaces, increasing their vulnerability—particularly of female ex-combatants and the wives of men in detention or under-going rehabilitation—to abuse.

15. CULTURAL RIGHTS

1. Tamil is an official language in law but the relevant provisions of the 13th and 16th Amendments to Constitution²²⁹ have not been fully implemented, in particular within the public service, police and security forces.²³⁰ There is a significant shortage of Tamil-speakers in state institutions, with only 6% of central government able to communicate in Tamil.²³¹
2. The shortage of Tamil-medium teachers, especially in the hill country and in some Muslim schools has reduced access and availability of education in the Tamil-language within those communities.²³² This in turn impacts the socio-economic opportunities available to these communities and their cultural identity.²³³
3. In the Tamil-majority North and East, there is apprehension that State actors are attempting to dilute the cultural identity of the region through various means.²³⁴ While there is significant space for religious freedom in Sri Lanka, recently there have been a number of attacks on places of worship.²³⁵

16. SOCIO-ECONOMIC RIGHTS

1. Even while official statistics suggest clear progress towards achieving the Millennium Development Goals,²³⁶ the data is incomplete as it excludes the North and East where the war made data collection impossible²³⁷ and there are gaps in the analysis²³⁸.
2. Food Security is a problem in most parts of Sri Lanka but is acute in areas directly affected by the war.²³⁹ There also remain concerns regarding budgetary allocations with specific sectors²⁴⁰ getting priority over others which are critical to human development²⁴¹. Other concerns include labour issues including problems with wages and meeting certain labour standards²⁴² and issues related to development programmes.²⁴³ Further rights of those forcibly evicted and displaced are poorly protected in law and in practice.²⁴⁴

17. UP-COUNTRY TAMILS

1. Despite the formal end of statelessness, Up-Country Tamils in general and estate workers and residents in particular continue to experience political, economic, social and cultural discrimination.²⁴⁵ State authorities adopt a laissez-faire attitude to estate sector residents and neglect the provision of essential services.²⁴⁶ The community also faces sporadic violence.²⁴⁷

18. RIGHTS OF MIGRANT WORKERS

1. The revenue earned by migrant workers provides up to one third of Sri Lanka's foreign exchange.²⁴⁸ But many gaps remain on the policy front.²⁴⁹ Even though Sri Lanka has signed up to the Convention on the Protection of the Rights of All Migrant Workers²⁵⁰ no enabling legislation has been enacted. The National Migration Policy²⁵¹ has yet to be effectively implemented and monitored. Sri Lankan embassies, in countries with a high percentage of Sri Lankan workers, lack capacity to deal with the needs of migrant workers.²⁵² Steps have yet to be

taken to ensure that migrant workers can exercise their right to vote in Sri Lankan elections while residing in other countries.

¹ 13th Amendment to the Constitution

² “Sri Lanka will take measures for the effective implementation of the 13th Amendment to the Constitution” (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, para 103). The GOSL has stated on several occasions that it is committed to the full implementation of the 13th amendment and to even go beyond the existing scheme of devolution of power (references to 13+) See “Full implementation of 13th Amendment plus, MR tells Krishna”, The Daily Mirror, 17 January 2012, <http://www.dailymirror.lk/top-story/16141-full-implementation-of-13th-amendment-president-tells-krishna-.html> ; Anthony David and Nadia Fazlulhaq, “President again pledges 13 Plus to India”, The Sunday Times, 22 April 2012, http://sundaytimes.lk/120422/News/nws_01.html . But on other occasions the GOSL and members of the ruling party have expressed reservations on implementing provisions relating to the devolution of “police powers” and “land powers” Arthur Wamanan and Sandun Jayawardana, “Pluses and Minuses of 13 +”, The Nation, 22 January 2012, <http://www.nation.lk/edition/feature-viewpoint/item/1731-pluses-and-minuses-of-13-%20.html>

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 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 GOSL firmly believes in building strong and independent national institutions which can sustain and deliver on their mandates to promote and protect human rights...” (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 7, 8).

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 Sri Lankan Government has failed to fulfill the voluntary pledge that it will reconstitute the Constitutional Council. (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 89).

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. Even though one and a half years has elapsed since the 18th Amendment was adopted the Elections commission and the Delimitation Commission are yet to be appointed. 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.

⁹ 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 CoI’s and other government appointments which are the only means of employment for most retired Judges. There is a general practice of appointing retired Judges to CoI’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).

¹⁰ 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)

¹¹ 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, (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>)

¹² 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.

¹³ 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).

¹⁴ 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)

¹⁵ 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, (http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=452%3Aconcerned-over-scs-courts-martial-verdict-cpa&Itemid=56)

¹⁶ 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.

¹⁷ The Attorney General's Department was brought under the direct control of the President in May 2010.

¹⁸ 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.

¹⁹ 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".

²⁰ 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.

²¹ 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, Law and Society Trust, 2010.

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

²² 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>).

²³ 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.

²⁴ 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 The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf](http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf).

²⁵ B. Skanthakumar, “Atrophy And Subversion: The Human Rights Commission of Sri Lanka”, Law and Society Trust, [http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf](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.

²⁶ 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 The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf](http://www.lawandsocietytrust.org/PDF/Atrophy%20and%20Subversion%20The%20Human%20Rights%20Commission%20of%20Sri%20Lanka.pdf)

²⁷ 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, 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.

²⁸ Centre for Policy Alternatives, 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>)

²⁹ Whilst these commissions are mandated to submit reports to the President the only report which has been made public by the government is the report by the Lessons Learnt and Reconciliation Commission (LLRC). See *Ibid*.

In addition to the lack of progress made with past CoI's, there was no progress made with the implementation of the interim recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) issued in September 2010, a point noted by the LLRC in their final report. (Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 8.192, 9.210)

³⁰ The International Independent Group of Eminent Persons (IIGEP) who were invited by the Present Government to observe a Commission of Inquiry made a scathing attack on the 'lack of political will' to address violations. For more information See Centre for Policy Alternatives, "The Sri Lankan Case: Rhetoric, Reality and Next Steps?" March 2012.

This confirms that these CoI were measures to deflect international and local pressure from urgent calls for redress. In some circumstances CoI's have been mandated to look into the same incidents that were within the mandate of previous CoI's. On 23 August 2006 A two-member CoI was appointed to probe the assassination of Batticaloa district Parliamentarian Joseph Pararajasingham this incident was also part of the mandate of the CoI appointed to Investigate and Inquire into Serious Violations of Human Rights which are alleged to have arisen in Sri Lanka since 1 August 2005 which was appointed on the 13 November 2006; Recently former Attorney General Mohan Peiris gave an assurance during an interactive session held on the sidelines of the 19th Session of the United Nations Human Rights Council that the Government would reopen investigations into the 2006 killing of five students in Trincomalee and 17 aid workers at Muttur. The CoI appointed to investigate these incidents submitted its report to the President in June 2009 but no public information is known regarding its findings or any follow up action.

³¹ The Sri Lankan Constitution does not provide for judicial review of legislation. Any citizen who wishes to challenge the constitutionality of a bill can only do so within 7 days of the bill being gazetted and been tabled in Parliament.

³² Article 122 (1) (c) of the Constitution states that the Supreme Court shall make a determination in respect of urgent bills within a period of 24 hours or on a date not later than three days as specified the President. This limits public debate and challenges by interested parties. The LLRC recommended that the Government and the Opposition should reach a consensus on an appropriate constitutional amendment, to provide for an adequate timeframe to challenge proposed legislation. See LLRC Report, para 8.205.

Some post-war legislation with significant impact on human rights was not preceded by any public discussion, leaving many unaware of implications, leaving little space for legal review prior to enactment. This was evident in the case of the 18th Amendment and the PTA regulations. See The Centre for Policy Alternatives (CPA), Public Statement on the 18th Amendment Bill, September 2010, (<http://www.adaderana.lk/news.php?nid=9649>); See also CPA, Statement on the new Regulations under the Prevention of Terrorism Act, 26 September 2011.

³³ The state of emergency declared in Sri Lanka was allowed to lapse by non extension in August 2011.

³⁴ 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.

³⁵ 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>).

³⁶ 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, (<http://www.sundaytimes.lk/110828/Columns/focus.html>); CPA, Statement on the Termination of the State of Emergency, 27 August 2011.

³⁷ The proposed bill on Victim and Witness Assistance and Protection (which was committed to at the 1st cycle of the Universal Periodic Review) has received constitutional clearance from the Supreme Court and is before Parliament. If enacted it will put in place a legislative framework to provide assistance and protection to not only victims of conventional crimes and witnesses of such incidents, but also to victims of human rights violations and witnesses of such violations. The Bill attempts to also establish a mechanism for compensation to victims of crime and facilitate the providing of treatment, including medical treatment, rehabilitation and counseling (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, para 80)

Apart from some activism on the issue in 2008, there has been no significant progress to enacting any legislation that would provide adequate protection. See Kishali Pinto Jayawardene, “The lies need to stop, at least now”, The Sunday Times, 11 March 2012 (<http://www.sundaytimes.lk/120311/Columns/focus.html>)

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.

⁴³ The Government’s response to the LLRC Report has been to set up military courts of inquiry but no public information is available on the terms of reference and process, raising questions whether such processes meet basic standards of due process.

⁴⁴ In February 2011 the AG withdrew two charges including committing grievous injury and causing murder that had been filed against former Member of Parliament of the government (Chandana Katriarachchi) and three others in the Nampamunuwa murder case after they pleaded guilty for one charge of unlawful assembly; on the 24 March 2011 the AG agreed to withdraw the indictment against a Member of Parliament of the government and the monitoring MP for the Defence Ministry (Duminda Silva) on charges of rape and engaging in sex with an under-age girl. According to the AG's Department the indictment was withdrawn as the girl who was reportedly raped was reluctant to give evidence during cross-examination; The then Chief Justice of Sri Lanka Asoka De Silva stated that it was wrong of the AG to withdraw charges in these two instances and further stated that it was up to the AG to explain his actions. See Saroj Pathirana, "Attorney General wrong to withdraw charges – CJ", BBCSinhala.com, 17 April 2011, (http://www.bbc.co.uk/sinhala/news/story/2011/04/110417_asoka_duminda.shtml), Last accessed on 20 April 2012.

⁴⁵ This is applicable to several Members of Parliament from the Government who have been either been directly involved in violence or threatened individuals with no action being taken. See Fredrica Jansz, "Shame on the President and his brother the Defence Secretary who both are a national disgrace", 15 October 2011, <http://transcurrents.com/news-views/archives/5122>), last accessed on 21 April 2012.

⁴⁶ 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.

⁴⁷ Pethuru 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'

⁴⁸ In 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.

⁴⁹ As 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

⁵⁰ The Presidential Directives on Protecting Fundamental Rights of Persons Arrested and / or Detained issued in July 2006.

⁵¹ See SC FR 51/2012

⁵² Section 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>

⁵³ Section 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.

⁵⁴ 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]

⁵⁵Sections 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

⁵⁶ National Action Plan for the Protection and Promotion of Human Rights: Sri Lanka 2011-2016, p 22.

⁵⁷ “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).

⁵⁸Poonthottam 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

⁵⁹These persons have to be distinguished from detainees held at prisons and other detention centres such as Boosa. According to the State the surrendeers are persons said to have surrendered to the armed forces or separated from the general IDP population.

⁶⁰In August 2011, there were reportedly 12,000 Surrendeers. (Ministry of Rehabilitation and Prison Reforms, <http://www.bcgr.gov.lk/news.php?id=108>, last accessed on 20th April, 2012.)

⁶¹They were initially held under Emergency Regulations (ER) (Regulation 22 of Emergency (Miscellaneous Provisions and Powers) Regulation No. 01 of 2005 as amended on 12 September 2006) and following the lapse of the state of emergency are presently held under regulations issued under the Prevention of Terrorism Act (Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 - The Prevention of Terrorism (Surrendeers Care and Rehabilitation) Regulations No. 5 of 2011. The maximum period an individual can be held at a rehabilitation centre is 24 months).

⁶²As stipulated in ER 22 [PTA regulation 5 of 2011 (Surrendeers Care and Rehabilitation) section 6 (1) read with 8(2)(b)]

⁶³There have also been instances of persons being held at rehabilitation centres for a few months and thereafter transferred to either a detention centre such as Boosa, or remanded in judicial custody (For instance, Rajathurai Jegan B/6148/11: He surrendered himself on 15/05/2009. He was detained at the Poonthottam Madiya Maha Vidyalayam for 11 months and sent to the Welikanda Rehabilitation Centre. In June 2010 he was sent to Boosa detention centre and detained there for 18 months. Later he was produced before the Colombo Magistrate in Case No:B/6148/11, remanded and presently is at New Magazine Prison). Furthermore, persons who were originally held at detention centres have been transferred to rehabilitation centres at the end of the maximum period of detention. The maximum period of detention under the PTA is 18 months- section 9 (1).

⁶⁴ Maximum period of detention under PTA (18 months) plus the maximum period of rehabilitation (24 months) would amount to 42 months in detention.

