

SRI LANKA

End the 'Authoritarian Project'

Introduction: The Military has Tasted Power

In the previous years' editions of this Report, we have traced the development of the Sri Lankan political and legal system, i.e. its having moved away from the democratic and the rule of law framework within which it was founded at the time of independence in 1948. We have traced the process of 'rooting out' this constitutional framework with the 1978 Constitution and the practices developed thereafter. We have noted, in particular, the ousting of the 17th Amendment to the 1978 Constitution with the 18th Amendment; all these 'shiftings' of the constitutional framework has ultimately resulted in the displacement of the basic aspects of the system of the rule of law in the country.

In this year's Report, we observe how an authoritarian system has taken root in Sri Lanka and how the military is being introduced into greater roles within the country's political system and within the Sri Lankan economy. In 1962, a coup was attempted by certain leaders of the armed forces of Sri Lanka. This coup was uncovered, exposed, and suppressed. However, the military has now, through a different path, entered the political mainstream and, as a natural consequence, is now entering the economic life of the country.

The idea of "the military residing in the barracks" is no longer a phrase reflecting reality. While, the origins of militarization can be traced back to the anti-terrorism drive against the JVP as well as the LTTE insurgencies, the crushing of the JVP insurgency by the early 1990s and the defeat of the LTTE insurgency in May 2009 did not end military involvement in the civil life of Sri Lanka. The military, making use of these insurgencies has, in fact, grown larger strength, influence and number, and also in every other aspect. In short, it has tasted power.

However, what confirms the military as a prominent factor in the Sri Lankan State structure is not merely its strength during the period of conflict. The Presidential system has developed its own security structure and this development has brought forth the Ministry of Defense as the most powerful ministry of the Sri Lankan State. We have commented on this development in last year's Report. Today, the Ministry of Defense controls almost all aspects of the country - not only the security apparatus, but the entire the State structure.

It is the Minister of Defense that has strategically brought the armed forces in positions of control and also brought in the armed forces to play a part in the economic life of the country.

What people have a taste of now is not of military personnel who merely have a salary that goes with their job, but of many military officers who have, overnight, also become highly successful entrepreneurs within the Sri Lankan economy. This phenomenon of high ranking military officers being not merely salaried officers but also those allowed to run their own businesses will have a drastic impact on the power equations within a country. When we

look to our neighboring countries in Asia, such as Pakistan, Burma, Indonesia and Cambodia, we see that due to various historical developments, armed forces have become one of the main stakeholders in those economies and have adversely affected political life there.

In short, the major impact of a military growing in strength and beginning to exert influence within the economy is the creation of formidable obstacles for political opposition in Sri Lanka. The opposition political parties, as well as Trade Unions and other stakeholders in the political life, will have to bear opposition of not merely the ruling political parties but also the armed forces and the security apparatus in its entirety. Electoral politics will become a mere show, and the real possibilities of democratic transition through the power-of-the-ballot, will be an illusion rather than reality. The opposition political players are already aware of this.

Into this developing role of the security apparatus, another factor has crept into existence in the recent years: the growth of the intelligence services, penetrating all areas of ordinary life. In post-independence Sri Lanka, intelligence services had only a limited role. However, due to counter-intelligence work, their roles have expanded and now, with the new political culture of totalitarian and military developments, intelligence services have acquired a much greater role and more state funds are spent on consolidating a larger role for intelligence services. The ultimate aim of these services is to constantly watch and monitor citizens. A kind of 'big brother' approach has developed and everything that any one may choose to do, may become subject to scrutiny of the intelligence services. Today, it has become quite a natural occurrence, for an intelligence officer to walk into any premise and announce his or her arrival, in order to find out whatever that particular organization or individual is up to.

In the past, there may have been a time when people dared to challenge anyone arriving in this manner, as an intruder, and questions may have been raised what business he or she may have to probe a particular affair in this manner. At the time also, unless such a person could claim that his or her concern is related to an investigation of a crime, no one would have thought of having any obligation to comply. However, today intelligence officers are not merely engaged in investigations into crime, their scope has been widened. They may pry into the affairs of trade unions or civil society organizations and may even require these organizations to keep the intelligence services informed of any and every activity they are engaged in. The intelligence services may also probe the affairs of enterprises, including companies and corporations, requiring them to provide information about their economic activities. Perhaps most importantly, every kind of political activity has become a domain in which intelligence services claim that they have a right to probe. It could be as a requirement of someone in government or in the armed forces who may want such information for the purpose of interfering into economic activities. Another area intelligence services poke their noses into, is the activities of journalists and various publications, either in print or electronic media. In fact, this list could go on, to include any and everything. The ordinary citizen is helpless and simply has to comply and put up with every kind of interference into his or her privacy. In fact, the defence of privacy hardly makes any sense, any longer. Under the pretext of interfering on behalf of the state, intelligence services have become tools of various private entrepreneurs who cover their personal interest under the guise of some claim on behalf of the State. Often, the pretext used for such expansion of the intelligence services is national security, in general, and, in particular, the need to defend the victory against terrorism by protecting the country from the diaspora whose sole interest, as claimed by the Government, is to bring back the LTTE or a similar organization. Such claims of threats to national security

are often made as a cover-up for private motivations, to justify any such interference. Again, Sri Lanka in this context, is following the path of other countries which had military regimes such as Pakistan, Burma, Cambodia, and Indonesia to name a few neighboring ones. There are similar examples throughout the world. These experiences show that such expansion of intelligence services is perhaps the greatest danger that can develop within any given society.

The threat is not only for private citizens, but also to those who work for the State, such as government officers, judges, even police and military officers. And this is gradually extending to the more innocent sectors of society such as teachers, farmers, and the like. When things are at their worst, even intimate circles of family are not safe from the interference of intelligence services.

It is within this context that the problems of human rights need to be considered. The space available for assertion of rights by both individuals and organizations in Sri Lanka has shrunk in every extent possible.

The idea of legal protection of rights has lost its relevance, as the power of the judiciary has been severely suppressed. The attack on the Supreme Court, by way of removal of the Chief Justice, Dr. Shirani Bandaranayake, was only an overt demonstration of what was happening behind the scenes over a period of time and a glimpse of what is yet to come. Already, observers have noted that there are fewer and fewer persons seeking recourse in the system of Courts on matters relating to their constitutional rights. Moreover, the general perception of the judiciary has been negative and there is greater suspicion now than ever before of the Executive directly interfering with the judiciary. The unlikelihood of survival of any judicial officer who dares to take action against the Executive has by now become a widely held belief. Added to this, there is also greater public belief of more judicial officers being corrupt than ever before. All this raises enormous doubts about the protection of human rights by any legal means and through any judicial intervention.

More than ever, the possibility of the protection of individual rights, both in the area of civil and political rights, as well as economic, social, and cultural rights lies entirely with the will of the population to resist and protest against violations of these rights. While this has become more difficult than ever, there is greater public perception that this is the only road open. The way in which the changes of political perception among the people will find expression in the actual political life will mostly depend on the seriousness with which those who are more politically sensitive understand and articulate the present situation, and how the population, as a whole, can be brought to a collective realization of actions in defence of their own survival. In short, these are politically serious questions. How the collective understanding of the collective will of the people will forge their own strategies is what any serious observer should watch under the present circumstances.

Rising Authoritarianism & Militarism

In a media statement, from Colombo, on 31 August 2013, Dr. Navi Pillay, the United Nations High Commissioner for Human Rights, said,

"I am deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction."

What are the features of this increasing authoritarianism?

The following have been observed:

- ***No place for law:*** During British colonialism in Sri Lanka, from 1815 to 1948, law was established as the overall organizing factor in society. There was a law for more or less everything. The operational principle was that whatever any legitimate authority does should be defined in terms of law. It can be said that after over a century of government based on law, law became imbedded in the Sri Lankan consciousness, and therefore a basic foundation for the rule of law was quite settled in Sri Lanka. However, the constitutional changes introduced in 1972 and 1978, and the events of the last 40 years, have undermined that functional system in which government actions had legitimacy and justifiability. It is difficult to determine what is legal and what is illegal at any given moment. This uncertainty and ambiguity runs into everything, including criminal law, public law and, to a great extent, property laws. It has also unsettled the courts. The importance of the courts has been undermined to a significant extent. Public perception that has developed treats the courts as increasingly irrelevant. The citizen has lost belief in the possibility of legal redress for wrongs suffered. In fact, the uncertainty of the legal situation has also resulted in ambiguity about what legally recognized wrongs are. Thus, the creation of uncertainty and ambiguity about the law, legal wrongs, and legal remedies has permeated every aspect of life.
- ***Uncertainty & ambiguity about all public institutions:*** What the Parliament is and what it is supposed to do are questions that citizens will find difficult to answer. Practical experience shows that the Parliament merely does what the Executive President wants and there is nothing that the Parliament can do that the Executive President does not want. Making laws in line with the consent of the people is a notion that does not have even the remotest meaning. The capacity of the Executive President to do whatever he wants and to get a stamp of approval, either before or after such actions, gives the appearance of legitimacy to whatever he does. In fact, even such appearance of legitimacy is not really a requirement, as there is no capacity for anyone or any institution to challenge anything on the basis of legitimacy. Thus, even the notion of legitimacy is often simply insignificant.
- ***Judicial independence undermined:*** The undermining of the law and the problems that exist in relation to the Parliament itself have affected the independence of the judiciary. Besides this, the system of appointments and the removal of judges from the highest courts have created great doubt in the minds of the citizens, including the lawyers, about what kind of outcomes are possible in litigation. The idea of pursuing litigation on the belief that the final outcome would be in terms of merit of the case has diminished. The notion that there are many ways through which political influence can affect what might happen in a case has buried deep and spread wide among the people, including lawyers. The idea that litigation is also a



matter of market practices has also gained ground. All these questions what can be expected from the courts.

- Displacement of civilian policing:* The change in public institutions and the manner in which their role and capacity have become ambiguous is revealed in the Sri Lankan policing system. Ineffective policing is not merely due to incapacity of the police force. Its ineffectiveness is largely a product of the overall crisis of the legal and political systems. Police officers, including high-ranking officers, are often 'powerless'. It is difficult for any officer to fathom what he/she should or should not do. Extraneous forces often play a role in determining what should and should not be done. For the most part, the actions of public institutions are controlled from outside and there is no practical way for officers not to succumb to these influences. Besides this, the intelligence services, special security forces and the armed forces themselves are being called upon to engage in actions that, in previous times and under a rule of law system, would have belonged only to the civilian police. These outside forces are directly controlled by the Ministry of Defence and are only accountable to those who hold power within that ministry. The crisis in courts and of law affect the relationship between the security apparatus and the police. A further factor that has affected the nature of the police is the lessening importance given to criminal law and procedure. Both in terms of the powers and resources given to the police (particularly budgetary allocations for the work of criminal investigations), the police is treated as an institution of the least importance. The Sri Lankan police force today is extremely backward, from the point of view of training and capacity, as well as in terms of the space available for it to exercise its functions independently. One of the consequences of undermining this institution is extreme use of brutality on suspects by the police. There is considerable documentation on the routine torture that is exercised almost on everyone brought to a police station. Resulting from these factors, there has been a breakdown of discipline within the police establishment. Disciplinary control exercised in former times no longer exists. Higher-ranked officers, and their subordinates, are involved in wrongdoings: political subservience as well as corruption. Police hierarchy lacks the authority enjoyed by forerunners in earlier times. This collapse of the policing institution has aggravated the undermining of law.
- Political control of Attorney General's Department:* One of the legacies of the British is the Attorney General's Department, modeled after the British Advocate General's Office. For a long time, this department produced competent prosecutors and leading lawyers on behalf of the state. They were aware of traditions and guarded their independence. The department developed a strict protocol in dealing with government ministries. As the chief legal advisor to the government, the Attorney General advised the government on the legality of proposed laws and actions. The system was geared to ensure that the government conformed to the law. Unfortunately this has been undone. The process of its undoing went on for several decades. It is now in a state of deep degeneration. The department is now directly under the Presidential Secretariat. The protocols that guaranteed independence have been abandoned. The department has been brought under direct political control. Prosecutions are filed against political opponents under political instruction. On the other hand, indictments that have already been filed



on sound legal basis are withdrawn or modified to suit powerful politicians. The Attorney General is supposed to oppose proposed legislation that is illegal and against the rule of law; this function is no longer carried out. Even on the matter of the unlawful removal of the Chief Justice, Dr. Shirani Bandaranayake, the Attorney General's Department went out of its way to support the government. The Attorney General has himself filed an action against the Court of Appeal's judgment against the Parliamentary Select Committee, a judgment that the government refused to carry out. The tradition of the Attorney General not to support alleged perpetrators in cases of human rights violations, particularly fundamental rights violations, has been abandoned. Department lawyers now take active part in opposing fundamental rights applications filed by citizens. Negative impression of the department among the people has sunk in deep.

- *Growth of all-powerful state propaganda machinery:* What is being offered in place of legality and legitimacy is a propaganda machinery of extraordinary power, which attempts to convince the people that any action taken by the government is right and that those who oppose these actions are evil. Such attacks on any kind of rational opposition are part of a vicious campaign, unleashed through the media and channeled into every house in the country. Many of the government's actions are prepared beforehand through prolonged propaganda, and this includes attacks on anyone against whom the government wants to take action. The attack on Chief Justice Dr. Shirani Bandaranayake while she was still in office was one such vilification campaign, the likes of which had not been witnessed. The campaign started with the view to force her out of office on her own. When this did not result, propaganda was intensified to create the impression that the government was right in what it was doing and that every move taken for the purpose of her removal was correct. The content of such propaganda is viciously manipulative, as is the language used. The lowest levels of language are used to humiliate opponents. The opponents themselves are not given any opportunity to have their version of events heard. The hate campaigns against opponents are reminiscent of the type of medieval campaigns read about in western history books. Heavy repression against the free media has also become a permanent feature in Sri Lanka. Assassinations, abductions, forced disappearances, physical harm, and threats of assassinations to journalists have created an environment of fear and intimidation. Large numbers of competent journalists have left the country to live in exile. Besides journalists, media establishments and publishers have also been targeted in attacks. Creating circumstances that force private media to sell their establishments to persons with close association with the ruling regime is also a contemporary feature. As a result of this repression, people have lost the opportunity to listen to alternative views on matters of public importance.

Consequences of the Radical Departures

All these radical departures from what existed in the country have already had disastrous consequences. Some consequences are as follows:



- Resort to direct violence:* Direct use of violence is facilitated by various developments. For instance, there is a change in practices relating to arrest and detention. There has been a large-scale practice of killing persons after detaining them. This began in the aftermath of the 1971 JVP insurrection, during which, in general estimation, around ten thousand persons were killed. These killings were not combat killings. People were arrested, often interrogated, and thereafter disposed. This practice was reprised in the South, from 1987 to 1991. The government appointed Commissions into Involuntary Disappearances, which recorded that there were around 30,000 such disappearances. As the commissions pointed out, the word 'disappearance' during this time meant abductions in place of arrest, followed by interrogations, killings, and disposal of bodies. A similar practice was also carried out in the North and East throughout the 27 year conflict between the LTTE and the government. In Sri Lanka, the idea of taking political prisoners does not seem to exist (except in rare instances) after the killing of several prisoners during July 1983 riots. Instead, killing after arrest became a frequent practice. There may be complex reasons that give rise to this situation. The overall approach seems to be based on the fact that that this method is the most convenient and does not carry many logistical and administrative obligations. The whole matter is over within a short time, with the disposal of the body. If political prisoners are to be kept, arrangements need to be made for recording their statement and other matters, and this leads to obligations under criminal procedure laws. Perhaps the most difficult obligation is to ensure that there is an investigation that could lead to evidence justifying the arrest and detention in front of the courts. On the other hand, when people are made to disappear after arrest, large-scale administrative arrangements are not required. Disposal of persons in this manner also removes the obligation to keep people in prisons. Keeping political prisoners in prison imposes heavy obligations. There are the ordinary obligations of giving prisoners food, space, and facilities for sleep, health, and sanitation. Equally important are the heavy security obligations. As political prisoners may have their organizations, there may be attempts to rescue them from prisons or on their way to and from the courts. There are even greater difficulties from the heavy political propaganda that arrives as a result of keeping political prisoners. As long as such prisoners are in custody, there will be agitations for their release from political organizations, human rights groups, and the families of the prisoners. During elections, matters relating to political prisoners can weigh heavily against the incumbent government. From the point of view of the media, the existence of political prisoners generates much news and political commentary. All such complex issues can be conveniently avoided by disposing of persons after arrest. This method also has the further effect of creating enormous intimidation in the population. Such intimidation deters many from participating in political agitation and protest. Keeping this level of intimidation high is advantageous when maintaining an authoritarian form of government. The decisions in relation to such extrajudicial killings are left to the security forces or the police. In such extrajudicial killings, the functions of arrest, interrogation, execution and, disposal of body are all left to the decision of whoever does such killings. Due process and decision-making by the courts are thus taken away. Of course, the possibility of appeal does not arise at all.



- Loss of memory of law, procedures, & redress:* Further consequences include the problems of the legal system, described as a loss of memory regarding law, legal procedures, courts, and other aspects of legal redress. In over a century under colonial rule, a system of law was introduced and, as a result, mental and social habits were developed. During the last 40 years, along with the undermining of the legal process, much of this memory has been wiped out. Lawyers complain about many judges having a much lower quality of legal understanding than in previous generations, which has precipitated the crisis of law. There is also stark degeneration in relation to legal knowledge and ethical practice amongst lawyers, which is spreading to litigants. In fact, the entirety of the population is losing this memory of the law. With time, such loss of memory becomes much greater. Additionally, extra-legal methods for resolving conflicts develop. Through this, new mental habits and attitudes are formed, which spread to everybody; ordinary people, lawyers, judges, politicians, prosecutors and the like. Thus, while positive knowledge about the law is lost, there is a negative kind of knowledge about doing things by illegal means that spreads. As a result, there is a development of underground and powerful elements, which attempt to intervene to resolve problems through direct violence.
- Spreading administrative negligence:* As a result of the loss of relevance of law, and the loss of law-based administrative practices, negligence has spread to all areas of the administration, including local government administration. In earlier times, there were supervisory and monitoring mechanisms inbuilt in all programmes and projects. However, such supervision and monitoring has weakened. Many negative developments are not noticed and there are no attempts to take preventive action to avoid adverse consequences. Some glaring instances have already surfaced. For example, in Mulativu, Kilinochchi, and Vavuniya in the Northern Province, there are problems relating to shortages of clean drinking water. People undergo severe difficulties and there has been a rise in health problems due to poor quality drinking water. Similar complaints about drinking water also exist in the North Central Province and Uva Province, and there are complaints about the large number of cases of chronic renal failure. The problems relating to drinking water in Rathupaswela, Weliweriya (in the Western Province) surfaced recently, caused, it is believed, by the operation of a factory dealing with rubber products, where the release of wastewater into the surrounding lands has resulted in increased acidity levels in the ground water. Under the previous administration there were regular checks of such factories because of the possible effect on the health conditions of the people in the surrounding areas. However, such monitoring has been neglected. Also, for several years now, dengue hemorrhage fever has spread to the point where it has reached epidemic levels. Earlier there existed an efficient system of mosquito control and other such parasite controls, and significant achievements were made. However, the problems caused by administrative neglect prevent concerted efforts from being made to overcome this problem. Efforts to control illegal narcotics have also failed. There are regular reports about the drug trade, which is widespread in cities, as well as in other areas of the country. The prosperous drug trade operates with impunity and manipulates the weakened legal system in the country. As a result, drug addiction has become a big problem. Associated with this problem is the spread of money laundering. According to reports, Sri Lanka has become a hub for money



laundering in the region. These are only few examples of the manner in which the spirit of neglect has now spread throughout the administration. It is likely that many other unforeseen problems will occur due to this neglect, in all parts of the country and all areas of life.