⁶⁵ ICRC was denied access in July 2009. Since then while some agencies, such as the International Organization for Migration (IOM) has had access, no agency with a mandate to undertake protection monitoring has had access to the rehabilitation centers.

⁶⁶ According to the website of the Ministry of Rehabilitation And Prison Reforms the total numbers of PARCs are 07. Ministry of Rehabilitation and Prison Reforms, <http://bcgr.gov.lk/establishment.php> , last accessed on 20th April, 2012.

⁶⁷ “More ex-cadres reintegrated” : www.defence.lk on 19 February, 2012

⁶⁸ In February 2012, the Government claimed 10,490 individuals had been 'rehabilitated' (“More ex-cadres reintegrated” : www.defence.lk on 19 February, 2012)

⁶⁹The military, the Criminal Investigation Department (CID) , the Terrorism Investigation Department (TID) and the police.

⁷⁰ 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.

⁷¹ 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)

⁷² HC Colombo Case No. 1244/2009 – where the A G's Department took steps to revise findings of a court that confessions were in fact obtained under torture. See also 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 (Denmark, France)”. Two of the recommendations of the Special Rapporteur on Torture on the 26 February 2008 are to “Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession; and that The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress” [A/HRC/7/3/Add.6]

⁷³ For example JMOs frequently conduct such examinations in the presence of the police (See for instance HRC 6732 on 29 June 2010 and SC FR 56/2012.) and several individuals have also been denied a copy of their medical report by the Judicial Medical Officers.

⁷⁴ See for instance SC FR 936/2009. The State has failed to implement even basic recommendations of the Special Rapporteur requiring Magistrates to ask every suspect produced by the police as to whether they have been tortured. 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 (Denmark, France)”. One of the recommendations of the Special Rapporteur on Torture on the 26 February 2008 is to(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

⁷⁵The Attorney General’s Department has failed to prosecute any cases in terms of the CAT Act No. No. 22 of 1994 even though the State admitted to the CAT Committee that over 300 cases complaining of torture or ill treatment by public officers were lodged in the period 2008 to 2011. Also the AG’s Department has failed to appeal the order of the High Court which dismissed the case against police officers alleged of torturing Gerard Perera of Wattala for insufficient evidence to identify the perpetrators as the chief witness was dead. Mr. Gerard Perera was killed just prior to giving evidence and the family believes that the killing was instigated by the police. The failure to appeal is stark lapse as the Supreme Court has pronounced a finding that the accused police officers have violated the fundamental rights of Gerard Perera. There is also no means of ascertaining how many cases are pending investigation.

⁷⁶ For example while there exists a Human Rights Commission hotline, there is no means of obtaining a copy of the follow-up action taken in response to a complaint made over the hotline.

⁷⁷ There have been instances where persons pursuing fundamental rights applications or prosecution of perpetrators of torture being killed, as in the case of Gerard Perera who was gunned down before testifying against his alleged torturers and Ramasamy Prabakaran was abducted in February 2012, two days before a fundamental rights case on his arbitrary detention and torture was to be heard by the Supreme Court. A number of cases in which torture has been alleged have been either ‘settled’ by proceedings being terminated or the case being withdrawn. This practice of settling cases results from a number of reasons including pressure on the Petitioner to withdraw or the Petitioner is either released or indicted after a long period in detention, on the basis that he or she agrees not to pursue their legal rights. This practice leads to non recognition of fundamental rights violations by public officers, removes irregular and illegal acts from the scope of judicial scrutiny and allows perpetrators to be protected from any sanctions. See for instances supreme court cases of Sri Selvam Anton Judes and VettivelJasikaran. 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 ”. Two of the recommendations of the Special Rapporteur on Torture on the 26 February 2008 are to (1) : “Develop proper mechanisms for the protection of torture victims and witnesses” [A/HRC/7/3/Add.6] Recommendation 8 of the UPR report accepted by the State: “Ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT, unless already done (Czech Republic)” . One of the recommendation of the CAT on the 15 December 2005 is para 15. “ In accordance with article 13, the State party should take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals for making such reports. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection.” [CAT/C/LKA/CO/2]

⁷⁸ Human rights lawyer, Amitha Ariyaratne filed a fundamental Rights case regarding the threat and intimidation faced by him in January 2009 as a result of the human rights cases he had undertaken. His office was set on fire and a Magistrates Court case is pending on the matter. A forensic report on the arson attack was called for in 2009 is still pending.

Chamari Mahanama an attorney at law who represented the family of a torture victim, Sugath Nishantha, at the post mortem, was threatened by a telephone call on 21 September 2008. The threat included the words “We will see if you come to the courts tomorrow” and a complaint was lodged directly to the IGP by the President of Right to Life, Brito Fernando. Two official letters were received by Right to Life from the DIG of the Western Province - North Division bearing reference number WPN 5/466/ 2008 stating that the complaint had been referred to the Superintendent of Police, Criminal Division of Western Province North. The OIC, Criminal Division of the Western Province North by letter bearing reference number CD/OIC/1060/2008 informed Right to Life that an inquiry had commenced into the complaint. Inquiries appear to be ongoing with no progress towards identifying the perpetrators to date.

⁷⁹ See 6.1.a of the National Action Plan. See Recommendation 8 of the UPR report accepted by the State: “Ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT, unless already done (Czech Republic)” . One of the recommendation of the CAT on the 15 December 2005 is para 12 b (b) Try the perpetrators and impose appropriate sentences on those convicted, thus eliminating any idea that might be entertained by perpetrators of torture that there is impunity for this crime. [CAT/C/LKA/CO/2]

⁸⁰ Practice shows awards of payments of approximately 50 USD to 600 USD. See for examples cases HRC/827/2011 and SCFR Application 252/2006.

⁸¹ Dr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives, received death threats over the failure by Sri Lanka to receive the European Union GSP+ benefits (http://transcurrents.com/tc/2009/08/dr_paikiasothy_saravanamuttu.html and <http://www.omct.org/human-rights-defenders/urgent-interventions/sri-lanka/2009/08/d20203/>).

Since 2007 Devarathnam Yogendra, the anti-corruption campaigner, received death threats and has lived in hiding after filing a bribery complaint against a police officer (Asian Human Rights Commission appeal at <http://www.humanrights.asia/news/press-releases/AHRC-PRL-012-2011>).

On 2 March 2010, a Sri Lankan news website, Lankanewsweb, published the names of 35 human rights defenders and journalists featured on a list it alleged was compiled by a Sri Lankan intelligence unit. At the top of the list were Dr. Paikiasothy Saravanamuttu, Executive Director of CPA and J.C. Weliamuna, Sri Lanka Director of Transparency International. It is alleged that the list was leaked by the intelligence as part of a government campaign to intimidate those named and others working on human rights issues. (http://transcurrents.com/tc/2010/03/secret_list_reveals_sri_lanka.html).

⁸²On 27 September 2008 two grenades were thrown at Mr. J. C. Weliamuna's residence. Mr. Weliamuna is a prominent Attorney at Law dealing with large number of human rights cases and was the Executive Director of Transparency International Sri Lanka at the time. (<http://freemediasrilanka.wordpress.com/2008/09/28/on-the-grenade-attack-on-jc-weliamuna%E2%80%99s-residence/>)

In December 2011 D.M. Thushara Jayaratne, the whistleblower of alleged exam malpractices by Member of Parliament and son of the President, Namal Rajapaksa, says he was assaulted by a group of assailants on Thursday at a safe house. (http://www.bbc.co.uk/sinhala/news/story/2011/12/111202_thushara_assault.shtml)

⁸³In 2009 Pethuru Jesuthasan, a HRD and former officer of Jaffna Human Rights Commission was arrested and detained for two months, as was an intern at the Law & Society Trust.

In March 2008 J.S. Tissainayagam, a journalist was arrested and held for five months before he was charged (http://transcurrents.com/tc/2009/09/sentenced_journalist_tissainay.html). Another journalist and human rights defender, Mr. K. Wijesinghe, was detained and released in March 2008, but went into exile as he continued to be subjected to surveillance, questioning and intimidation and could not continue his human rights work.

In March 2009 Shantha Fernando, a church worker and human rights defender, was arrested over his possession of documents relating to the conflict in Sri Lanka (<http://sunandadeshapriya.wordpress.com/tag/santha-fernando/> and http://transcurrents.com/tc/2009/03/christian_human_rights_activis.html).

In May 2009 five doctors who reported on civilian deaths during the end of the civil war were detained by the army and were charged with aiding the LTTE. They subsequently denounced their accounts as 'terrorist propaganda'. (<http://www.guardian.co.uk/world/2009/jul/08/sri-lanka-doctors-casualty-figures>).

In September 2010 Jayampathy Bulathsinhala, the owner of a printing house that printed posters opposing the 18th Amendment, was arrested and charged under the Prevention of Terrorism Act. His wife, Kumudu Wijeyawardena, and her two younger brothers were also arrested, but were later released. (<http://www.thesundayleader.lk/2010/09/12/printer-detained-under-prevention-of-terrorism-act-for-anti-mahinda-posters/>).

On 28 November 2010 Aruna Roshantha and Marcus Fernando, two activists protesting against a sea plane project in Negombo, were arrested and charged with 'anti-government behaviour'. They were told by the police that they had committed an offence under Section 150 of the Penal Code, namely conspiring against the government of Sri Lanka and attempting to incite people to overthrow the government. (<http://www.thesundayleader.lk/2010/11/28/negombo-lagoon-activists-arrested-released/>).

⁸⁴On 7 May 2009 Stephen Suntharaj, a member of staff at the Centre for Human Rights and Development (CHRD), was abducted and is missing since. (<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-256-2009>).

On 9 December 2011 Lalith Kumar Weeraj and Kugan Muruganandan, who were working mainly on the issue of enforced disappearances, political prisoners in the North of Sri Lanka, disappeared and have been missing since. (<http://groundviews.org/2011/12/19/disappearance-of-human-rights-defenders-political-activists-lalith-kumar-weeraj-and-kugan-murugan-on-9th-december-2011/>).

⁸⁵In February 2010 Patani Razeek, founder and Managing Trustee of the Community Trust Fund and Executive Committee member of the Asian Forum for Human Rights and Development, disappeared and his body was found on 28 July 2011. (On the abduction see <http://www.thesundayleader.lk/2011/07/03/500-days-since-the-disappearance-of-pattani-razeek/> and the discovery of his body see <http://groundviews.org/2012/02/11/who-killed-razeek-and-why-unanswered-questions-two-years-after-his-abduction/>).

On 31 December 2010 an activist who had campaigned against environmental damage due to sand excavation in Jaffna was shot dead. (http://transcurrents.com/tc/2011/03/briefing_note_on_the_human_rig.html)

On 22 August 2011 Perumal Sivakumara from the Puttalam District died after being tortured by officers attached to the Special Task Force of the Sri Lanka Police. (<http://www.srilankamirror.com/old/english/the-news/7530-ahr-seeks-justice-over-hr-defenders-killing>).

On 20 September 2008 Sugath Nishantha Fernando was shot dead in front of his 12 year old son whilst pursuing a torture case before the Supreme Court (Case No. SCFR. 446/07) and a bribery case before the High Court (Case No. Bribery /1658/ 2006) against several police officers attached to the Negombo Police Station. His family is forced to live in hiding following continual threats to their lives. (<http://www.right2lifelanka.org/new/newsview.php?id=138>).

⁸⁶ On 11 December 2010, Deputy Minister Sarath Kumara Gunaratna was quoted in Lakkima News: “I am happy that even ordinary people of this country are taking their patriotic duty seriously and acting against traitors. I can tell you that in the future, it does not matter whether they are politicians or journalists. People will beat up anyone who betrays this country. That is what I call people’s power. People will take to task anyone who betrays this country and its leader.”

On 15 July 2010, the President was reported as saying “some of these NGO representatives go to foreign countries and carry out publicity campaigns against the country”. (<http://www.lankaenews.com/English/news.php?id=9774>)

On 20 June 2010, the state controlled Sinhalese newspaper Silumina, accused a group of exiled journalists of collaborating with international NGOs to encourage the UN to play a more active role on allegations of war crimes in Sri Lanka. (The full text in Sinhalese is available at <http://www.silumina.lk/2010/06/20/art.asp?fn=aa1006204>)

On 30 May 2010, Media Minister Keheliya Rambukwells speaking to Sinhala language weekly Irida Lankadeepa said that he does not want exiled journalists coming back to Sri Lanka as most of them are anti- country persons.

On 31 January 2012, Lankasrinews website reported that the National Patriotic Movement, a group aligned with the government, made a statement imposing a ‘death sentence’ on representatives of the TNA (a Tamil political party) if they present evidence against Sri Lanka at the UNHRC.

(<http://www.lankasrinews.com/view.php?22YAM6202vIOA4e3PBmcca3L5Yedd2yY53ac0Smb4e4eAOlc02aWM>
A)

Lawyers undertaking cases defending human rights violations and arbitrary attacks of the State have been facing harassment and threats to their lives including when the Ministry of Defence website posted a piece calling lawyers traitors(<http://www.thesundayleader.lk/20090719/spotlight.htm>.)