- Unprecedented corruption:* The success achieved by the Commission to Investigate Allegations of Bribery or Corruption is limited. In the past these issues were not such big problems, but now one of the areas in which law enforcement is most ineffective is in relation to bribery and corruption. The present administration of the commission has failed to take effective action relating to those who are associated with, or part of, the ruling political regime. The commission is instead being manipulated for political purposes. It is used as a tool in reprisals against those politically targeted by the government. A clear example of this is the action taken against Chief Justice Dr. Shirani Bandaranayake. Corruption has spread to the extent that the country's business sector, including the foreign investment sector, is awash in this problem. There are reports about many persons being threatened to sell their properties far below market value. When so threatened, these persons have no option but to comply. Law enforcement officers are often a part of such corruption networks. The recent arrest of a Deputy Inspector General of Police, alleged to have been involved in the killing of a businessman on a contract given to him and a gang that operated under him, is an indication of the extent of the linkage between law enforcement agents and networks involved in corruption. Many scandals that have come to public notice relating to the stock exchange also manifest the spread and depth of prevailing corruption. Given the crisis of law, there is no solution to this problem of corruption. It is likely to spread even more and negatively affect all areas of life. The loss of memory also affects the whole of the civil administration. Previously, traditions were established to ensure rational administration within the civil service. However, all these habits have now been lost due to political manipulation, which the civil servants have been unable to resist. The loss of the discipline that was established through long years of education and development of individuals who personified the best aspects of rational administration will be one of the greatest problems that the country will face in the future. One result of the collapse of discipline in civil administration is large scale brain drain. Educated, well-trained, and highly motivated persons, who do not want to be a part of corrupt system of administration, look for other avenues of employment, which they often find outside the country. This brain drain will also be one of the factors that will create serious negative consequences for Sri Lanka in the future.
- Rising intolerance:* Undermining the law and administration of justice has provided a base for any kind of fanatic to provoke violence against others. There are often attacks on minority religious groups. There have been reports of attacks on mosques and churches. Hate speech against one religious group by another is common. Thus, the crisis of law has removed the environment needed for tolerance and peaceful coexistence. When government comes under criticism for the failure to prevent such attacks, it makes some public pronouncements about protecting minorities. However, when the whole legal system is in chaos, the government does not have the capacity to do anything beyond making



pronouncements. The provocateurs manipulate the crisis of law enforcement to their advantage.

- North, East, & consequences of prolonged conflict:* The crisis relating to the law and system of administration will remain the greatest obstacle for achieving a solution to the specific problems in the North and East, including conflict-related accountability and reconciliation. The displacement of the civilian police, and the replacement of it with military, intelligence services, and special security services, have had a profound impact on the situation in the North and East. The government's propaganda, carried out through its media channels, about the possible return of the LTTE also profoundly affects this situation. If law is not going to be the basis of social organization, then how could the problems affecting the people of these areas be resolved on the basis of equality before law? The crisis of the legal environment of Sri Lanka is the fundamental problem that affects all its minorities, including the Tamils. Unfortunately this is not being raised with adequate seriousness by the Tamil diaspora, who still want to find the solution to problems in the North and East alone. However, such a perspective is practically impossible to implement; the crisis of the legal environment is the unavoidable obstacle every step of the way to finding a solution to minorities' problems. Additionally, those who oppose special attention being given to the minority issues are able to manipulate the crisis of the legal system to the disadvantage of the minorities. The highly provocative political environment in the country could be manipulated to cause disturbances for some time to come.
- No implementation of LLRC recommendations:* The precondition for the implementation of the LLRC recommendations is the rule of law. As repeatedly shown in this report, the overall crisis of the administration of justice is incompatible with the rule of law. It is this incompatibility that effects the implementation of LLRC recommendations, which have been the core issue of the contestation between the government and the international community's demands for peace and reconciliation.
- Negative psychological impact of the crisis:* The entire population of Sri Lanka is psychologically oppressed due to the environment of lawlessness and the absence of protection through a functioning system of administration. This psychological condition affects the health of the people. While all are badly affected, it is the children who suffer most. They lack the environment to develop their personalities on the basis of positive human values. The scars caused by these psychological situations will have lasting impact on the future of all these children. Students studying in the universities are being adversely affected by this psychological environment. The government often treats the students as a possible threat to security. The highly disturbed environment also prevents a regular way of life for these students and exposes them to many difficulties in engaging in their academic work. Women are especially affected by this environment too, where insecurity has become a way of life. Thus everyone is facing a constant traumatic situation and there is no way of out of it.

Practice of Torture & Ill-Treatment

Right Against Torture is not Justiciable in Sri Lanka

Today, internationally, it is agreed that all human rights are justiciable. However, in most Asian countries, none of the human rights are justiciable. This can be illustrated using one of the most basic of all rights, the right against torture. International law states that this is an absolute right. However, except for Hong Kong, there is no jurisdiction in Asia where this right is justiciable. Sri Lanka, the Philippines, and now Bangladesh have laws criminalising torture and ill-treatment; however, there is no legal mechanism for the enforcement of these laws. As for other countries in Asia, even a law criminalising torture does not exist. Therefore, the question of justiciability does not arise.

The dictionary definition of justiciability is the capability of a matter to be decided by a court. The way the court decides may depend on the particular remedy available in law. If a particular wrong is considered a crime, the remedy lies in criminal law. However, there are also civil wrongs and wrongs which are of a public nature, in which case the remedies may lie within public law. When we say that a right is not justiciable it means that no legal remedy is available for a person complaining about a violation of that particular right.

For there to be a remedy within criminal law, following legal elements need to be present:

- (i) *Violations of the right are recognized in law as a crime.*
- (ii) *The law provides a mechanism for victims to make a complaint of violation.*
- (iii) *Once complaint is made, the state is obligated to investigate the complaint.*
- (iv) *In order to investigate the complaint, there is an authorised agency (or agencies) that has the obligation to investigate the complaint on behalf of the state.*
- (v) *If the investigations establish that the complaint is credible and that there is sufficient evidence which, if placed before a court, may lead to a conviction, then it is the obligation of the state to prosecute on the basis of the findings of the investigation.*
- (vi) *The state has established an agency (or agencies) that has the power and competence to prosecute the case before a court of law.*
- (vii) *It is the obligation of the state to establish courts where such prosecutions could be conducted and it is also an obligation of the state to provide for all expenses necessary for proper functioning of such courts, as well as the agencies mentioned above.*
- (viii) *It is implied that such courts have the power to enforce their decisions.*

When we look at most Asian countries, we find that very few or none of these requirements are being met. Let us take some examples.

India is perhaps one of the Asian countries with the most advanced legal system, including an independent Supreme Court and judiciary. However, though torture is endemic there, India does not recognise torture as a crime. Therefore, even if India may have a quite capable investigation mechanism to investigate complaints of torture, such investigations cannot begin as an investigation agency can only prosecute offenses recognised in law.

Pakistan, Nepal, Thailand, Malaysia and several other countries have also not criminalized torture. Besides this, serious problems relating to investigating agencies, prosecuting agencies, and the judiciary are also obstacles for the justiciability of violations to human rights.

Now let us take the case of **Sri Lanka**. In Sri Lanka there is a law which recognises torture and ill-treatment as a crime. This is the Convention Against Torture (CAT) Act, Act No. 22 of 1994, which has created a domestic law relating to the UN Convention Against Torture. However, the present policy of the government is not to conduct credible inquiries into allegations of torture. When there is no investigation there cannot be any further steps taken from the point of view of justiciability. It is not that Sri Lanka does not have capable and competent criminal investigators to investigate complaints of torture. For a short period between 2006 and 2009, there were several credible investigations into torture complaints. However, then the policy was changed and now the practice is, to not investigate any of these cases.

What is worse is that government agencies, such as the intelligence services, the military, the police, and other persons who act in connivance with these agencies, engage in intimidation and harassment of complainants. This includes assassination of complainants. The overall impression has been created that any person who makes a complaint against the police or other security agencies runs the risk of threat to their lives or to their families. Even if someone dares, despite these fears, such a person would run this risk for many years as litigation in Sri Lanka takes a long time. However, when complaints are made, the relevant agencies do not consider it an unshakeable obligation to investigate the complaint. It is quite optional and the option is often exercised against the complainant. Besides, rather than conducting investigations, such agencies can subvert the investigation. And complaints regarding subverted investigations have become quite common in Sri Lanka. Over and over again, the police file reports stating that they have been unable to identify the culprits or to find adequate evidence to prosecute. To sum up, public impression is that it is foolish to expect proper inquiry against the police or any other security agency.

Another, rather new, factor that frustrates all attempts at justiciability is the rapid loss of judicial independence in Sri Lanka. This has been illustrated by the illegal dismissal of Chief Justice, Dr. Shirani Bandaranayke, condemned by internationally reputed jurists and Bar Associations, as well as the local Bar Association and civil society. The written legal opinion submitted by two international jurists whose opinion was sought by the Commonwealth Secretariat have now been published. In their lengthy submissions, they have categorically and unequivocally described the removal of the Sri Lankan Chief Justice as unconstitutional, illegal, and completely contrary to the independence of the judiciary, the separation of powers, and the rule of law. The reports were from Justice P.N. Langa of South Africa and Professor Sir Jeffrey Jowell from the UK.

In the **Philippines** and **Bangladesh**, both of which have laws criminalizing torture, the situation regarding the making of complaints, investigations, and prosecutions is more or less the same as Sri Lanka. It was a few years ago that the Philippines passed a law criminalising torture but to date there has not been a single prosecution despite widespread practice of torture in the country.

In countries such as **Burma** and **Cambodia** the possibility of justiciability relating to any human rights violation is absent. The judiciary simply does not have the power or capacity to adjudicate on any matter against any state agency. Besides the judiciary, the police and the prosecution also do not have such powers.

China and **Vietnam** do not recognize separation of powers and the independence of the judiciary. Within such a context, there is no room for justiciability relating to human rights violations.

Singapore is a unique case where, within a former common law jurisdiction, now all the possibilities of challenging the state in court on any matter at all have been completely removed. Naturally, violations of human rights cannot become justiciable when the state does not recognize the authority of courts to examine its accountability.

Who Will Investigate Torture?

One question frequently asked about the prevention of torture is who will investigate complaints of torture and ill-treatment. It is quite natural to have tremendous distrust and disbelief in relation to the police itself investigating crimes perpetrated by policemen, or the military investigating torture committed by their own. The possibility of an impartial inquiry can hardly exist if investigations are carried out in that manner. In some countries, higher ranking police officers are expected to carry out inquiries into the wrongdoings of lower ranking officers. However, this too is mistrusted as more and more ranking officers are complicit in the wrongdoings of their subordinates. The experience is that higher ranked officers, when called upon to investigate torture and ill-treatment, attempt to discourage the complainants and even intimidate and threaten them. In the end, they file reports stating that the complainants themselves have withdrawn their complaint or settled the matter.

On the other hand, human rights commissions or the national institutions do not have the capacity and the power needed to investigate torture and ill-treatment as a crime. It is not within the mandates of such organisations to investigate crimes. Above all, such organisations do not have the formidable powers of the police and military, who bear arms and who are perceived as powerful agencies within a nation. Criminal investigations require the capacities of arrest, detention, and interrogation and also dealing with courts within the framework of the criminal procedure of the country. The national institutions have their powers modeled under ombudsman institutions and they cannot be a substitute for basic criminal investigation mechanisms of a country. In most of the texts of the laws relating to national institutions in Asia, the functions attributed to them are those of a civil nature. Besides, the appointments to these institutions, as well as the removals, are more susceptible to direct political pressure. Thus, in terms of developing a permanent institutional framework for the implementation of criminal law relating to torture, these institutions are unsuited.

Who then can investigate complaints of torture and ill-treatment? When a country has achieved police reforms that bring the policing institution to modern standards, the problem of who is to investigate torture and ill-treatment does not pose great difficulty. The very modernisation will ensure that the policing institution can function effectively and that it will have separate divisions with the capacity to investigate itself under the ultimate supervision of the judiciary. Having an institution with internal controls, through supervision and discipline, is a well-proven model.

The question that really arises in countries where such substandard policing is all that exists, as in most of the countries in Asia, is: until thorough police reforms bring policing systems of these countries at par with the systems in more developed countries, what can be done about the complaints regarding torture and ill-treatment? This is a question that needs to be addressed and without finding a practical solution to this problem much of the discussion on torture and ill-treatment, including achievements relating to legislation, will not be of much use to the public and particularly not to the victims of torture. Thus, in what we may call the transitional period before such substantial changes are achieved, ways have to be developed for credible, independent, investigations into torture. We may look into some actual experiences.

Under pressure from the United Nations human rights agencies and under heavy criticism about the large scale prevalence of torture, in 2006, Sri Lanka took a step towards investigating complaints of torture. It proved quite effective as long as the measures taken were allowed to operate. The method adopted was for the Inspector General of Police or the Attorney General to refer complaints of torture to a Special Unit of Inquiry of the Criminal Investigation Division (CID) for inquiry. The special units called SIUs usually consisted of officers whose capacity and integrity had been recognised by the institution. Within a period of two to three years such SIUs investigated a significant number of cases and they found that there was adequate evidence to prosecute officers in about 60 cases. The files of these cases were presented to the Attorney General's Department with recommendations for prosecution. This is so far the only example in Asia where effective measures have been taken for the investigation and prosecution of torture and ill-treatment cases. Unfortunately this approach was abandoned due to pressure from the police and the military, which reacted strongly against the investigations.

What this effort – which unfortunately lasted for only a short while – proved is that during the transitional period in question ways can be found to institute a special group of investigators with competence and integrity to conduct investigations into complaints of torture. However, whether this will happen or not depends on the political will of the government concerned, which in turn, at least to some extent, will be reflected by the amount of pressure from civil society to have such effective investigations. On the one hand, civil society organisations committed to the documentation of torture cases and giving assistance to torture victims by way of legal, medical, and psychological measures is an essential component to create the local and international pressure necessary to make the governments heed to this important task. In this regard, conscientious legislators can play an important role to mobilise civil society as well as to initiate effective measures.

These considerations about justiciability need to be given the attention and the highest priority by all persons and organisations that promote the implementation of human rights.

At the international level, though there are some concerns expressed, an adequate discourse has not taken place on this issue. Part of the reason for this international silence may be due to the fact that in more developed democracies, which play a leading role in the human rights community, the problem of justiciability in the manner that is expressed above does not exist. Centuries of development in their legal systems have ensured that a right, when recognized, can be soon brought to a situation where it is capable of being decided by a court.

However, that is not the case in most parts of the world and certainly not the case in most of Asia. If the rights discourse is to be taken seriously by the people this tremendous problem needs to be addressed thoroughly and comprehensively and as quickly as possible.

Until then, rights without remedies will be regarded by the majority of the people, particularly by the poor, as empty promises.

Specific Cases of Torture

1. Ms. Achala¹

Achala, an 18 year old school girl from Ratnapura has been assaulted by an ex-army soldier in presence of several witnesses and when she reported the matter to the police very little or nothing was done to investigate the assault. The victim and her family believe that this is due to the influence of the assailant's employer who is a wealthy businessman and who has unduly influenced both the police and health authorities to protect the assailant. Although the victim was hospitalized she was forcibly discharged and it is believed that this was also due to the influence of the employer. She has suffered hearing loss due to the assault and now lives in fear of her life and has appealed to the AHRC for justice and for the safety of her and her family.

2. Ms. Sujani Weerakkodi²

A Buddhist Monk, Bowelle Wimaladhamma Thero, verbally abused and physically assaulted Ms. Sujani Weerakkodi, a government employee working as a Science and Technology Officer, at the Udalapalathe Vidatha Resource Centre under the Ministry of Technology in her office on 22nd January 2013. Her immediate superior and the police refused to take action against the monk due to his political influence and the victim was later abused at both the Gampola and Kandy hospitals. Furthermore the doctors and nurses tried to portray her as being mentally unbalanced due to the monk's interference. According to Sujani the monk had entered the office, which was being rented from him, and threatened her "not to deal with him in the same manner in which she deals with her staff" and continued to act in a violent manner by throwing a chair across the room, by which impact she fell and hit her head. This is the second case the AHRC has received through its Urgent Appeals desk, of a

¹ Urgent Appeal Case: AHRC-UAC-017-2013

² Urgent Appeal Case: AHRC-UAC-019-2013

Buddhist monk abusing a woman and using his authority to evade the administration of justice process.

3. Mr. Suntharallngam Ketheeswaran³

Mr. Suntharallngam Ketheeswaran was severely beaten by an intoxicated prison guard at the Tangalle Prison, and despite the severity of the injuries he has suffered, the prison authorities have not provided him with any medical attention for his injuries.

On Saturday February 23, 2013 at around 10.30 p.m. Mr. Suntharallngam Ketheeswaran along with another prisoner named Kanagaratnam Wilendran was in cell No. 9, at the Tangalle Prison where he was inhumanly attacked by the prison guard who was under the influence of alcohol to the extent that Suntharalingam's genitals were severely injured and his entire body was swollen and bruised and suffered unbearable pain and finds it difficult to breathe.

Following this incident of torture he was returned to the Magazine Prison in serious condition and in spite of his complaint to the officers he has not been sent for treatment to the National Hospital or seen by a Judicial Medical Officer for a report. His injuries are serious in that his genitals were severely damaged and this has caused many complications.

4. Ms. Punchibandage Indrani⁴

Ms. Punchibandage Indrani was severely tortured by the Officer-in-Charge (OIC) of Rajanganaya Police Station. On this day police officers including the OIC came to Indrani's home and assaulted her brother-in-law. Prior to the beating neither the OIC nor any of the officers present gave any reason for the assault. Indrani has been falsely charged with obstructing the police and having illegal liquor. She has made a complaint to the Human Rights Commission of Sri Lanka but to-date no action has been taken.



Indrani said that her brother-in-law, while being assaulted by the police had managed to scamper to a nearby toilette after which Kumarasena, the OIC of the Rajanganaya Police forced Indrani and her daughter into the Police jeep and were taken to the Rajanganaya Police Station at around 8:30 p.m. with only male police officers accompanying them.