On 23 March 2012, Sri Lanka’s Minister for Public Relations, Mervyn Silva addressed a public demonstration against the UNHRC resolution, threatening to “break the limbs” of any of the exiled journalists if they dared set foot in the country again. Among the journalists mentioned was Poddala Jayantha, who suffered a brutal assault in Colombo in June 2009 that left him with permanent disabilities, and has lived in exile since January 2010.

(<http://www.bbc.co.uk/news/world-asia-17491832>)

⁸⁷On 15 January 2011, the government controlled Dinamina newspaper accused the Non Violent Peace Force Sri Lanka (NPSL) of secretly acting against the Government and disclosed details about the relocation of NPSL offices.

⁸⁸Such allegations are serious as it feeds into the perception of ‘traitors and trouble makers’ and could lead to the use of anti terror legislation to be deployed to arrest, investigate and prosecute HRDs without the generally available due process rights.

⁸⁹On 26 January 2012, the Dinamina quotes government Minister, Keheliya Rambukwella, who states that exiled media personnel who lobby in Geneva are traitors to the country and are bringing the country to disrepute. (See <http://www.dinamina.lk/2012/01/26/art.asp?fn=p1201261>)

On 14 March 2012, the Daily News, a English daily newspaper, reported in an article titled ‘Pakiasothy, Sunila and Nimalka working with LTTE rump’ and alleged that the HRDs ‘continue to work with the LTTE terrorist rump and betray Sri Lanka in Geneva’. (<http://www.dailynews.lk/2012/03/14/news11.asp>)

On 14 and 16 March 2012, ITN, a local television station alleged that named HRDs are aligned with the LTTE and that they are traitors and degenerates. A number of visuals identifying the HRDs were also presented.

(<http://cdn.itn.lk/news/20120315/newsfull0930.wmv> and <http://col3negshiran.com/watch.php?id=40775>)

16 March 2012, Dinamina (in Sinhala)editorial characterizes human rights defenders Sunila Abeysekera and Nimalka Fernando as liars and women ‘who have gone astray’.

On 17 March 2012, an article in Lanka C News (in Sinhala) alleges that the four named HRDs were in Geneva aiding the LTTE.(<http://www.lankacnews.com/sinhala/news/52220/>)

Since 2007, Dharmasiri Lankapeli, a press freedom- and minority rights-activist, has been the target of threats and smear campaigns, having been accused by state-controlled media of supporting the LTTE and participating in anti-government activities. (http://www.lankanewspapers.com/news/2012/3/75391_space.html)

⁹⁰On 13 July 2008, a staff of the Law & Society Trust & Right to Life Human Rights Centre was interrogated for eight-hours by the Colombo Crime Division regarding the contents of a joint leaflet marking the International Day against Enforced Disappearances.

On 26 August 2008, Mano Ganesan, prominent human rights defender, opposition parliamentarian and convenor of the multi-party Civil Monitoring Commission was interrogated for seven-hours by the Criminal Investigation Department interrogation.

In March 2012 at least three activists working on land issues were subjected to interrogation by Criminal Investigation Department in Colombo.

In November 2011, the office premises of Companions on a Journey, a NGO working on HIV/AIDS prevention was searched by police and those present were questioned for several hours and intimidated. Prior to this incident, the same NGO was attacked in a Sinhala newspaper, *Rivira* and accused of promoting homosexuality under the guise of HIV/AIDS prevention. The NGO has suspended their activities as a result of the threats and harassment.

In September 2009 activists were questioned by Criminal Investigation Department (CID) regarding a statement they signed condemning death threats sent to the Executive Director of CPA, Dr. Paikiasothy Saravanamuttu ([http://www.humanrights.asia/news/ahrc-news/AHRC-STM-196-2009/?searchterm=Dr. PaikiasothySaravanamuttu](http://www.humanrights.asia/news/ahrc-news/AHRC-STM-196-2009/?searchterm=Dr.PaikiasothySaravanamuttu)).

In June 2009 Chandana Sirimalwatte, editor of the 'Lanka' newspaper was interrogated by officers from the Colombo Crimes Division (CCD), in an attempt to force him to reveal his sources for articles on 'sensitive subjects'. (http://www.ifex.org/sri_lanka/2009/06/25/editors_questioned/)

⁹¹In 2010, following their attempts to organise activities to commemorate Human Rights Day, two community based activists who have previously been critical of the government on several matters, were placed under surveillance and their friends and neighbours have been repeatedly questioned and harassed.

Since February 2012, Mr Herman Kumara, a well known human rights defenders and convener of the National Fisheries Solidarity (NAFSO) and leader of several other civil society coalitions has been subjected to a media smear campaign, repeated threats, surveillance and intimidation following rounds of protests by fisher people in the Chilaw and Negombo areas.

For example on 17 January 2012, a group of HRDs and activists from the South, who were travelling to Jaffna to attend a protest organized by platform of civil society groups against disappearances and abductions, were harassed, checked and finally stopped by police at Puliyankulam on the A9 road (Kandy-Jaffna road) and prevented from reaching Jaffna.

In February 2012, **Asela Ihagama** a human rights defender in Kandy, was subjected to harassment and intimidation by police, including being accused of promoting support for the LTTE among the estate populations and sending information to the international community in order to discredit the government.

- the most recent example of such intimidation is when state officials visited several NGO offices in the North, following the 19th Session of UNHRC

⁹² Participating HRDs were named and at least one was questioned by intelligence officers afterwards, resulting in some of them curtailing their involvement in engaging with UN human rights system. On October 3, 2010 and January 15, 2011, the Divaina newspaper identified the Law and Society Trust (LST) as having collaborated in the training. The article tacitly accused LST and Nonviolent Peaceforce Sri Lanka (who organised the training program) of engaging in anti-government activities.

⁹³ For example, there has been no progress in the investigation of complaints of the disappearance of Stephen Sunthararaj, the killing of Pattani Razeek or the death threats against Dr. Paikiasothy Saravanamuttu.

⁹⁴ Black January protest march, to mark killings of journalists and threats and intimidation against media personnel, organised for the 25 of January 2012 was forced to shift to another venue due to several attempts disrupt and prevent it. Initially the police had attempted to obtain a court order to prevent the protest, which was denied by the local magistrate. Later a government-organised counter protest was conducted at the intended location.

On 10 December 2011, a group of HRDs and political activists from the South of Sri Lanka who were travelling to Jaffna [North of Sri Lanka] to attend a protest march against human rights violations to mark human rights day in

Jaffna town were detained by the police in Jaffna and prevented from attending the protest. The group was accused of attempting to provoke ethnic tensions and undoing what the military had achieved after years of struggle against terrorism.

In November 2011, Lalith Kumar Weeraraj and several others were severely beaten by an armed group following a protest against disappearances in Jaffna town.

In February 2012 a fisherman was shot and killed by security forces at a protest over petrol price hikes.

⁹⁵ On 16 June 2011, a meeting of the Tamil National Alliance (TNA) in Jaffna was attacked by the Army. (http://www.island.lk/index.php?page_cat=article-details&page=articledetails&code_title=28134 and <http://groundviews.org/2011/07/05/the-attack-on-tna-parliamentariansin-jaffna-a-timeline-of-outrageous-denials/>).

On 17 February 2012, in Colombo, an opposition parliamentarian, several protesters and others were injured and subjected to a tear gas attack by police during a protest organized by the main opposition party, the United National Party. (<http://www.ft.lk/2012/02/18/unp-fumes-over-tear-gas-attack-on-protest/>).

On 16 February 2012, in Maligawatte, a protest organized by opposition party, the Janatha Vimukthi Peramuna (JVP), was also subjected to tear gas attack by police, and several people including a parliamentarian were injured. (<http://www.ft.lk/2012/02/16/jvps-fuel-hike-protest-thwarted-with-tear-gas/>).

In January 2012, the military prevented a meeting of the Socialist Equity Party (SEP) in Jaffna after previously having detained two SEP members who were pasting posters at Gurunagar and demanded details of party members. The same soldiers had followed the party members after their release and organised a physical attack on them. The military has visited the homes of party members to further intimidate them (<http://www.socialequality.lk/content/sri-lanka-sep-open-letter-defence-minister>).

⁹⁶ On 24 January 2012, the Fort Magistrate on an application made by the Officer in Charge of the Fort police station issued an order directing that the protest organised by an organization called “Platform for Freedom” be limited to the Fort Railway station premises and preventing the crowd from walking to Temple Trees, the residence of the President.

On 8 February 2012, police obtained a court order preventing a protest to be held at Hultsdorf outside the court complex, in support of Sarath Fonseka, an former opposition member of parliament and common opposition candidate at the 2010 presidential elections who is currently incarcerated.

⁹⁷ Security forces have used various methods from use of force to threats and intimidations. In May 2010, displaced persons who were protesting during a visit by two Government Ministers about the takeover of their land by the Navy were detained and threatened in Mannar. Later in 2010, a religious leader who supported efforts by a community organization to organize a peaceful protest regarding water facilities was threatened by the military. In May 2011, the police attacked Free Trade Zone (FTZ) workers protesting against the Government’s proposed pension bill, including inside the factories where they worked. Several workers were injured in the attack and one person, Roshen Chanaka was killed. In July 2011, intelligence officers entered the office of the FTZ and General Services Employees Union (FTZGSEU), questioned and intimidated those present and searched through files and documents.

⁹⁸ On 10 February 2010, a protest organised by opposition parties, including the United National Party (UNP), Janatha Vimukthi Peramuna (JVP) and Sri Lanka Muslim Congress (SLMC) at Hultsdorf, near the Colombo judicial complex was attacked by about 150 persons armed with iron bars, empty bottles and clubs.

On 4 February 2011, a peaceful protest by the main opposition party in Sri Lanka was attacked by thugs armed with iron rods, Molotov cocktails, poles and rocks. Several protesters were brutally beaten and vehicles damaged in the attack during which Police took no steps to stop or prevent the attack.

On 2 June 2011, the Colombo District parliamentarian Duminda Silva’s of the United People’s Front Alliance (UPFA), the government party, together with supporters carrying poles attempted to disrupt the JVP, an opposition party, protest at Lipton Circus in Colombo.

In November 2011, Lalith Kumar Weeraraj and several others were severely beaten by an armed group following a protest against enforced disappearances in Jaffna town.

⁹⁹On several occasions, in Colombo and in the North, owners of halls that are available for rent have refused to rent out or cancelled bookings for spaces for meetings and events organized by human rights NGOs as such events are perceived as “anti government”.

¹⁰⁰Examples of demonstrations and protests organized by the government or with the support of the government which had no disruptions are the protest in February 2012 supported by several government members of Parliament under the broad themes of unity and integrity of the country, denying human rights violations and war crimes, denouncing the US for supporting the LTTE, blaming the opposition UNP and NGOs for supporting international intervention in Sri Lanka and on 14 March 2012 hundreds of Buddhist monks marched in Colombo to urge the United States to withdraw its support for a proposed U.N. Human Rights Council resolution on alleged abuses during the country’s civil war.

¹⁰¹On the night of 6-7 April, two leaders of a new left party, Dimuthu Attygalle and Kumar Gunarathnam, were forcibly abducted, just two days before the launching of their party – the Frontline Socialist Party (FSP) which was previously called the People’s Struggle Movement (PSM). PSM activists Lalith Weeraraj and Kugan Muruganandan were abducted on 9th December 2011 in Jaffna and have not been seen or heard from since. Lalith Weeraraj was repeatedly threatened by police and military prior to his abduction and ordered to stop his work in the North.

¹⁰² A key member of the Jaffna University Students’ Union, Subramaniam Thavapalasingham was assaulted with iron rods by an ‘unknown gang’ on the 16 of October 2011. Other incidents related to universities include the following- There were a number of crackdowns on student led protests during the period, including the arrest of student activists (These included a number of arrests of student activists and students in the universities for issues ranging from involvement in protests to the pasting of posters- <http://www.adaderana.lk/news.php?nid=10443>) and suspending a student union (A student union tried to organize a protest march against the suppression of student rights and establishment of private universities. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=41663). The space for dissent within universities has been increasingly restricted with efforts to control academics (Most recently there has also been serious concern expressed about a circular from the Ministry of Higher Education that prohibits all academics from participating in workshops, seminars or lectures without prior approval from the relevant ministry. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=49128) and subjected to militarization (Most notably in the decision by the Government to implement a “leadership training program” for undergraduates in military camps across the country which was to be a pre-requisite for university entrance as well as the decision to hand over the security of universities to a private security firm headed by the Secretary to the Ministry of Defense. (See statement by Friday Forum - http://futa-sl.blogspot.com/2011_06_10_archive.html; <http://www.thesundayleader.lk/2011/09/11/university-security-under-gotas-firm/> and statement by University academics - <http://www.scribd.com/doc/70063252/FUTA-Statement-on-Militarization-of-University-System>)

¹⁰³ On the 17 2010 May, in the Nallur Temple area in Jaffna, where an inter-religious event was being held to remember those killed in the war was held, was surrounded by the police and the army. The people who came to participate were threatened and told to go away. Those who insisted on going in they were asked to register their names and other details with the police. In the Vanni, an army officer had told a villager that he will shoot a parish priest and drag him behind his jeep, because he (the priest) was organizing prayer services for those killed in the war. Another priest was prevented from celebrating a holy mass in May 2010 to pray for those killed in the war on 19th May in the Vanni. (<http://groundviews.org/2010/06/18/celebrating-war-victory-and-banning-commemoration-of-dead-civilians-this-is-%E2%80%9CChome-grown-indigenous%E2%80%9D-reconciliation-and-freedom-in-sri-lanka/>)

¹⁰⁴The PSC was initially appointed in November 2005 to investigate NGOs in the aftermath of the 2004 Tsunami, but its mandate was extended to investigate activities ‘that adversely affect national security’ and that ‘are inimical to the sovereignty and territorial integrity of Sri Lanka’ (Letter from the International Commission of Jurists highlighting issues with the Commission see http://www.icj.org/IMG/Open_letter.pdf.) There have also been several questions raised regarding some NGOs in Parliament including questions of finances and transparency.