After they were taken to the police station, the OIC made them enter a nearby room and asked an officer to bring two cans of illicit liquor (Kasippu). The OIC tried to persuade Indrani to place her fingerprints on one of them. A few minutes later, the OIC came back with a two and half feet long hose pipe and threatened her to put her finger prints on the can. He began to beat her six or seven times on her back, thighs and head. Due to the attack against head Indrani was made temporarily blind.

³ Urgent Appeal Case: AHRC-UAC-017-2013

⁴ Urgent Appeal Case: AHRC-UAC-030-2013



Indrani was remanded for 14 days. When she was at the Anuradhapura Prison she was admitted to the prison hospital due to the pain in her hands. Indrani's health deteriorated and on the 22 of November she was admitted to the Thambuththegama Government Hospital. Now she cannot raise her hands due to the severe pain. She said that she was taken by the police for no reason and was tortured by the OIC, whose name is Kumarasena.

5. Mr. Janaka Darshana Kumara⁵



Mr. Janaka Darshana Kumara was arrested on suspicion of rape by Officer-in-Charge of Sub Police Watch, Deniyaya, while Janaka was at his sister's place. He was taken to Matara Headquarters Police Station where he was tortured brutally, harassed sexually and detained illegally by the Senior Superintendent of Police (SSP) Matara, Deshabandu Thennakoon. After three days of detention he was forced to promise not to take any action against them and released after a false certificate from a Judicial Medical Officer (JMO) was produced. Due to this torture, Janaka was admitted for three days at the Karapitiya Teaching Hospital.

While being tortured and beaten by Police Officer Mendis, Janaka had pleaded with him to stop saying, and he was later made naked, his mouth and nose was wrapped by a shirt and forced him to sit on a chair. His head was forced backwards and water was poured over the cloth covering his face. Water filled in his throat and it was hard to breathe. When he screamed it was stopped but again and again the same thing was happened continuously until the large cup of water was empty.

The next day (12.12. 2012), they were taken again to the Office of SSP, Matara where Janaka had to remove his clothes and was shown a bottle of Siddhalepa balm. He was forced to apply it on his penis. The SSP squeezed and dragged his scrotum and penis asking to tell him the truth. He cried and pleaded that he was innocent. He was struck on his thighs and back seven or eight times with that pole.

Janaka and his brother in law were released on police bail without being produced in any court or being charging for anything. Janaka was thereafter admitted to the Karapitiya Teaching Hospital and he was discharged on 18 of December, 2012, after 4 days of treatment. He continues to receive treatment for the bruising.

6. Mr. Varnakulasingham Arulanandam⁶

Mr. Varnakulasingham Arulanandam 42, a former LTTE child recruit, who was abducted and forcibly recruited by the LTTE during the middle of 1996 managed to escape in August 2006. On 17 May 2009 he was living in the Internally Displaced People's (IDP) Camp in Chettikulam. While in the camp at when asked to identify if they had any connection to the LTTE and after Arulanandam identified himself he was separated from the family and was

⁵ Urgent Appeal Case: AHRC-UAC-031-2013

⁶ Urgent Appeal Case: AHRC-UAC-034-2013

taken to Vaani Vidyalam (school) in Vauniya and then to Colombo and from there then to Galle. He was produced in Galle Magistrate's Court on the 21 January 2010 and was then released by the Galle Magistrate as there was no credible evidence against him.

However, following his release on several occasions he was called to the Terrorist Investigation Division (TID) at Colombo for further interrogation. He obtained his released order on 3 April 2012, and while he was leaving for Qatar for employment, Arulanandam was rearrested at the Katunayake International Airport. At the time of his arrest no warrant or reason was given. He was then taken to TID Office Colombo detained for one month and then again detained at Boossa Detention Center. Since then he is never been produced before any court. Furthermore, according to his wife Christina, Arulanandam was severely tortured by the TID officers after his arrest at the airport. So far his wife has visited Arulanandam at the Boossa Detention Center twice on the 13 August 2012 and on the 12 December 2012. She questions as to why he was arrested for no reason after he was released by the Galle Magistrate, tortured and detained without trial.

7. Mr. Kitnasami Rajendran⁷

Mr. Kitnasami Rajendran 57 years old, of Udayarkattu North, Udayarkattu in Mullaitivu District was illegally arrested in 2008 and has been detained without trial for more than four years. He was tortured in the custody of the Colombo Criminal Investigation Division and is now detained at the Anuradapura Remand Prison after being produced in the Vavuniya Magistrate's Court and the Colombo Magistrate's Court. To-date, Rajendran has never been shown a charge sheet describing his 'crimes'.

According to his wife Komadi, Rajendra is accused of having explosives in his possession which he vehemently denies. After Rajendran was arrested his wife Komadi lost two of their sons on 3 February 2009 as a result of a shelling while in their house at Udayakattu. Elder son Vasantha Ruban was 24 and the second Sathya Ruban was just 21.

As a result of this tragedy Komadi is living with the youngest son who is still schooling and she is without any income. Rajendran is now detained at Anuradapura Remand Prison after being produced in the Vavuniya Magistrate's Court and the Colombo Magistrate's Court. Komadi says that Rajendran is innocent and that he is from Southern Province of Sri Lanka, Galle, and had no connections with the LTTE.

8. Mr. Balasundaram Jeyamagudam⁸

Mr. Balasundaram Jeyamagudam 32 years old, was illegally arrested, detained and severely tortured by Terrorist Investigation Division (TID) officers for two months without being produced in court. According to his wife, Balasundaram was never involved in the any

⁷ Urgent Appeal Case: AHRC-UAC-037-2013

⁸ Urgent Appeal Case: AHRC-UAC-038-2013



of the activities of the Liberation Tigers of Tamil Elam (LTTE). He was arrested on 13 January 2013, four years after the civil war ended.

Balasundaram was interrogated at the TID office at length and severely tortured in an effort to force him to admit that he was with the LTTE even for a day which allegations he vehemently denies. Due to the severe torture Balasundaram was injured and bleeding heavily and therefore he was taken to Vauniya General Hospital for treatment. Having tortured him for 10 days in Vavuniya, he was brought to the Colombo TID office on the 23 January 2013 and he is still detained at that facility. To date, Balasundaram has never been produced in court.



His wife said that Balasundaram was severely tortured, he was beaten with poles, slapped and TID officers stood on his chest until he was injured and fainted. He was forced to accept that he was with the LTTE and sign documents which he has refused repeatedly. His wife is expecting a baby and she has no parents as both have died during the war and she has no income to look after the son.

9. Ms. Kumarapperuma Arrachige Dileeka Shanthi Kusum⁹



Ms. Kumarapperuma Arrachige Dileeka Shanthi Kusum, a 33-year-old mother of two was beaten in public by the Chairman of the Co-op Lanka, Kotapola. Dileeka Shanthi Kusum was hospitalised due to the injuries she received in the incident and has made complaints to the Pitabaddera Police Station, Human Rights Commission (HRC), Inspector General of Police (IGP), National Police commission (NPC) and the Attorney General (AG). None of these authorities have taken action in the matter and instead, the Pitabaddera Police are providing security for Mr. Bandu Ranawaka, the perpetrator.

Mr. Bandu Ranawake had beaten Dileeka Shanthi Kusum's chest severely and she fell down on the floor due to the pain. Due to the fall she hurt the back of her head. When the other employees helped her to stand up Bandu Ranawake then struck her on the head causing her to faint. When she was able to walk, Dileeka Shanthi Kusum went to the Pitabaddera Police Station and made a complaint under CIB 248/184 about the incident. As she was vomiting and feeling faint she went to the Morawake Government Hospital and was admitted to the ward the same day. Still she is unwell continues to suffer from headache and backache and is unable to return to work. Other employees, Ms. J.D. Chandra, Ms. D.Y Pushpa and Ms. K.D. Seelawathi were also brutally beaten by Mr. Bandu Ranawake, and had received injuries including a broken finger.

10. Mr. Vidana Mahaduralage Somarathne¹⁰

⁹ Urgent Appeal Case: AHRC-UAC-046-2013

¹⁰ Urgent Appeal Case: AHRC-UAC-054-2013



Mr. Vidana Mahaduralage Somarathne, a farmer by possession, was illegally arrested, detained and severely tortured by the four police officers attached to the Polpithigama Police on 20 March 2013 at Ma Eliya Junction.



Mr. Vidana started screaming in pain in the early morning of 21 March. He was taken to the Polpithigama District Hospital. The on duty doctors admitted him to the Intensive Care Unit. He passed away at around 1 pm on 21 March. Despite being aware that the victim had been severely tortured the Judicial Medical Officer claimed that the cause of Mr. Vinda's death was a heart attack. His son Mr. Anuradha campaigned vigorously for a second post-mortem examination which was eventually granted by a Magistrate but the results have not yet been made public. Anuradha states that his father was illegally arrested and brutally assaulted and that due to this torture his father died.

The relatives complained to the Inspector General of Police (IGP), National Police Commission (NPC), Attorney General (AG) and Sri Lanka Human Rights Commission (HRCSL) on 25 of March, 2013 regarding the death by custodial torture of Somarathna and requested impartial and independent inquiry in to the incident. However to-date, none of these authorities have taken any action whatsoever on these complaints.

11. Mr. Amarasinghege Priyantha Samanthilake¹¹

Mr. Amarasinghege Priyantha Samanthilake was severely tortured by police officer P.C 51752 Jayasiri who is attached to the Negombo Police Station.

On 27 April 2013, at about 9.30 a.m., Samanthilake was returning home after taking his daughter to her tuition class. Police Constable (PC) Jayasiri and two other unknown people in civilian dress had arrived on two motorbikes and without any explanation they beat him brutally and damaged his motorbike before leaving. Samanthilake went to the Negombo Police Station and made a complaint under the Number of CIB I 269/ 554. Following his complaint PC Jayasiri threatened him saying that Samanthilake had done something and warned him to be careful or he would face bigger problems.

Following his complaint police officers went to see the place and took a statement from the eye witnesses as well. However, the Headquarters Inspector (HQI) of Negombo Police Station withdrew his complaint and sent it to the mediation board without Samanthilake's permission. On the same day of the assault Samanthilake was admitted to the Negombo Hospital. To-date his he is still unwell and continues to suffer from the damage to his teeth and left shoulder.

12. Mr. Krishnaswami Ramachandran¹²

¹¹ Urgent Appeal Case: AHRC-UAC-074-2013

¹² Urgent Appeal Case: AHRC-UAC-076-2013



Mr. Krishnaswami Ramachandran was arrested on suspicion of his involvement in the bomb blast at Daladha Maligawa in 1998. He was tortured and the charges were based on the confession he was forced to give under duress. In 2003 he was sentenced to death by the Kandy High Court. Ramachandran states that he was not given a fair trial. He further states that the trial was held in Sinhalese which is not his mother language and due to this he was unable to follow the proceedings. He also vehemently refutes the charges and says that he was convicted and sentenced for a crime he did not commit. In this regard Ramachandran has filed an appeal against the verdict of the High Court in the Court of Appeal of Sri Lanka which, according to his two daughters, is still pending.

Ramachandran's daughters also affirm that their father did not get a fair trial as he was not kept apprised of the proceedings and that his full testimony was never submitted and to the trial judge who did not consider the scant information that he did actually receive. The daughters further state that all these allegations were based on the confession which was made after severely torturing their father and where the officers took his signature by force. Therefore we appeal for justice and fair trial".

13. Mr. Dewasundaralage Thushar¹³



Mr. Dewasundaralage Thushar was illegally arrested, detained, brutally tortured and laid with fabricated charges. Thushara has been falsely charged with obstructing officers of the Department of Excise and having illegal liquor. The officers concerned asked Thushara to identify the person who was manufacturing illicit liquor and when he denied any knowledge of this the officer started beating him.

He was detained in the Excise Department office in Puttalam where he was tortured and forced to place his fingerprints on cans and bottles of illicit liquor and then write and sign a statement incriminating himself. On 21 March 2013, he was taken to the Magistrate's Court of Puttalam and a case was filed against him under the B/76251. He released on bail of Rs. 15,000 and Rs. 5,000 surety but as the relevant office was closed he could not fulfill the bail conditions and was remanded in prison for another 5 days. He was finally released on bail on 25 March 2013.

Thushara was admitted to the Puttalam District Hospital for treatment as his condition worsened and was discharged on the afternoon of the 26th.

14. Mr. Chandila Padmakumara Gurusinghe¹⁴

Mr. Chandila Padmakumara Gurusinghe 35 years old, of Kiripedda, Babuwo Kanda, Karandeniya in Galle District was illegally arrested, tortured and humiliated by officers of the

¹³ Urgent Appeal Case: AHRC-UAC-077-2013

¹⁴ Urgent Appeal Case: AHRC-UAC-082-2013



Karadeniya Police Station. The officers tricked him into accompanying him saying that they had a job for him at the police station. Once there he was illegally detained and tortured severely. The officers taunted him with slurs about being low caste and threatened to sodomise him if he caused any trouble for them.



Chandila was brought to the kitchen of the police station by SI Mendis, PC 53241 and another officer. There, the officers ordered him to remove all his clothes. The officers started to shout at him using obscene language. They further accused him of being 'Hakura' (derogatory words used to insult and defame people belonging to that caste). Chandila felt that he was being discriminated against by the officers. The officers further humiliated him by saying that they "wanted to use his anus". The officers first bound Chandila's hands behind his back. Then they threw another rope over a ceiling beam, which they attached to the rope binding Chandila's hands. He was made to stand on a chair and the officers took up the slack on the rope. When they were ready, PC 53241 kicked the chair out from under Chandila, leaving him hanging by his wrists. Chandila was in enormous pain and felt as if his shoulders and wrists were broken. Then SI Mendis asked him, "How are you feeling now, are you ready to tell the truth now?" With considerable courage, Chandila replied that he had nothing to say and reiterated that he had not committed any crime. SI Mendis then told other two officers that he had still had not sweated enough and to leave him in the same position for some more time.

After three days of detention and torture inside the police station, the officers produced Chandila before the Magistrate of Elpitiya on 10 May 2013. The Magistrate was remanded until 16 May 2013 and taken to the Galle Remand Prison. On 16 May 2013, Chandila was produced before the Magistrate of Elpitiya and released on bail. He is still taking treatment for the injuries he suffered at the police station.

15. Mr. Madawala Maddumage Don Aruna Nilupul Indika¹⁵



Mr. Madawala Maddumage Don Aruna Nilupul Indika (39) is an interior designer by profession. After he completed a job at the house of Anoma Siriweera, an Attorney-at-law, the lady's husband approached Nilupul and told him that their house had been burgled and that he suspected Nilupul of having done it. Nilupul denied the accusation. At the instigation of the Attorney and her husband Nilupul was illegally arrested, detained and inhumanely tortured by officers of the Matugama Police Station.

Nilupul was able to identify one of the officers as Raveendra Pushapakumara, attached to the Crime Branch of the Matugama Police. At 1 p.m. on the following day Nilupul was taken out of the cell and handcuffed by an officer. The officer then grabbed him roughly by the neck and took him to a room in the officer's quarters, which were behind the station. He was then forced into a sitting position on the floor of the living room. There were three officers present at the time, including Raveendra Pushapakumara, who was now in uniform. The other two officers were in civilian dress. Pushapakumara then shouted at Nilupul and told him that he had to admit to selling a stolen electric grinder; otherwise they would beat him so badly that

¹⁵ Urgent Appeal Case: AHRC-UAC-083-2013

he would never be able to work again. However, Nilupul denied the accusation and said that he had never engaged in any illegal act.

At that time Nilupul noticed that one of the officers was holding a bag of Kochchi chilies (a small but very strong chili). Pushapakumara placed the chilies in a disused sock and used a piece of hosepipe to crush them before adding some water to make a chili juice. Another officer made Nilupul lie on the floor facing upwards. He then tore off his sarong and pulled off his underpants. They held him down and Pushapakumara squeezed the sock so that the chili juice ran into Nilupul's eyes. When he tried to close his eyes to prevent the chili juice running into them the officers forced his eyelids apart. Nilupul suffered enormous pain due to this treatment and felt that he was losing the vision in his eyes. He started struggling violently but they held him down. They then placed a couple of chairs over him to prevent him from moving. The officers sat on the chairs to ensure that Nilupul could not push them away. Then Pushapakumara again began to drip the chili juice into his eyes. The officer then urged Nilupul to admit to the crime of theft but, despite the torment, Nilupul refused.

Once again he was held down in the same fashion and Pushapakumara dripped the chili juice into his eyes. Pushapakumara stopped the torture when he received a telephone call on his mobile and went outside to answer it. One of the officers then brought a pole with which he beat the soles of Nilupul's feet. Nilupul was left there for an hour until the three officers returned. The torture with the chili juice resumed.

Nilupul states that the officers of the Matugama Police Station illegally arrested, detained and tortured him to fulfill the whims of Anoma Siriweera, Attorney-at-Law, and her husband. He has made a complaint to the Inspector General of Police, the Senior Superintendent of Police, Kalutera and the Human Rights Commission of Sri Lanka. None of these authorities have initiated any inquiries into this case.

16. Mr. Kopiya Waththage Don Chaminda Priyantha Kumara¹⁶

Mr. Kopiya Waththage Don Chaminda Priyantha Kumara was accused of having stolen a mobile phone and arrested by officers of the Kalutara South Police Station. After severely beating him and forcing him to sign a statement which he was not permitted to read they implicated him in further unsolved cases. He was taken to the Additional Magistrate of Kalutara who remanded him without even seeing him as Kumara was forced to wait outside his chambers. Upon his arrival at the Remand Prison of Kalutara he fell unconscious and was transferred to the prison hospital. He was eventually released on surety bail and has to appear before the Magistrate of Kalutara on 13 September.



Three police officers have taken him to the Crime Branch and told him to sign a document which was already prepared. He signed it due to fear of further ill-treatment but affirms that he had no knowledge of the contents of the document. The officers then took him to a bathroom at the rear of the police compound where he was stripped naked. He was then made to lie on a bench facing upwards. Then one of the police officers used a wooden mallet to beat his testicles. Following this his ankles were cuffed and he was tied to the bench with coir rope.

¹⁶ Urgent Appeal Case: AHRC-UAC-084-2013

One of the police officers then climbed onto the window sill and from there jumped onto Kumara's chest. Following this the officers moved the bench on which Kumara was tied to the wall where there was a tap and hose pipe. While one officer sat astride Kumara another tied a cloth about his eyes and started to force water into his mouth and nose. While this was going on another officer started to beat the soles of his feet with the cinnamon stick. The officers took it in turns to force the water into his mouth and nose and beat him.

Kumara was suffering enormous pain felt as if he was drowning and pleaded with the officers to stop. While this was going on the officers accused him of stealing mobile phones, computers, the burglary of a banana shop where he stole soap and washing powder. The officers asked him how many houses he had burgled. When Kumara could no longer stand the pain he started to struggle.