¹⁰⁵ Regulations No. 1 and No. 2 of 2011, which deal with the proscription of the LTTE and the TRO establish extremely overbroad offences. The regulations make transacting with any organization that is ‘reasonably suspected of being connected with or concerned in’ unlawful activities, an offence. Hence even the provision of legal services to an organization that is reasonably suspected of unlawful activities would be considered an offence. These regulations also permit the President to arbitrarily seize properties in the possession of persons. An inquiry may be held only if the President himself thinks it fit. There is a fear amongst civil society actors that these provisions could be used against NGOs.

¹⁰⁶ Prime Minister Ratnasiri Wickramanayaka told Daily Mirror online in March 2010 that the government has decided to amend the existing Act which deals with both local and foreign Non Governmental Organizations (NGOs) in order to probe their activities and take appropriate action against them.

¹⁰⁷ Voluntary social service organizations (registration and supervision) Act No. 31 of 1980.

¹⁰⁸ “NGOs again in focus amidst new proposals to control them” Sunday Times, 14 March 2010. (<http://www.sundaytimes.lk/100314/BusinessTimes/bt15.html>)

¹⁰⁹ In June 2011 the NGO Secretariat took over the control of the Puttalam based non-governmental organization, the Community Trust Fund (CTF), citing alleged mismanagement and corruption. (<http://www.srilankabrief.org/2011/06/local-ngo-ctf-puttaalam-taken-over-by.html>); “Sri Lanka: NGO Secretariat under Defence Ministry now” reported by Dianne Silva, JDSLanka website, 15 June 2010. (<http://www.jdslanka.org/2010/06/ngo-secretariat-under-defence-ministry.html>).

¹¹⁰ Andrew Buncombe, “British envoy banned in war without witnesses”, The Independent, February 14, 2009, (<http://www.independent.co.uk/news/world/asia/british-envoy-banned-in-war-without-witnesses-1609188.html>)

On May 8, 2010, Ms. Fiona Partol, Resident Advisor of “Internews”, an international NGO that fosters independent media and access to information worldwide, was blocked by Sri Lanka Defence Ministry from entering Jaffna to participate in a five day training course for local media persons.

¹¹¹ In July 2008 Namal Perera, the project coordinator for Sri Lanka Press Institute and freelance defence writer was assaulted by a gang who attempted to abduct him.

On 4 August 2008 Labour Minister Mervyn Silva and two accomplices assaulted Sirasa TV journalist Saliya Ranawaka and cameraman Waruna Sampath and seized their equipment at the opening of a flyover at Thorana Junction in Kelaniya two television journalists. (Freedom House Press Freedom Report Sri Lanka 2009 at <http://www.freedomhouse.org/report/freedom-press/2009/sri-lanka>).

On 28 May 2011 an Uthayan reporter was attacked by armed thugs while travelling to work. Journalists at the Uthayan newspaper in Jaffna have been repeatedly attacked. (<http://www.thesundayleader.lk/2011/06/12/uthayan-under-fresh-attack/>).

On 29 July 2011, Uthayan news editor G. Kuganathan was assaulted with iron rods in Jaffna. He was in critical medical condition (<http://www.jdslanka.org/2011/07/sri-lanka-senior-tamil-journalist.html>). He is now living overseas.

On 5 January 2011, a journalist, Mr. P.M.M.A Cader, was attacked by a Mr. A.R.M. Ameer, a member of the Kalmunai Municipal Council, after he refused to write a report based solely on the information provided by Mr Ameer.

On 15 February 2012, **Prasad Purnimal Jayamanne**, a freelance journalist working for the BBC’s Sinhalese service and a member of the South Asian Free Media Association (SAFMA), was attacked and badly beaten while filming a demonstration by fishermen in Chilaw, 100 km north of Colombo, in protest against the death of a fisherman at the hands of the police and the injuries sustained by others. Jayamanne had to be hospitalized.

Mohammed Ibrahim Rahmathulla, an independent journalist with ‘Vaara Uraikal’, has suffered numerous attacks over the years as a result of his reporting on local government corruption, malpractice and the misuse of state resources in the Kattankudy and Batticaloa areas. On 30 April 2008 an unidentified group of persons attacked and robbed Mr. Rahmathulla and his daughter. No action has been taken by police on this matter. On 9 May 2008 Mr. Rahmathulla was attacked and robbed by a group of three people. Mr. Rahmathulla believes that the attack was provoked by his refusing to support the campaign of a powerful ruling party politician. On 31 October 2008 Mr

Rahmathulla received death threats on his phone. No steps have been taken by the police in this matter. On 27 January 2010 soon after the Presidential election Mr. Rahmathulla received a phone call from Mr. S.H.M. Ashfar, former Chairman of the Kattankudy Urban Council, who threatened to kill him. On 7 February 2011 Mr. Rahmathulla was attacked outside a mosque. (<http://www.thesundayleader.lk/2011/02/13/journalists-attacked/>).

¹¹² “Sunday Leader Editor Threatened Again”, Sunday Leader, 11 December 2011, (<http://www.thesundayleader.lk/2011/12/11/sunday-leader-editor-threatened-again/>) “Death threats against newspaper editor”, RSF, 2 November 2011, (http://en.rsf.org/sri-lanka-death-threats-against-newspaper-02-11-2011_41321.html)

¹¹³ In May 2008 the deputy editor of the *Nation* newspaper was beaten and abducted. He was subsequently released by his abductors. He fled the country soon after.

On 1 June 2009, Poddala Jayantha, a journalist and media rights activist, was abducted and assaulted. His injuries included a broken leg. (<http://www.thesundayleader.lk/2012/04/01/defining-a-traitor/>). On 23 March 2012 Government Minister Mervyn Silva claimed he was “the one who chased Poddala Jayantha from Sri Lanka” (<http://lankanstuff.blogspot.com/2012/03/i-chased-poddala-jayantha-from-sri.html>).

¹¹⁴ On 9 January 2009, Lasantha Wickrematunge, Editor-in-Chief of the Sunday Leader, was murdered by unknown assailants.

¹¹⁵ On 5 January 2009, the MTV/MBC studio was attacked by an armed gang. (D.B.S Jeyaraj, “Anniversary of terror attack on MTV-MBC Radio/TV station”, 5 January 2010, <http://dbsjeyaraj.com/dbsj/archives/1283>). In a separate incident, the MTV-MBC office was attacked allegedly by a gang associated with a deputy minister in March 2010. (Gandhya Senanayake and Supun Dias, “MTV/MBC attacked by thugs”, 22 March 2010. (<http://www.dailymirror.lk/news/2552-mtvmbc-attacked-by-thugs.html>)

¹¹⁶ In July 2009, non-cabinet Labour Minister Mervyn Silva stated publicly at a meeting in his electorate that “Lasantha from the Leader paper went overboard. I took care of him. Poddala (Jayantha) agitated and his leg was broken”. (<http://groundviews.org/2009/07/13/mervyn-silva-publicly-admits-to-killing-lasantha-wickrematunge-and-grievously-attacking-another-journalist/>)

In September 2010 Deputy Highways Minister Mervyn Silva (who had been promoted from a non cabinet minister to a deputy cabinet minister) told Parliament that he had evidence to prove that former Army Commander Sarath Fonseka ordered the assassination of the Sunday Leader Editor Lasantha Wickrematunga (http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=7378).

In October 2010, the same deputy minister made a statement to a private TV channel on that he had evidence as to who killed the Sunday Leader Editor Lasantha Wickrematunge.

(<http://www.thesundayleader.lk/2010/10/10/mervyn-refuses-to-give-details-of-lasantha%E2%80%99s-killers/>)

On 23 March 2012 Minister for Public Relations Mervyn Silva claimed he was “the one who chased Poddala Jayantha from Sri Lanka” Charles Haviland, “Sri Lanka minister Mervyn Silva threatens journalists”, BBC, 23 March 2012, (<http://www.bbc.co.uk/news/world-asia-17491832>) Easwaran Ratnam, “I will break your bones says Mervyn”, Sunday Leader, 23 March 2012, <http://www.thesundayleader.lk/2012/03/23/i-will-break-your-bones-says-mervyn/>; “Video: No one can touch me as long as Rajapaksas are in power”, Ada Derana, 27 March 2012, (<http://www.adaderana.lk/news.php?nid=17520>)

¹¹⁷ Recommendations on the freedom of expression accepted by the Government from the UPR 2008 included taking “measures to safeguard freedom of expression and protect human rights defenders, and effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible” and “Take measures to improve safeguards for freedom of the press”.

¹¹⁸ A suspect in the murder of Lasantha Wickrematunge died in hospital after being admitted for chest pains. Another suspect, a former army intelligence officer, Kandegedara Priyawansa claimed in open court that an official of the Terrorist Investigation Division (TID) had promised him protection and a foreign job had he given evidence to the effect that a senior military officer was involved in the killing of the journalist. An application was made on the next date that Kandegedara Piyawansa’s statement be recorded and the Mt. Lavinia Magistrate proceeded to do so in Chambers. This statement was neither made public nor placed on record but sent to the Inspector General of Police

for a report and no progress whatsoever has been seen since. Whilst the TID insists in court that investigations are going on, no evidence has been forthcoming nor reported to Court. It is over three years since the murder and the Police reports to Court say that any further facts to Court would hamper a successful investigation. (<http://www.thesundayleader.lk/2012/04/08/happy-birthday/>)

¹¹⁹In January 2010, Gamini Pushpakumara was dismissed from his position at the state-run Sri Lanka Rupavahini Corporation (SLRC) television station, following his attempts to protest imbalanced coverage of the presidential candidates and elections, and forced into exile. His wife continued to receive threats while Pushpakumarawas in exile. Journalists and press freedom activists Sunanda Deshapriya and Poddala Jayantha were also forced to flee Sri Lanka, after threats and attacks on their lives. The Sunday Leader newspaper reported that a total of 157 journalists went into exile in the past year [2009]. (<http://www.thesundayleader.lk/2010/01/03/journalists-flee-to-stay-alive/>)

¹²⁰ On 1 June 2009, Poddala Jayantha, a senior journalist and former General Secretary of the Sri Lanka Working Journalists Association (SLWJA), was abducted and severely beaten by unknown persons; July 2011, the news editor of Uthayan newspaper, Gnanasundaram Kuganathan, was brutally assaulted in Jaffna: “Uthayan news editor assaulted”, Daily Mirror, 29 July 2011, <http://www.dailymirror.lk/news/12684-udayan-news-editor-assaulted.html>. On 31 March 2009 a group of persons armed with swords and clubs broke into Mr. Mohammed Ibrahim Rahmathulla's office. On 27 January 2010 soon after the Presidential election Mr. Rahmathulla received a phone call from Mr. S.H.M. Ashfar, former Chairman of the Kattankudy Urban Council, who threatened to kill him. On 7 February 2011 Mr. Rahmathulla was attacked outside a mosque (<http://www.thesundayleader.lk/2011/02/13/journalists-attacked/>).

¹²¹ On 24 January 2010, two days prior to the presidential election, Prageeth Ekneligoda, online journalist and cartoonist for lankaenews.com, was abducted and is still missing. Little progress has been made on the case despite widespread international attention and demands for progress in investigations. (“UN heard Ekneligoda’s cry for help; husband still missing”, CPJ, 21 March 2011, <http://cpj.org/blog/2011/03/un-heard-ekneligodas-cry-for-help-her-husband-stil.php>). Government officials have instead accused Prageeth Ekneligoda of seeking asylum and living in hiding in another country (Chris Kamalendran, “Ekneligoda case: Focus on Ex-AG”, Sunday Times, 11 December 2011, http://sundaytimes.lk/111211/News/nws_24.html).

¹²² Dinidu De Alwis, “Media should exercise self-censorship”, Ceylon Today, 23 March 2012, <http://www.ceylontoday.lk/16-3780-news-detail-media-should-exercise-self-censorship-lakshman-yapa.html>

¹²³ “Press Council reactivated”, Sunday Times, 14 June 2009, http://sundaytimes.lk/090614/News/sundaytimesnews_10.html

¹²⁴The Press Council Act of 1973. Media institutions refrained from nominating a media representative as required by the Act. The Press Council is now constituted by only Presidential appointees and a government coalition party member as the media organization nominee. Media organizations opposed the Press Council as it is seen as an arbitrary and repressive control of freedom of expression.