On 31 May he was again produced before the Magistrate of Kalutara who released him on Surety bail of Rs. 15,000.00. At no time did any lawyer appear on his behalf. As there was no one to sign for his Surety he was returned to Remand Prison. On 3 June he was released from the Remand Prison and told that he was to appear before the Magistrate of Kalutara on 13 September 2013.

Kumara states that he was illegally arrested, detained, tortured and laid with fabricated charges by the police officers attached to the Kalutara South Police Station.

17. Mr. Sundaramani Sivakumar¹⁷

The Asian Human Rights Commission (AHRC) has received information that Mr. Sundaramani Sivakumar 36 years old was illegally arrested and detained by the Terrorist Investigation Division at the Kandy Headquarters Police Station where he was forced, under torture and threats to his life to sign blank pages. The officers then later filed fabricated charges to keep him in prison for almost five years to prevent him from revealing the torture he endured.

Upon receiving a message from the Kandy Headquarters Police Station to make a statement, Sundaramani was accompanied to the police station by his father in law where he was arrested and detained by the Terrorist Investigation Division without explaining any reason to him for doing so. He was continuously detained there for a period of three months and during his detention in the TID which was not explained to him by the officers. He was threatened with death and out of fear for his life and out of the fear of being continuously tortured he signed the blank sheets of paper.

Sundaramani's parents believe that their son is being detained with fabricated charges. Sundaramani states that he has now been in detention for 4 years and 11 months without any reason. He further states that he is among hundreds of other detainees who have been detained without any charge. He also states that all his rights – guaranteed to him under the Constitution - were denied to him by the law enforcement agencies.

¹⁷ Urgent Appeal Case: AHRC-UAC-096-2013

18. Mr. Nanthamuni Arachchilage Asitha Sri Dewanandha¹⁸

Mr. Nanthamuni Arachchilage Asitha Sri Dewanandha 34 years old, of No: T19, Ella Road, Iginiyagala in ampara District had been for a long period of time suffering from a mental disorder. He has been under psychiatric care for some time and has been taking regular medication since 2002. Frequently he would not take his medication and as his family is very poor they are unable to sometimes provide him with the adequate food. During such instances, he is known to become a nuisance to his family and neighbours and when this happens complaints are made to the police who arrest him and send him to the Angoda Mental Hospital in Colombo by the neighbours. As this has occurred on several occasions the police were well aware of his condition.

On 26 May 2012 he scuffled with some of the police officers attached to the Inginiyagala Police Station and accidentally injured one of the officers on the head. The officers from that station did not like Asitha and considered him a nuisance. Following the incident they searched for him until the morning of the 28th when they arrested him. At the time of the arrest the officers were in plain clothes and it was obvious from their demeanour that they did not consider him a mentally disturbed person. At the time of the arrest they assaulted him brutally and at one point, in an act of senseless brutality inserted a bottle into his rectum. His arrest and torture was witnessed by his neighbours who heard him screaming, "Please release me, please, don't beat me, please don't kill me".

Later Asitha was able to inform his mother that as many as 30 police officer's at the Iginiyagala Police Station had beaten him. They beat him with batten poles and some of the policemen trampled his body. He was assaulted in different rooms from time to time and on occasion was struck with a car battery. In an act of unbelievable cruelty they had also inserted a bottle into his rectum.

Asitha's relatives have made complaints to the Human Rights Commission of Sri Lanka (HRCSL), the Inspector General of Police (IGP) and the National Police Commission (NPC) requesting them for an impartial and independent inquiry. However, to this date, all of these authorities have failed to take any action.

19. Mr. Ganeshan Pushparaj & Mr. Ganeshan Govi ¹⁹

Mr. Ganeshan Pushparaj and his brother Mr. Ganeshan Govi of Odinton Estate, Lindula, Thalawakalle in Nuwara Eliya District have been detained for more than 4 years and 10 months by the Terrorist Investigation Division. They were tortured in detention and have been laid with fabricated charges. It is believed that the reason for their continued detention is their failure to pay the bribe demanded by the TID officers. On 15 October 2008 Pushparaj was taken by officers attached to the Terrorist Investigation Division (TID) of the Kandy Headquarters Police Station. At the time they promised that they would record a statement

¹⁸ Urgent Appeal Case: AHRC-UAC-108-2013

¹⁹ Urgent Appeal Case: AHRC-UAC-110-2013



from his and send him home. When the officers took him he was not given any explanation of why they wanted a statement from him.



During his detention, he had been severely tortured and forced to sign blank papers and documents, pleading guilty to crimes that he had never committed or was involved in. He was finally produced before the Magistrate of Teldeniya, the Magistrate of Panvila and the Magistrate of Matale on fabricated charges following which he was detained at Bogambara Remand Prison. Later Pushparaj learned that the Attorney General has filed another two cases against him. The two case numbers were: HC/83/2013 and HC/25/2013. He remains in remand prison due to the constant delays in the hearing of the cases.

Pushparaj's brother Ganeshan Govi (30) was also arrested on 22 December 2008 and was detained at Katugastota Police Station. Pushparaj was treated in Kandy Teaching Hospital since he was severely tortured by the police officers attached to the TID. Govi his brother also sustained injuries due to the severe torture he suffered in police custody. Their mother Murudai has learned that the Kandy TID officers have taken money from families of detainees who have been detained under the Prevention of Terrorism Act, amounting to sums of up to Rs. 2 million to either release them or frame lighter charges.

20. Mr. Velu Yogarasa²⁰

Mr. Velu Yogarasa was arrested and detained in Bogambara remand prison by the TID in August, 2008 under the Prevention of Terrorism Act. He was severely tortured in custody on several occasions by the prison officers.

Mr. Velu Yogarasa (26) of Marugola, Ukuwela (Matale District) was arrested on 9 August, 2008 and has been in Bogambara Remand Prison for the last 5 years. He was arrested and detained under the Prevention of Terrorism Act (PTA) and was severely tortured on 30 September, 2013 by being beaten with a high tension electric wire.

In the early morning of 30, September 2013, Velu Yogarasa was taken to another cell and severely beaten with a high tension electric wire. He screamed for help but to no avail. The prison officer, known to the prisoners as "Galle Mahattaya" (as he is from Galle), threatened Velu and said: "I am from the south, I am not afraid of anyone". Velu Yogarasa was beaten on his head, feet and back and one of his fingers was broken. This ordeal went on for 15-20 minutes and when the other prison officers discovered that Velu was bleeding he was sent to the prison hospital. The doctor gave him few Panadol pills and Velu requested the authorities that he wanted to be admitted in a general hospital. His request was refused. Velu Yogarasa was then met by his lawyer at around 11 a.m. who testifies that Velu told him that he had been subjected to severe torture. The lawyer has seen the marks all over his body and that his finger was broken and bleeding.

²⁰ Urgent Appeal Case: AHRC-UAC-130-2013



21. Mr. Balasundaram Jeyamagudam²¹

Mr. Balasundaram Jeyamagudam was arrested by the TID on the charge of being associated with the LTTE four years after the civil war ended. His wife believes that the reason for his arrest, and that of other innocent victims, is to justify the continued presence of the TID and the army in the north. He has been detained since January 2013 and tortured to confess that he was a member of LTTE.

According to Balasundaram he was never involved with the LTTE and he was arrested on 13 January 2013, at his residence, four years after the civil war ended. Having questioned Balasundaram at the TID office at length and severely tortured him, he was forced to accept that he was with the LTTE for a day at least, which he has refused. Due to the severe torture, Balasundaram was injured and was bleeding and therefore he was taken to Vavuniya Hospital for treatment but his wife was not allowed to see him at the hospital. Having tortured him for 10 days in Vavuniya, he was brought to the Colombo TID office on the 23rd January 2013, where he is still detained.

According to Anne Catherine, Balasundaram has been severely tortured. He was beaten with poles, slapped and TID officers stood on his chest until he was injured and fainted. He was forced to accept that he was with the LTTE and sign documents.

Furthermore, Anne says that the TID officers and the military continue to arrest people even now, in order to justify their presence in the north and further tell the general public that the LTTE is coming up again.

22. Mr. Jayantha Aberatne²²

Mr. Jayantha Aberatne, a security officer has been arrested detained and tortured, and laid with false charges by the Headquarters Inspector of the Teldeniya Police Station. On 21 June 2013 at 1 p.m. when Jayantha was on duty, he was summoned to the office of the Teldeniya Headquarters Inspector of Police. When he met the HQI named Dharmaratne, he was questioned about some white sandal wood that was lost at the Magistrate's Court and when Jayantha told him he had no knowledge of the matter the HQI locked his office door and severely beat him. Dharmaratne kicked him in the groin and stomach. He was stripped of his uniform and during the beating a finger on his right hand was broken.

After he was severely tortured Jayantha was asked by the HQI to admit that he helped others to steal the white sandal wood from the Magistrate's Court. Afterwards, one by one around three people were brought to the office and Jayantha had to say: "I did this business with you". Jayantha states that after severe torture he had no option other than to do what the HQI ordered him to do. According to Jayantha the white sandal wood was in the custody of the Magistrate's Court as case productions and had been misplaced. On 22 June Jayantha was produced in court and remanded at the Bogambara Remand Prison. Upon his arrival Jayantha

²¹ Urgent Appeal Case: AHRC-UAC-131-2013

²² Urgent Appeal Case: AHRC-UAC-134-2013



told the prison officers about the torture he had endured and was admitted to the Prisons Hospital. He was bailed out on 24 June, 2013 and following his release Jayantha was admitted to the Teldeniya Government Hospital where he was treated until 27 June 2013.