¹²⁵The Prevention of Terrorism Act of 1973.

¹²⁶ In September 2009, J.S. Tissainayagam, a journalist, was convicted under the Prevention of Terrorism Act on three counts: attempting to cause acts of violence or racial or communal disharmony; attempting to cause such acts with the intention of causing disrepute to the GOSL; and collecting and obtaining information for the purpose of terrorism and raising funds for the purpose of terrorism through the collection of funds for the North-Eastern Monthly magazine in 2006. The main charge involved the writing of two articles which were critical of the GOSL’s military campaign. Tissainayagam was detained by the Terrorism Investigation Department (TID) on 7 March 2008 without charge (“Release Tissainayagam NOW”, IFJ, 8 September 2009, <http://asiapacific.ifj.org/en/articles/free-tissainayagam/>); “J.S. Tissainayagam interview”, RSF, 17 November 2010, <http://en.rsf.org/sri-lanka-j-s-tissainayagam-interview-17-11-2010,38836.html>; “J.S. Tissainayagam, Sri Lanka, Sunday Times”, CPJ, 2009, <http://cpj.org/awards/2009/js-tissainayagam-journalist-sunday-times.php>).

¹²⁷ “Government blocks critical news websites, says they have to register”, RSF, 8 November 2011, <http://en.rsf.org/sri-lanka-government-blocks-critical-news-08-11-2011.41367.html>

¹²⁸ A civil society statement condemning the request for registration and the blocking of sites noted the following: “We note that the Information Department press release does not state what the process of ‘registration’ will entail and whether any sort of liability or conditions will be imposed. We further note that this move by the government is the first step in the realisation of plans mooted by the TRC in 2010 to draft legislation that would make it compulsory for news websites to register with the authority. We also have additional concerns about the press release. Firstly, the press release does not establish with sufficient clarity the categories of either websites or persons who are required to register with the Ministry. Secondly, it is not clear whether and how the requirement for registration will apply to international news websites and websites operated by international organisations that publish news on and in Sri Lanka. Finally, in the interests of transparency, consistency and equal treatment, the Information Department and TRC must explain the legal framework and process under which registration of this nature can be enforced.” (“Arbitrary Blocking and Registration of Websites: The Continuing Violation of Freedom of Expression on the Internet”, Civil Society Statement, 9 November 2011, <http://www.scribd.com/doc/88102850/Arbitrary-Blocking-and-Registration-of-Websites-The-Continuing-Violation-of-Freedom-of-Expression-on-the-Internet>)

¹²⁹ “United Nations must intervene to protect Sri Lanka’s media,” CPJ, 31 January 2011, <http://cpj.org/2011/01/united-nations-must-intervene-to-protect-sri-lanka.php>

¹³⁰ “Sri Lankan authorities ban Lanka eNews”, CPJ, 28 April 2011, <http://cpj.org/2011/04/sri-lankan-authorities-ban-lanka-e-news.php>; “Another Lanka eNews journalist arrested”, CPJ, 25 April 2011, <http://cpj.org/2011/04/another-lanka-e-news-journalist-arrested.php>

¹³¹ It is not clear what the legal basis is for the directive issued by the Media Centre for National Security (MCNS) and whether there are possible punitive measures that could be enforced if media institutions, which disseminate news through SMS alerts, fail to comply. (“New censorship of SMS news in Sri Lanka”, Groundviews, 12 March 2012, <http://groundviews.org/2012/03/12/new-censorship-of-sms-news-in-sri-lanka/>.) A similar directive was issued in 2006 by the Secretary of Defence, Gotabhaya Rajapaksa, and the MCNS. (“Sri Lankan defence authorities impose unofficial censorship”, WSWS, 11 October 2006, <http://www.wsws.org/articles/2006/oct2006/sri-o11.shtml>)

¹³² between 2008 and May 2009

¹³³ B. Fonseka, *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, Centre for Policy Alternatives (CPA), September 2010.

¹³⁴ This includes the mass detention of the majority of IDPs who came out of the Vanni by the Government in Menik Farm and other closed IDPs camps from 2008 onwards (*A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya*, Centre for Policy Alternatives (CPA), March 2009). There were other instances on restrictions on movement including the LTTE’s pass system that imposed severe restrictions on the movement of persons from areas they controlled which resulted in civilians being trapped. (*Field Mission to Vavuniya*, CPA, WMC, September 2008, pg 14)

¹³⁵ This is an accusation made against both the Government and the LTTE (*A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya*, Centre for Policy Alternatives (CPA), March 2009; *A Marred Victory and a Defeat Pregnant with Foreboding*, UTHR(J), Special Report No.32, 10 June 2009).

¹³⁶ The LTTE was accused of carrying out a forcible recruitment of civilians including IDPs (*LTTE Is No Excuse For Killing Vanni Civilians*, UTHR(J), Information Bulletin no.47, 17 April 2009; *A Marred Victory and a Defeat Pregnant with Foreboding*, UTHR(J), Special Report No.32, 10 June 2009).

¹³⁷ Allegation against both the Government and the LTTE (*Let Them Speak: Truth about Sri Lanka's Victims of War*, UTHR(J), Special Report no.34, 13 December 2009).

¹³⁸ B. Fonseka, *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, Centre for Policy Alternatives (CPA), September 2010.

¹³⁹ Mainly from the coastal areas of Mullaitivu District where the last stages of the war were fought. As quoted by Mahinda Samarasinghe at the 19th Session of the UN HRC High Level Segment, 27 February 2012, Geneva. See also UNOCHA, Joint Humanitarian and Early Recovery Update, January 2012, 39

¹⁴⁰ In the humanitarian discussions in Sri Lanka IDPs are generally categorised as 'old IDPs' and 'new IDPs' with the former including those who were displaced prior to April 2008 and the later being those who were displaced since April 2008.

¹⁴¹ Due to mines, military occupation or other obstacles that prevent their return. This includes populations affected by official and unofficial high security zones in Jaffna, the Vanni and Sampur. (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011); UNOCHA, Joint Humanitarian and Early Recovery Update, October 2011, 37)

¹⁴² There were 104,121 refugees in India as of August 2011. (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011).

¹⁴³ Non-recognition of actual status has multiple implications including not being eligible to assistance from the Government and even humanitarian agencies. The GOSL has failed to conduct a detailed survey to ascertain the situation and numbers relating to de facto IDPs. The NHRAP, which contains a chapter on IDPs, makes no commitment to do so either.

The NHRAP has a separate chapter on IDPs and puts forward a series of actions to be taken to ensure the rights and provide for the needs of displaced and resettled communities. However, it too refers to the figure of 6,000 IDPs and given existing mechanisms and processes related to displacement, its current applicability is in question. For instance, in the North displacement and resettlement are under the Presidential Task Force, which lacks a legal basis as there is no publicly available gazette for its establishment and is coordinating these issues in a highly centralised manner with limited consultation of affected communities (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011)

The Government's pronouncements are unclear on whether the location of the last phase of the war will be opened for resettlement and whether the 6,000 plus officially recognized IDPs from those areas will be able to return

¹⁴⁴ The site for relocation is Kombavil where relocation is on-going. (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011)

¹⁴⁵ The continued military occupation of houses and properties, in addition to the maintenance of high security zones and special economic zones poses a significant challenge to communities, who are either unable to return or have returned to their places of origin but cannot regain full control of their lands and properties. The basic assistance package is 6 months food rations and Rs 25,000 shelter grant. As a result of the difficulties faced by returnee communities to rebuild their livelihoods and secure food security, the food rations were extended in most areas by a further 6 months. The transitional and permanent housing needs in the Northern Province have not yet been met, and some beneficiaries involved in owner driven housing schemes are finding it difficult to complete construction due to the high cost of building material and labour, and their limited financial resources. There are significant levels of vulnerability including high numbers of female headed-households, landless persons and socially marginalised groups. Returnees also face security threats including intimidation by and violence from the military and other armed actors.

See B. Fonseka and M. Raheem, *Land in the Eastern Province, Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010; B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War*

Politics, Policy and Practices, Centre for Policy Alternatives (CPA), December 2011; B. Fonseka, *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, for Policy Alternatives (CPA), September 2010; B. Fonseka and M. Raheem, ; B. Fonseka, *Commentary on Returns, Resettlement and Land Issues n the North of Sri Lanka*, for Policy Alternatives (CPA), September 2010.

¹⁴⁶ In July 2011 the Government introduced a Land Circular for the North and East which had a role for military decide on land issues including ownership of particular plots of land. The Circular was challenged in 2011 resulting in the Government withdrawing it in January 2012. At the time of writing this submission, there was an effort to introduce other mechanisms to examine and decide on land issues. The lack of transparency regarding Government's plans for land in the North and East, the increased role of politicians and military of administrative functions and the central Government's role in deciding policy with limited or no consultation with local actors have exacerbated fears of state sponsored plans of 'land grabs'. For more information, B. Fonseka&M. Raheem,*Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011.

¹⁴⁷ The Government undertook; to implement an action plan for IDPs and conflict-affected communities, including host communities; to develop a comprehensive and uniform compensation policy for the displaced and dispossessed; to complete the process of drafting a bill on the rights of IDPs having consulted all relevant stakeholders. See Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, Para 106,107,108.

¹⁴⁸ The Ministry of Resettlement with the Resettlement Authority working with the UNDP developed a resettlement policy but a powerful actor within the Government ordered that the process be stopped in 2008. The IDP unit of the Human Rights Commission developed an IDP Bill which was circulated for comments and then presented to the Ministry of Disaster Management and Human Rights on the 8th of August 2008 but this bill was never presented to cabinet. Instead the Government has established separate programs for the Eastern and Northern Provinces to deal with rehabilitation and development. For the North a Presidential Task Force was established and is the primary body responsible for dealing with humanitarian issues. The legal basis of this body remains unclear. (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011).

The lack of clear and coherent legislation and policy demonstrate the absence of a plan by the Government to address humanitarian issues and durable solutions and recent experiences have demonstrated that the Government approach is ad-hoc and in response to events rather than being a planned process.

¹⁴⁹These include excessively bureaucratic procedures to gain permission to conduct specific activities, especially those relating to empowerment, protection and psycho-social work, and face prolonged delays/denials/restrictions of visas for expatriate staff (B. Fonseka, *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, for Policy Alternatives (CPA), September 2010.)

¹⁵⁰ B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011

¹⁵¹ B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011

¹⁵² During 2008-9 at least 6 local personnel working for INGOs were either killed or disappeared. During 2006-2009 it is estimated that approximately 61 humanitarian workers for the UN and INGOs were either killed or disappeared in Sri Lanka, all of them locals (*A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya*, Centre for Policy Alternatives (CPA), March 2009.)

Many others have been detained and questioned by the security forces and intelligence but most cases are not publicly reported due to fear of reprisals, there is continued pressure on humanitarian workers including monitoring, questioning and visiting of homes by security personnel and intelligence. Several cases are known of harassment and detention of local humanitarian workers in the North in 2012 alone but not yet been publicly reported.

¹⁵³ The Government of Sri Lanka has undertaken to ensure the safety of humanitarian workers and to give them access to populations in need. Restrictions, if any, are to ensure that these persons are not caught up in the conflict or its fallout. (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, para 95)

“Ensure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal investigative powers to their full extent.” (Recommendation made by the US and accepted by the GOSL at first UPR).the Government has yet to take measures on their commitment to follow up on the investigations of killings of aid workers

¹⁵⁴ 60,000 families were expelled (S.H.Hasbulla, “Muslim Refugees: the Forgotten People of Sri Lanka’s Ethnic Conflict”, Research and Action forum for Social Development, 2001.)

¹⁵⁵ It is only in 2011 that any systematic recognition of Muslim right to return and assistance through infra structure development of Muslim villages was provided by the government. (Quest for Redemption: The Story of the Northern Muslims. Report of the Citizens Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990. (November 2001) Colombo, Law and Society Trust.) Although 2012 has been recognized as the year to end protracted displacement, it is important that it is done with due recognition to the specific needs of twenty plus years of displacement, equitable assistance for all caseloads of IDPs while targeting the more vulnerable among them – such as women headed households.

¹⁵⁶ The Tamil old IDPs from the Jaffna High Security Zones need their land released by the military and demined as a prerequisite. For successful Northern Muslims return measures are needed for reconciliation between Tamils and returning Muslim communities, especially to ensure acceptance by the leadership and cooperation and assistance from the Tamil-majority administration (Fonseka, B. *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, for Policy Alternatives (CPA), September 2010; Quest for Redemption, CPA Northern Land)

¹⁵⁷ Tamil IDPs from old IDP centres in Vavuniya, Poonthottanand Sitharampuramwho continue to live there despite the closure of the camps prefer local integration as opposed to returning to their areas of origin.

¹⁵⁸ In the case of Northern Muslim IDPs their integration needs to be assisted through supporting the development of the Puttalam area (Quest for Redemption: The Story of the Northern Muslims. Report of the Citizens Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990. (November 2001) Colombo, Law and Society Trust).

Given significant sections of the population are anticipating return, for the sake of post war reconciliation and to ensure that ethnic cleansing and other forms of forcible displacement are not inadvertently institutionalized, the government must act to facilitate the return of northern Muslims and other IDP populations.

¹⁵⁹ This is applicable to the period of the war but also insurrections such as when the JanathaVimukthiPeramuna (JVP) challenged the State through an armed rebellion. It is alleged that roughly 15,000 died or disappeared in the first insurrection of 1971 and 40,000- 60,000 were killed or disappeared in the second insurrection of 1987-1990. In the case of the insurrections there has not been a credible accountability process. Despite, the establishment of a number of commissions of inquiry to investigate mass killings and disappearances, the fate of persons who went missing during that period remains largely unknown and the perpetrators of grave human rights violations have not been held to account. The failure to carry prosecutions reinforced the perception that state actors will elude prosecution. In the period under review, there is been no publicly known process initiated to investigate and inquire into serious human rights violations.

¹⁶⁰ The issue has received greater attention due the egregious violations committed and alleged to have been committed by the State, the LTTE and other armed actors including the indiscriminate attacks on civilians, attacks on hospitals and ‘no fire zones’, the use of human shields, the denial of essential supplies to civilians and the disappearance of thousands of civilians during the last stage of the war and soon after.

¹⁶¹ Refer the section on the Rule of Law in this submission for more information.

¹⁶² The International Independent Group of Eminent Persons who were invited by the present Government to monitor a Commission of Inquiry in their final report stated that there was a lack of political will to investigate

human rights violations. For more information- The Sri Lankan Case: Rhetoric, Reality and Next Steps?, CPA, March 2012.

¹⁶³ The idea of depoliticizing key government institutions (i.e the Judiciary, the police and the Attorney General's department) was mooted to combat this culture of impunity and culminated in the 17th Amendment but its provisions have been repealed under the 18th Amendment (See section on the Rule of Law in this submission for more information).

¹⁶⁴ 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).

¹⁶⁵ "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>

¹⁶⁶ 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.

¹⁶⁷ 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

¹⁶⁸ 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.

¹⁶⁹ M. 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>

¹⁷⁰ Please refer to "Behind the Numbers: A Closer Look at Sri Lanka's *Enumeration of Vital Events – 2011-Northern Province*," 28 February, 2012 <<http://www.scribd.com/director2005/d/83065413-Behind-the-Numbers-A-Closer-Look-at-the-Enumeration-of-Vital-Events-1>>. For another critique please see: International Crisis Group, "Sri Lanka's dead and missing: the need for an accounting," 27 February, 2012 <<http://www.crisisgroupblogs.org/srilanka-lastingpeace/2012/02/27/sri-lanka%E2%80%99s-dead-and-missing-the-need-for-an-accounting/#more-78>>.

¹⁷¹ This was most recently seen in relation to the 19th Session of the United Nations Human Rights Council (UNHRC) where a resolution was adopted on Sri Lanka. The propaganda by the Government and its supporters stated that the initiative to revisit the case of Sri Lanka at the UNHRC was a western conspiracy and to bring war crimes charges against Sri Lankan troops.

¹⁷² Many of the family members who lost loved ones and were witnesses to the horrors of the war indicated the need for the 'truth' and to know what happened to their loved ones when they testified before the LLRC in the sessions held in the North and East. Many affected communities have reiterated this notion of wanting to know the 'truth' and having a 'justice' but not been able to always articulate what this form of accountability actually means.

¹⁷³ M. 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

¹⁷⁴ LLRC: submission by the catholic Diocese of Mannar: by Rt. Rev. Dr. Rayappu Joseph , Rev. Fr. Victor Sosai, Rev. Fr. Xavier Croos<http://www.srilankaguardian.org/2011/01/llrc-submission-by-catholic-diocese-of.html>

¹⁷⁵ ‘White van abductions’ are commonly referred to when a white van was used for the abduction.

¹⁷⁶ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 5.14-5.24 and 5.27

¹⁷⁷ Family members even feared reporting abductions to the authorities for fear of further persecution.

¹⁷⁸ For example- On 22 June 2008, Devadasan Sureshkumar was abducted at a fuel station in Batticaloa. On 28 October 2008 a Tamil youth was abducted in the Negombo police division. (See Dilrukshi Handunnetti, “The sad story of Lanka’s HR record”, The Sunday Leader, 1 February 2009, <http://www.thesundayleader.lk/archive/20090201/focus.htm>)

¹⁷⁹ See: Civil Society Field Report to Vavuniya, September 2008; A profile of human rights and humanitarian issues in the Vanni and Vavuniya, CPA, 2009. Since the Government took control of Batticaloa, 2007-2009 more than 300 youths were abducted or reported missing. See Sri Lanka Brief, “300 Tamils disappear in Batticaloa during SLA rules, alleges TNA” 8 June 2011, <http://www.srilankabrief.org/2011/06/300-tamils-disappear-in-batticaloa.html>

¹⁸⁰ The Impact of Armed Conflict on Children and the Post-War Challenges for their Effective Rehabilitation and Reintegration in Sri Lanka, Civil Society Working Group on Children in Armed Conflict, December 2009.

¹⁸¹ The Impact of Armed Conflict on Children and the Post-War Challenges for their Effective Rehabilitation and Reintegration in Sri Lanka, Civil Society Working Group on Children in Armed Conflict, December 2009.

¹⁸² In one instance an alleged abductor was bestowed with “Deshamanya” title by President Mahinda Rajapakse (Tisarane Gunasekara “The LLRC Report: The Master Piece of Contortions on 20 April 2012, <http://www.thesundayleader.lk/2011/12/25/the-llrc-report-a-masterpiece-of-contortions/>). See also: The Impact of Armed Conflict on Children and the Post-War Challenges for their Effective Rehabilitation and Reintegration in Sri Lanka, Civil Society Working Group on Children in Armed Conflict, December 2009.

¹⁸³ 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*, 7April 2012, (<http://groundviews.org/2012/04/07/latest-victims-of-a-heinous-trend-abduction-of-political-activists-premakumar-gunaratnam-and-dimuthu-attygalle>).

¹⁸⁴ See Interim recommendations of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Interim Report), September 2010, (<http://llrc.lk.files.wordpress.com/2011/02/interim-recommendations.pdf>) .

¹⁸⁵ 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.

¹⁸⁶ See sections on human rights defenders, freedom of expression, freedom of assembly and association in present submission.

¹⁸⁷ 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/>)

¹⁸⁸ Ibid. para 5.37

¹⁸⁹ Ibid. para 5.46

¹⁹⁰ Ibid para 5.48

¹⁹¹ Since the focus is on events in 2008-2012, the war zone referred to here is broadly classified as the Northern Province. The killings can be further broken down to those that were caught in the crossfire.

¹⁹² The lack of comprehensive data is due to the lack of independent monitoring and reporting but also for incomplete documentation and many documents being lost or destroyed which will hamper any efforts to establish the number of killings during the last stage of the war or any other period. While the Government introduced legislation to issue death certificates for those who died during the last stage of the war, there are obstacles in people obtaining the documents such as long delays in documents being processed.

¹⁹³ On 3 October 2008 K.Kugathasan and S.Gunaseelan were arrested and detained in Batticaloa police station. On 07 October 2008 the relatives was informed that the both were missing. Later the bodies were found washed to the sea shore at Kaththankudi area. SCFR No:512/2008,513/2008; On 20 September 2008 Sugath Nishantha Fernando was shot dead in front of his 12 year old son whilst pursuing a torture case before the Supreme Court (Case No. SCFR. 446/07) and a bribery case before the High Court (Case No. Bribery /1658/ 2006) against several police officers attached to the Negombo Police Station. His family is forced to live in hiding following continual threats to their lives. See Right to Life: Sri Lanka, “Sugath Nishantha shot dead”, (<http://www.right2lifelanka.org/new/newsview.php?id=138>)

¹⁹⁴ See Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 5.68 – 5.76 for allegations of illegal activities conducted by armed groups particularly the Tamil Makkal Viduthalai Pulikal (TMVP) and Eelam People’s Democratic Party (EPDP) who are part of the GOSL. Also read Civil Society Field Report to Vavuniya, September 2008.

¹⁹⁵ Some motives behind the killings include political divisions, reprisals, economic reasons.

¹⁹⁶ Civil Society Field Report to Vavuniya, September 2008; A profile of human rights and humanitarian issues in the Vanni and Vavuniya, CPA, 2009.

¹⁹⁷ Although independent reporting was absent during the last stage of war and in the immediate aftermath, media and phone recordings by individuals present in the area during the period demonstrates the conducting of extra judicial killings and evidence of alleged killings. Several documentaries and news clippings by international media groups including those produced by Channel 4 in the United Kingdom have shown extra judicial killings by those alleged to belong to the security forces. (See: A profile of human rights and humanitarian issues in the Vanni and Vavuniya, CPA, 2009) The issue of those who surrendered to the military and are unaccountable is also raised in the LLRC (See: Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 4.319) Further, there are allegations of LTTE surrendees and their family members being killed by the security forces at the orders of senior Government officials during the final phase of the war.

¹⁹⁸ In 2011, there was sharp upsurge of killing of beggars on the streets of Colombo while in 2010 approximately one dozen killings were reported. Ten bodies were discovered in February 2012 in addition to one missing person in Jaffna who was later found dead. In September 2010, Mr. Suresh Kumar was killed while in police custody. Notably, presidential adviser and former parliamentarian Bharatha Lakshman Premachandra was killed on 8 October 2011 in Colombo allegedly by a member of parliament and advisor to the Ministry of Defence and his security officers, the inquiry into the killing has been slow with police investigators failing to present themselves in court to report on the murder suspect. On 28 July 2011, human rights activist, Mr. Pattani Razeek, was found dead and there are allegations that his murder was politically motivated. In January 2012 in Jaffna, a sixteen-year old female student, Miss. Iridiyana Sineshika, was murdered. In October 2011 Mr. Mohamed Sali Mohamed Niyas, a.k.a “Loku Seeya”, was abducted in a Colombo suburb by an armed gang in a white van. Three weeks later the police in Kavathamunai (in the eastern province) found a body washed up on the beach which was later identified as Mr. Mohamed Niyas.

¹⁹⁹ The Sri Lankan Police Force are alleged to have been directly involved in the extra-judicial killing of Sri Skandaraja Sumanan (28), Mr. Kamaranga Hannadige Lalith Susantha Peiris (32), Mr. Ganearachchi Appuhamilage Gayan Saranga (29), Mr. Sanchiarachchige Thushara, and Mr. Garusinhage Priyantha (45). Most of these took place in broad daylight and with credible witnesses (See the situation in Sri Lanka – an unsigned statement from Sri Lankan civil society, February 2012- http://www.scribd.com/fullscreen/82184215-The-Situation-in-Sri-Lanka?access_key=key-3szuxcd2ta360nmtjil); on the 18 April 2012 a key witness in a fundamental rights case filed against the Office-in-Charge of the Wadduwa Police Station was illegally arrested and was later killed while in the custody of that station. In August 2009 the dead bodies of two youths arrested by the Angulana police were discovered, after protests by area residents an investigation into the incident was carried out, See Double Murder: Victims were whipped before being killed, The Sunday Times, 30 August 2009, (http://sundaytimes.lk/090830/News/nws_21.html)

²⁰⁰ The killing of Government politician Baratha Lakshman Premachandran by a Government MP and his associates in October 2001 is the most prominent example.

²⁰¹ See List compiled by Civil Society of Killings, Disappearances and other serious human rights violations in Jaffna (December 2010-February 2011).

²⁰² For example, editor in chief of the Sunday Leader, Lasantha Wickramatunge was brutally murdered in January 2009. More recently there have been several deaths of protesters such as cases reported in Katunayake (2011) and Chillaw (2012). Please refer to the section on human rights defenders for more information.

²⁰³ 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).

²⁰⁴ See Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 5.68 – 5.76 for allegations of illegal activities conducted by armed groups particularly the Tamil Makkal Viduthalai Pulikal (TMVP) and Eelam People's Democratic Party (EPDP) who are part of the GOSL.

²⁰⁵ The LLRC report recommended the disarming of illegal armed groups and prosecuting members of such groups for allegations of human rights violations including EJK. However there are no reports of action taken in this regard. See Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC Report), November 2011, para 5.66-5.88)

²⁰⁶ In January of 2009, former editor-in-chief of the *Sunday Leader*, Lasantha Wickrematunge, a strong critic of the government, was brutally murdered, yet little progress has been made in holding the perpetrators accountable. In another high profile case in Colombo in October 2011 where a Government politician Baratha Lakshman Premachandra was killed, no progress has been made to arrest, indict and prosecute the main suspect who is a MP of the Government.

²⁰⁷ The UN, in particular the OHCHR, has highlighted specific international obligations.

²⁰⁸ The civil society draft of the NHRAP recommended amending Section 365 of the Penal Code excluding the application of penal sanctions to homosexual conduct engaged between consenting adults at non-public locations. However this too was omitted in later versions of the NHRAP.

²⁰⁹ For instance a graduate student *Saman*, working on his Master's thesis on 'Safer Sex' in Galle (southern Sri Lanka) was accosted by plain clothed policemen while he was conducting a questionnaire interview with several men. They were arrested and several of them were beaten. An effeminate man who went by the pseudonym "Geetha" was sodomized by 3 police officers by inserting a wooden stick into his anus. The OIC of the police station slapped Saman and threatened him with years in jail, accusing him of promoting homosexuality. He was thrown into a cell with such force that he fell and damaged his ankle. See "Codified homophobia in Sri Lanka and its oppressive side-effects", LGBT Sri Lanka, Available at <http://www.youtube.com/watch?v=nRuj27pt65o> , accessed on 15 March 2012.

²¹⁰ "Some controversial moves are being made by groups within the Colombo social circles along with a few diplomats and leading civil society figures to create an impression that heterosexuality is an outdated, obsolete disposition. Most of these individuals' one-time heterosexuals turn gays"... "Their promotion of vices including extensive use of drugs and aggressive promotion of their ideology have slowly started hitting the foundations of Sri Lankan society especially the family unit."(Editorial, Daily Mirror, 29 July 2010)

²¹¹ Some News papers published photographs identifying individuals as Homosexuals. Most recently - Rivira Newspaper, 6 November 2011; The Rivira 18 September 2011, (<http://www.rivira.lk/2011/09/18/janaindex.htm>), <http://www.rivira.lk/2011/09/18/vimarshana.htm> :The Rivira 09 October 2011, (<http://www.rivira.lk/2011/10/09/vimarshana.htm>) ; The Rivira 30 October 2011, (<http://www.rivira.lk/2011/10/30/vimarshana.htm>)

²¹² Article 12 (2)of the Constitution provides that No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex political opinion, place of birth or any such grounds.

This deprives them of avenues for redress because an application before the Supreme Court or the NHRC can only be made for infringement or imminent infringement of Fundamental rights guaranteed under the constitution.

²¹³ Sri Lankan LGBT persons reported significant social exclusion for being LGBT See Equal Ground, Stigma Index for Sri Lankan LGBT People 2012 ; For abuse within the family unit See Case Studies in Kemone Brown, Struggling Against Homophobic Violence and Hate Crimes, Equal Ground , 2011, (<http://www.equal-ground.org/newweb/resouces.php>)

²¹⁴ It was reported that the President had vetoed the provisions included in a previous draft of the NHRAP because he was unhappy about the provision which addressed gay rights("MR Vetoes Gay Rights ", Sunday Times , 11 September 2011, (<http://sundaytimes.lk/110911/Columns/cafe.html> \))

²¹⁵ Section 10 (d) Human Rights Commission of Sri Lanka Act No. 21 of 1996 also empowers the NHRC to make recommendations to the Government on measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards.

²¹⁶ Mandana Ismail Abeywickrema, "Sri Lanka Ranked 16 in Gender Equality", The Sunday Leader, 14 October 2010. <<http://www.thesundayleader.lk/2010/10/14/sri-lanka-ranked-16-in-gender-equality/>>

²¹⁷ The Sri Lanka's Women's Charter which is a policy that aims to eliminate sex-based discrimination and is monitored by the National Committee on Women has not yet been enacted into law (See "Constitutional Recognition of Women's Equality in Sri Lanka and Violence against Women" at <<http://www.actnowsrilanka.org/en/act-now/constitutions>>), the National Commission on Women has not been established ("Commission to secure women's rights", Daily News, 4 June 2011 , Sri Lanka

<<http://www.dailynews.lk/2011/06/04/news31.asp>>) and the National Action Plan for Women awaits submission to Cabinet.

²¹⁸ Women account for less than 5% of members in Parliament and Provincial Councils and are a mere 1.8% in local government bodies (Women and Media Collective, “Women in Politics”, <<http://www.womenandmedia.net/politics.htm>>). In the 2010 Parliamentary elections women secured less than 5% of nominations by the major political parties (Chulani Kodikara, “Sri Lanka: where are the women in local government?”, Open Democracy, 7 March 2011, <http://www.opendemocracy.net/5050/chulani-kodikara/sri-lanka-where-are-women-in-local-government>)

²¹⁹ Kumudini Sanuel, “Sri Lanka: the link between women’s political representation and the peace process”, Centre for Humanitarian Dialogue, 8 February 2011. <<http://peacetalks.hdcentre.org/2011/02/sri-lanka-the-link-between-women%E2%80%99s-political-representation-and-the-peace-process/>>

²²⁰ In the same year 35 women’s organisations received nearly 12,000 complaints of domestic violence Chulani Kodikara, “Only Until the Rice is Cooked? The Domestic Violence Act, Familial Ideology and Cultural Narratives in Sri Lanka”, International Centre for Ethnic Studies, Working Paper No. 1 (forthcoming). The Bureau for the Protection of Children and Women also recorded 94,094 family disputes in 2009, a significant share of which may in fact pertain to domestic violence.

²²¹ The Prevention of Domestic Violence Act (2005). The police filed only 55 cases under the Act in 2009 Chulani Kodikara with T. Piyadasa, Domestic Violence Intervention Services in Sri Lanka: An Exploratory Mapping 2009-2011, International Centre for Ethnic Studies, 2012, p. 39.

²²² The President, in a Women’s Day speech in 2010, is reported to have said that ‘domestic violence is a problem only until the rice is cooked.’ *Lankadeepa*, 10 March 2010.

²²³ Rakesh Sukla, “Sex Work and Laws in South Asia: A Monograph”, Centre for Advocacy on Stigma and Marginalization (CASAM), Sampada Gramin Mahila Sanstha [SANGRAM], Monograph Series 4, April 2010. <http://sangram.org/Download/Laws_in_south_asia.pdf>

²²⁴ Cases of rape and incest typically take 9 to 12 years to be concluded and despite mandatory sentences being provided for, suspended sentences for rape, incest and statutory rape are being handed down pursuant to a 2008 Supreme Court decision (See SC 30/2008). Women victim-survivors of sex offences receive no effective remedies or adequate protection to identifying perpetrators. This perpetuates impunity in cases of sexual violence against women. There is also a rise in incidents of rape throughout the country; reportedly five rapes take place daily according to official records. According to statistics compiled by the Police Department for the period January 1 to 30 November 2011 the number of recorded cases stood at 1,636. (“Incidents of rape rise drastically in SL,” *Lakbimanews*, 07 January 2012.). Marital rape is recognised only post judicial separation (Section 363(a) under the Penal Code (Amendment) Act No 22 of 1995 recognizes marital rape “where the wife is judicially separated from her husband”) or when consent is accorded under threat (Section 363(b) under the Penal Code (Amendment) Act No 22 of 1995 also recognizes marital rape if the consent obtained from the wife is by use of force or threats or intimidation or by putting her to fear of death or hurt, or while she was in unlawful detention). The only legal option that is available to women in Sri Lanka is the Protection Order obtained under the Domestic Violence Act No. 34 of 2005. Under this order, a woman psychologically or physically abused can go to court to necessitate a separation if the parties are living together (Ruhanie Perera, “What’s the point in getting married if you can’t f*** her when you want to?” 22 May 2010 <<http://www.womenandmedia.net/options/?p=208>>).

²²⁵ Section 303 under the Penal Code of 1883 states that whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with three years’ imprisonment and/or payment of a fine. The explanation of Section 303 also includes women who induce their own miscarriage. However, in 2012 the Minister of Child Development and Women’s Affairs recently announced that this law be amended to permit abortions for girls under 18 who have conceived due to rape or incest and for mothers carrying babies with severe genetic abnormalities. (“Abortion Law to be amended,” *Daily News*, 08 March 2012).

Nevertheless there is a high incidence of abortion, estimated to number 125,000-175,000 annually Indralal De Silva, “The Practice of Induced Abortion in Sri Lanka”, Research Paper No. 137, Women and Media Collective, 2010. In fact the Health Master Plan (2007-2016) identifies unwanted pregnancies and abortions as a significant challenge to the well-being of adolescents.

²²⁶ There is no minimum age of marriage and polygamy is permitted under the Muslim Marriage and Divorce Act No. 13 of 1951. Family law for the Muslim communities in Sri Lanka is governed under this Act. Although polygamy is illegal in Sri Lanka, Muslim men are allowed to have up to four wives under Muslim laws. Despite CEDAW’s Concluding Observations (2002) calling for reforms in Muslim personal law drawing from progressive measures in other Islamic contexts, no reforms have been forthcoming. A Personal Law Reforms Committee has been functional for two years but no reports or recommendations have been forthcoming. Concerns also remain regarding the application of provisions of the Thesawalamai to women and property in the Jaffna peninsula (B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011)

²²⁷ Recently, there has been an alarming rise in reports of sexual abuse in the North particularly in Jaffna District (Sanjeewa, “‘Alarming Rise’ Of Sexual Abuse In Jaffna”, *The Sunday Leader*, 11 March 2012. <<http://www.thesundayleader.lk/2012/03/11/alarming-rise-of-sexual-abuse-in-jaffna-2/>>) especially involving girl children (See Marisa De Silva, “The rape of a 13 year old and paramilitary presence in Jaffna”, *Groundviews*, 2 April 2012 <<http://groundviews.org/2012/04/02/the-rape-of-a-13-year-old-and-paramilitary-presence-in-jaffna/>>)

²²⁸ International Crisis Group (2011), “Sri Lanka: Women’s insecurity in North and East” <[http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf)>

²²⁹ “Implementation of the official languages policy and continuing encouragement of bilingualism, in particular in the security forces, police and within the public service”, *Report of the Working Group on the Universal Periodic Review: Sri Lanka* (A/HRC/8/46), 5 June 2008, Para 105.

²³⁰ As late as March 2010, only 4 police stations in the Western Province (where Tamil-speakers are a large minority) i.e. Dehiwala, Kohuwala, Mount Lavinia and Welikada, claimed to be able to record complaints in Tamil, see “Complaints can now be lodged in Tamil”, *Daily Mirror*, 16 March 2010, archived at <http://www.globaltamilnews.net/GTMNEditorial/tabid/71/articleType/ArticleView/articleId/48292/language/en-US/Complaints-can-now-be-lodged-in-Tamil.aspx>. While there has been some recruitment of Tamil-speaking police officers, and there has been some training of other police officers in Tamil, the need is far greater than the current provision. Even in the Tamil-speaking majority North and East, many police stations are unable to receive complaints in Tamil as the personnel are entirely Sinhala-speakers.

²³¹ Tamil speakers account for only 16% of provincial government employees (“Lack of proficiency hinders language policy implementation”, *Daily Mirror*, 28 September 2009, archived at <http://lankamuslim.com/2009/09/28/lack-of-proficiency-hinders-language-policy-implementation/>.)

The LLRC in its 2010 interim recommendation that bilingual interpreters should be employed in public offices has not been fully implemented *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation Commission*, November 2011, para 9.240, at p. 379, http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf.

The lack of Tamil-language translators in the public service violates the right of Tamil-speakers to engage with the administrative service in Tamil. Tamil-speaking government officers in the North and East complain that circulars are sent from Colombo in Sinhala only (“Northern Govt. Servants Facing Difficulties”, *Daily Mirror*, 02 April 2010). Tamil estate workers find it difficult to apply for refund of their social security benefits (Employees Provident Fund and Employees Trust Fund) because the Labour Department lacks adequate Tamil-speakers. In addition, Tamils outside of the North and East are unable to have their births, deaths or marriages registered in the Tamil-language as government officers are Sinhala-speakers or lack the technical resources. Tamil names are often transcribed incorrectly by Sinhala-speaking public officers in official documentation such as birth certificates, national identity cards etc.

Furthermore, the Official Languages Commission is invisible, under-resourced, and has not been decentralized with offices outside of Colombo. (The Official Languages Commission is invisible, under-resourced, and has not been decentralized with offices outside of Colombo. (B. Skanthakumar, *Post-War Context and Issues for Tamil Language Rights in Sri Lanka*, Law & Society Trust, Colombo 2010, <http://www.lawandsocietytrust.org/PDF/Briefing%20Note%20on%20Tamil%20Language%20Rights%201%20Oct%202010.pdf>; *No War No Peace: The Denial of Minority Rights and Justice in Sri Lanka*, Minority Rights Group International, London 2011 at pp. 26-27, <http://www.minorityrights.org/?lid=10458>.)

²³² “Muslim children decry lack of Tamil teachers”, *BBC Sinhala.com*, 21 August 2011, http://www.bbc.co.uk/sinhala/news/story/2011/08/110821_scholarship_exam.shtml.

²³³ This is because these people have little choice but to choose Sinhala-medium education for their children. The trend of a number of urban poor Tamils adopting Sinhala names to mask their ethnicity reflects the cultural and physical insecurities of Tamil-speakers particularly those living in Sinhala-majority areas.

²³⁴ Through the erection of Buddhist temples and images in non-Buddhist areas and through changing Tamil place names to Sinhala. (For example, Ilangai Muhathuwaram in Trincomalee has been renamed as Lanka Patuna and a Buddhist temple built there. See generally the analysis in Nirmal Ranjith Dewasiri, “History after the War: Challenges for Post-War Reconciliation”, *groundviews.org*, 25 February 2012, <http://groundviews.org/2012/02/25/history-after-the-war-challenges-for-post-war-reconciliation/>); Through appropriation of land and sites significant to other religious communities as religious and archaeological sites of Sinhala Buddhist civilization (for example, the Town and Country Planning Bill provides for compulsory acquisition of privately-owned religious properties as sacred areas at the discretion of the Buddha Sasana and Religious Affairs Ministry. The Bill has been successfully challenged before the Supreme Court (*Daily FT*, 16 December 2011, <http://www.ft.lk/2011/12/16/supreme-court-determines-town-country-planning-bill-inconsistent-with-constitution/>), but could be reintroduced in future. New ‘historical’ sites in the North and East are being claimed and appropriated by the military as well as Sinhala nationalist organizations); Through settlement of Sinhala-speakers in areas where Tamils and Muslims form a majority B. Fonseka and M. Raheem, *Land Issues in the Northern Province – Post-War Politics, Policy and Practices*, Centre for Policy Alternatives (CPA), December 2011; *Situation in North-Eastern Sri Lanka: A series of serious concerns*, Report tabled in Parliament by M. A. Sumanthiran MP (Tamil National Alliance) on 21 October 2011, pp. 6-9, archived at <http://dbsjeyaraj.com/dbsj/archives/2759>.)

²³⁵ A Muslim shrine in Anurdhapura was demolished by a mob, including Buddhist priests despite police presence at the site during the incident on 13 September 2011. (Charles Haviland, “Sri Lanka Buddhist monks destroy Muslim shrine,” *BBC*, 15 September 2011). A petrol bomb was thrown at a mosque in Dambulla on the night of 19-20 April 2011. The site has been a source of contention as local Buddhist priests and leaders see it as an illegal construction. A protest was held by Buddhist priests and members on 20 April 2012 forcing the mosque to cancel Friday prayers and it is not clear if the mosque will be demolished (Azra Ameen, “Protest in front of mosque in Dambulla”, *Ceylon Today*, 20 April 2012, http://www.ceylontoday.lk/27-4891-news-detail-protest-in-front-of-mosque-in-dambulla.html?utm_source=twitterfeed&utm_medium=twitter). On 6 December 2009 Our Lady Rosa Mystica in Ja-Ela was attacked by a mob and the church was damaged (“Church attacked after Sunday Mass in Sri Lanka”, *Vatican Radio online*, 9 December 2009, http://storico.radiovaticana.org/in2/storico/2009-12/340686_church_attacked_after_sunday_mass_in_sri_lanka.html)

²³⁶ “Sri Lanka, manifesting its commitment to promote people-oriented development, will work towards the alleviation of poverty and achieving the Millennium Development Goals by 2015 through continued investment in social infrastructure, education, and health services in line with the vision of the Government of Sri Lanka for social and economic development.” (Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sri Lanka, 5 June 2008, para 95)

²³⁷ President Mahinda Rajapakse recently acknowledged the gap between high rates of economic growth (8.3% in 2011) and the fact that many especially in rural areas have not benefited from it, see “More for masses says modest Mahinda”, *Daily FT*, 10 April 2012, <http://www.ft.lk/2012/04/10/more-for-masses-says-modest-mahinda/>. The

Central Bank of Sri Lanka's claim that per capita income has increased to USD2,836 in comparison to US\$2,400 is based upon statistical fudging following devaluation of the Sri Lankan rupee, see "Growth, growth everywhere, but who can read the numbers properly?", *Daily FT*, 16 April 2012, <http://www.ft.lk/wp-content/uploads/2012/04/DFT-111.jpg>.

²³⁸ For instance, the claim that poverty has declined to 8.9% is contested by civil society groups who argue that the measurement of poverty is flawed. Over 1.58 million (of a total of 4.9 million) households are currently receiving poverty-alleviation grants (*samurdhi*) and more are eligible but are not beneficiaries. (*Annual Report 2011*, Central Bank of Sri Lanka, Colombo 2012 at p. 78, http://www.cbsl.gov.lk/pics_n_docs/10_pub/docs/efr/annual_report/AR2011/English/7_Chapter_03.pdf.) In April 2012, the Minister for Economic Development announced that an additional 42,638 households had been identified in the North and East to receive cash transfers ranging from Rs750 to Rs1500 per month ("Samurdhi payment scheme has changed", *The Island*, 17 April 2012, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=49718). Furthermore almost one-third of all children; 39% of non-pregnant women; and 34% of pregnant women at a national level are estimated to be anaemic (*Demographic and Health Survey 2006/2007 – Prevalence of Anaemia among Children and Women in Sri Lanka*, Department of Census and Statistics and Ministry of Healthcare and Nutrition, Colombo 2009 at p. 9; p. 18 and p. 27 respectively, <http://www.statistics.gov.lk/social/Anemia.pdf>.)

²³⁹ 12% of the households in the Northern, Eastern and North-Central provinces face severe food insecurity, while 36% are moderately food insecure *Food Security in the Northern, Eastern and North Central Provinces*, United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011 at p. 77, <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp243519.pdf>. See also Department of Census and Statistics, *Poverty Indicators*, Vol. 1, Issue 2 (May 2011), p. 1,

²⁴⁰ Defence and Urban Development and Infrastructure Development amount to 10% and 16% respectively (See *Budget Estimates 2012, Volume 11*, Ministry of Finance and Planning, Colombo at p. 359 and 369.)

²⁴¹ Sectors such as health, education²⁴¹ and social welfare benefits²⁴¹ average only 4% each in the 2012 budget allocation (see *Budget Estimates 2012, Volume 11*, Ministry of Finance and Planning, Colombo at p. 90 , p. 185 and p 304)

²⁴² The minimum wage in the private sector (Rs 6,900 exclusive of the Rs1,000 budgetary relief allowance that workers earning below Rs20,000 per month (except in the estate sector) are entitled) is significantly lower than in the public sector (Rs 13,000) and wages in general are inadequate relative to the high cost of living (The average monthly household expenditure is Rs.31,331, see *2009/10 Household Income and Expenditure Survey*, Department of Census and Statistics, Ministry of Finance and Planning, Colombo 2011 at p. 15, http://www.statistics.gov.lk/HIES/HIES2009_10FinalReport.pdf.) There is no legislation enforcing equal pay for equal work. In practice, trade unions are not tolerated in the export processing zones and ILO Conventions No 87 and 98 are not enforced. As at end 2010, only 39 out of 267 EPZ factories were unionized, (*2010 Country Reports on Human Rights Practices: Sri Lanka*, US Department of State, Washington D.C. 2011 at p. 39, <http://www.state.gov/documents/organization/160476.pdf>.)

²⁴³ Mega-development projects and other development activities affect housing, land and property rights as well as livelihoods and incomes especially of the poor and vulnerable. There is no consultation or participation of affected communities in the project cycle; and without the right to information guaranteed in law, there is no mechanism to compel state authorities to disclose information. Furthermore Land-grabbing and development-induced displacement is a serious concern to communities affected by tourism development, special economic zones etc Several case-studies are highlighted in '*Land-grabbing and development-induced displacement*', A/HRC/19/NGO/64, Written statement to 19th session of the UN Human Rights Council, submitted by the Asian Forum for Human Rights and Development (FORUM-ASIA) in association with the National Fisheries Solidarity Movement, Praja Abilasha Network and the Law & Society Trust, 22 February 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/107/18/PDF/G1210718.pdf?OpenElement>.

²⁴⁴ For example in 2010, some 42,000 people were awaiting settlement of claims for land acquisition – some of which were already 25 years (“Sri Lanka has not paid for some acquired land for 25 years: official”, *LBO Online*, 27 July 2010, <http://www.lbo.lk/fullstory.php?nid=465033139>.)

²⁴⁵ There are multiple indicators demonstrating the poor socio-economic conditions of the community. 11.2% of the estate-sector population is officially poor, which is a higher percentage than the urban and rural sectors (The poverty head count ratio in 2009/10 disaggregated by sector was: Urban 5.3%; Rural 9.4%; Estate 11.2%, *2009/10 Household Income and Expenditure Survey*, Department of Census and Statistics, Ministry of Finance and Planning, Colombo 2011 at p. 35, http://www.statistics.gov.lk/HIES/HIES2009_10FinalReport.pdf). lower income levels as per capita income in the estate is Rs5,782, whereas it is Rs8,916 in the rural and Rs11,245 in the urban sectors; and the lowest median household income is in the estate sector, that is Rs24,162 whereas it is Rs35,228 in the rural sector and Rs47,783 in the urban sector (*2009/10 Household Income and Expenditure Survey* Department of Census and Statistics, Ministry of Finance and Planning, Colombo 2011 at p. 11 and p. 7 respectively, http://www.statistics.gov.lk/HIES/HIES2009_10FinalReport.pdf). Further more than one-half (50.7%) of estate residents live in ‘line-rooms’, whereas in the rural sector nearly 80 percent of households have 2 or more rooms and 47 percent have 3 or more rooms (*2009/10 Household Income and Expenditure Survey*, Department of Census and Statistics, Ministry of Finance and Planning, Colombo 2011 at p. 40, http://www.statistics.gov.lk/HIES/HIES2009_10FinalReport.pdf.) The literacy rate among Up-Country Tamils is lower than in comparison to non-estate sectors. Women’s literacy rate in the estate sector was 74.7% in comparison to 91.1% of women in the rural sector; and 88.3% of men in the estate sector in comparison to 94.7% of men in the rural sector (*Sri Lanka Poverty Assessment – Engendering Growth with Equity: Opportunities and Challenges*, World Bank, Washington D. C., 2007 at p.90, <http://siteresources.worldbank.org/SRILANKAEXTN/Resources/233046-1172006843012/srilankapoverassessment2007.pdf>). 12.3% of estate sector children who should be schooling are not; which is the highest percentage by sector. In comparison, 7.0% of urban sector and 5.4% of rural sector children are not in school (*2008/9 Child Activity Survey*, Department of Census and Statistics, Ministry of Finance and Planning, Colombo 2011 at p. 22, <http://www.statistics.gov.lk/samplesurvey/CAS200809FinalReport.pdf>.)

²⁴⁶ Provision and quality of health, education, infrastructure and social welfare facilities available elsewhere For instance, estates are excluded from the remit of local government authorities under the *Pradeshiya Sabha Act* No. 15 of 1987, thereby removing any obligation on them to deliver public services to estate communities. The minimum wage entitlement and other allowances of private sector workers are not extended to estate workers, who do not even receive a monthly salary.

²⁴⁷ Including the burning down of houses and allegations that for “Tamil-speaking women on the estates, family planning amounts to female sterilization (*Women as Objects of Control: An Examination of Health, Reproductive Health and Coerced Sterilization in Sri Lanka’s Plantation Sector*, Home for Human Rights, Colombo 2010 at p. 60.)

²⁴⁸ It is estimated that there are 1.7 million migrant workers providing foreign exchange amounting to roughly SL Rs 4.1 billion in 2012 which amounted to 33% of the country’s foreign exchange and 8% of its GDP.

²⁴⁹ The GOSL has not yet entered into legally binding agreements with countries hosting its migrant workers. There is no comprehensive list of agreements signed on the relevant government websites. Many documents titled as “bilateral agreements”, are actually non-binding memorandums of understanding. According to the Ministry of External Affairs website (<http://www.mea.gov.lk/index.php/foreign-policy/agreementsmous->), the only legally binding Bilateral Agreement is with between Sri Lanka and Qatar. Non-binding MOUs have been signed with Libya, Korea, UAE, Jordan, Bahrain and Italy, and an MOU is currently being negotiated with Saudi Arabia.

Approximately 49% of Sri Lankan migrant workers work as domestic workers in the Middle Eastern countries. Nonpayment of/delay in wages, forced captivity in the workplace, dangerous working conditions, confiscation of passports and travel documents, long work hours with little rest/sleep, physical, verbal and sexual harassment, accusations of theft, lack of communication and forced labour including trafficking are some of the main problems faced by these workers. These problems are often made worse by poor knowledge of the English and Arabic Language, unawareness of their human rights and public prejudice. Sri Lankan migrant workers also have very

limited access to justice and support services. Actors within Government have proposed measures such as increasing the minimum age of workers from 21 to 30.

Given the significant number of deaths (331) of migrants workers reported to the Sri Lanka Bureau of Foreign Employment in 2010 (Sri Lanka Bureau of Foreign Employment, Annual Statistical Report of Foreign Employment, 2010, <http://www.slbfe.lk/downloads/eps/stat10.pdf>, p11) and cases of migrant workers being prosecuted for crimes in host countries and facing death sentences, there are serious concerns about due process and the legal protection available to such individuals, especially from the GOSL

²⁵⁰Sri Lanka ratified the International Convention on the Protection of the Rights of All Migrant Workers and Their Families in 1995.

²⁵¹ Ministry of Foreign Employment Promotion and Welfare, National Labour Migration Policy for Sri Lanka, October 2008, archived at http://www.ilo.org/public/english/protection/migrant/download/mpolicy_srilanka_en.pdf

²⁵² There is a need for well-established Resource Centres to provide legal and welfare assistance, health services and information. In addition, the number of welfare officers/labour attaches in these embassies is insufficient.