Violence Against Women

A recent UN led survey into violence against women across the Asia and Pacific region revealed shocking statistics on Sri Lanka, one of six countries included in the three year study, along with China, Indonesia, Bangladesh, Papua New Guinea and Cambodia.²³ The study revealed that fifteen percent of men surveyed in Sri Lanka admitted to having committed rape, 65% of these men said they had committed rape more than once, with 40% committing their first rape before the age of 20. Most alarmingly, only 3.2% of those who admitted rape had been arrested, and only 2.2% had been jailed. In other words, in 96.5% of rape cases the rapist experienced no legal consequences. Only 34% said that they felt worried or guilty about what they had done. Both these figures are the worst among the countries involved in the study.

And this cannot be blamed on the sample size or the men who happened to respond. It was recently revealed that in Sri Lanka only 600 perpetrators of sexual abuse had been remanded in 300,000 cases, i.e. only 2% of the abusers. According to the report²⁴, a woman is raped every 90 minutes in the country, 95% of women who use public transport experience sexual harassment, and 3-5 children are raped every day. Despite this, 65% of men said that the law made it too easy to bring charges against a rapist.

Women in Conflict

Sri Lanka suffered enormously from the conflict which resulted in more than a million people being internally displaced. The male population has continued to decline due to disappearance or death, which has increased the female population in the North and East of the country. Today, more than 4 years after the end of the conflict, women in the north are taking up a new and challenging role as breadwinners, with more women becoming day labourers to support their families.

A survey conducted by the Jaffna-based Center for Women and Development, a non-profit group, revealed that the northern region had approximately 40,000 female-headed households - more than 20,000 in Jaffna District itself.²⁵ Although accurate statistics are hard to come by because many people remain displaced, government sources indicate that the northern and eastern regions combined are home to some 89,000 war widows. "Over 50

²³ The UN Multi-country study on men and violence in Asia and the Pacific - <http://www.partners4prevention.org/about-prevention/research/men-and-violence-study> -The Sri Lankan section of the study was conducted in Colombo, Nuwara Eliya, Batticaloa and Hambantota, with respondents answering sensitive questions anonymously to try and ensure honest disclosure.

²⁴ *ibid.*

²⁵ www.irinnews.org/report/90429/sri-lanka-women-take-over-as-breadwinners-in-north

percent of them [*women who head households*] are single parents under 30 years of age supporting their own and extended families."²⁶ This has had a drastic affect on livelihood options.

Overseas Domestic Workers

Large numbers of Sri Lankan women of all ethnic and religious groups, most between the ages of 18 and 45, are employed as domestic helpers in the Middle East. Many of these women are taken advantage of by employment agents, some of whom charge as much as Rs. 40,000 (USD \$ 4,000), almost 15 times what the law permits, for their services²⁷. Furthermore, since good health and childlessness are prerequisites for employment in the Middle East, many women are subjected to humiliating and potentially dangerous medical procedures and drugs and torture at the hands of both employment agents and their employers. The abuse does not end when the women arrive in the Middle East. Many more are abused by their Middle Eastern employers, including being forced to work 12 to 15 hour days and being refused the wages agreed upon, to outright physical, psychological, and sexual abuse – which has seen a drastic increase in the recent past.

The Legal Rights of Women

In 1981, Sri Lanka ratified the United Nations Convention on the Elimination of Discrimination Against Women. Despite the convention's provisions and constitutional guarantees, however, inequalities remain. Domestically, the Sri Lankan constitution guarantees equality before the law and equal protection of the law to all citizens²⁸ and further states that "no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion..." However, most laws and government programmes contain no special measures to ensure gender equality and women's equal access and participation. In the Katunayake Investment Promotion Zone (Free Trade Zone), where 86% of workers are women, conditions for factory workers are not regulated, unionization is prohibited, and workers are subject to long hours and inadequate remuneration. According to Kumari Jayawardena, a Sri Lankan feminist, "wages between men and women are unequal (in agriculture), while in other fields women are given the less skilled jobs". The presence of women in politics has also been minimal.

Freedom of Expression

While most of the incidents of grave concern against the freedom of expression in Sri Lanka remain unanswered, the space for expression is not simply shrinking. It is faltering, degenerating, disintegrating, and shattering in the deteriorating authoritarian system noted

²⁶The Association for War-Affected Women (AWAW)

²⁷ Reuters 24 Apr. 1990

²⁸Subsection 12.(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

by the High Commissioner of the Human Rights, Dr. Navi Pillay.²⁹ After dozens of journalists have been victimised by this system, almost all media institutes based in Colombo are now run under enormous political influence, mostly of the President, Mr. Mahinda Rajapaksa, and other key players in the government, also from the Rajapaksa family. Meanwhile, while large numbers of journalists are already in exile others are also leaving the country due to harassment, intimidation, and attacks on their basic rights.

In the meantime, the government is clearly taking a position that they are not willing to accept freedom of expression under the norms but are rather trying to bring it under the thumb of the ruling regime and their personal desires and agendas. Freedom of expression in Sri Lanka is nothing other than a day dream under the political culture of President Rajapaksa.

It was in the middle of 2013 that the government information department, headed by the former senior lecture who had headed the department of communication in the University of Kalaniya, Colombo, organized a workshop on, 'Patriotism and the role of the media.' There was a message from the Minister of Mass Media and Information, Mr. Keheliya Rambukwella in the workshop which stated the following:

"Distorting of information, misleading the people and destabilising society by using the media are also taking place. In this regard that it is important that the professional journalists should act with the right understanding. As it has been emphasised in the Mahinda Chintana, it is my belief that instead of using the media to fuel political animosity, it should be used with self restraint for achieving the country's social, cultural and economic development objectives and to raise the glorious name of the country without damaging social and moral ethics,"³⁰

He elaborated the government position by saying, "If the people get correct information about things happening in the country at all times, they will come to the right conclusions."³¹ Perhaps, it is "essential to identify the right path the media should take,"³² said the Minister.

Interestingly, the 'Mahinda Chinthanaya', the election manifesto of the President Rajapaksa, pointed out the importance of freedom of expression, lauded by most of allies of the President. The manifesto states: "Recognizing the right of the people to have to access to correct information, the foundation of our media policy is to get the broad participation of the media toward achieving country's social, cultural and economic development objectives"³³ The manifesto further reads, "State media will be made to be the highest example of in the use of an independent and responsible media and toward this. The state media will be de-politicized."³⁴

Opening remarks by the UN High Commissioner for Human Rights (<http://un.lk/news/opening-remarks-by-un-high-commissioner-for-human-rights-navi-pillay/>)

Available at: <http://freemediasrilanka.wordpress.com/2013/05/05/united-nations-world-media-freedom-day>

³¹ *Ibid.*

³² *ibid.*

³³ Mahinda Chinthanya (English Version): <http://www.president.gov.lk/pdfs/MahindaChinthanaEnglish.pdf>

³⁴ *ibid.*

However, the real situation, as given by the actual reality of the situation shows a clear-cut picture of intimidation and harassment of journalists and their institutes while the State's own media engages in slander and vulgar campaigns against selected people who raise their voices against the government. It was clearly proved how the state media functioned during the first and second resolutions on Sri Lanka tabled at the UN in Geneva, and also the impeachment against the 43rd Chief Justice, Dr. Shirani Anshumala Bandaranayake.³⁵ As the Asian Human Rights Commission pointed out, one of the people that conducted campaigns against selected people through state media was politically motivated to make baseless allegations and to try and humiliate those speaking out against the government.³⁶

It is a sheer fantasy to believe or take seriously what the 'Mahinda Chinthanaya' pointed out on the freedom of expression. It was aimed purely to grab public votes. However, when it's come to implementation it is a completely different story. The prevailing strategy of the government, regardless of 'Mahinda Chinthanaya' is do as we say not as we do.

Even after the civil war ended in May 2009, the government showed its colours by assaulting journalists and their institutes in the North as well as in the South. For a period there was concern about the slight privileges that most newspapers based in Jaffna peninsula deserved in terms of the space to publish realities, but the heavy militarization in the North not only decreased the freedom but also forced many journalists to flee the country or remain silent. This continued with a series of maverick attacks on Udayan,³⁷ an independent daily based in Jaffna by an unknown armed gang which caused injuries to several people on April 3, 2013.³⁸ However, the government offered no solution other than tomfoolery. It conducted no proper investigation.

It was few days before the official fact finding visit of Dr. Navy Pillay, organized upon request from the Government of Sri Lanka, when a senior journalist's house was robbed and attacked by people who, it turned out, were in the security forces. Mrs. Mandana Ismail Abeywickrama, the associated editor of the *Sunday Leader*, and the president of the newly formed Sri Lanka Journalists' Trade Union (SLJTU), was attacked by five men armed with hand grenades and knives. In responding to the incident the government provided different versions of the events, incident, labeling it as an attempted robbery by some deserters. "Nevertheless the police and army swiftly described the incident as a burglary that was not aimed at stifling the media," reported by the BBC correspondent in Colombo.³⁹

³⁵ Impeachment of Shirani Bandaranayake:

www.en.wikipedia.org/wiki/Impeachment_of_Shirani_Bandaranayake

³⁶ SRI LANKA: Rajpal Abeynake calls Chief Justice John Marshall a "cunning" and "devious" person and Justice Vigneshwaran a schizophrenic: <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-150-2012>

³⁷ Udayan , a daily based in Jaffna: <http://onlineuthayan.com/>

³⁸ Sinhala medium Statement issued by the Free Media Movement in Colombo/

³⁹ Sri Lanka Sunday Leader's Mandana Ismail Abeywickrema flees

<http://www.bbc.co.uk/news/world-asia-24148142>

Interviewed by a Paris-based rights group Mrs. Abeywickrama narrated the incident as follows:

“After entering my room and ransacking the wardrobes, I was asked by the assailants what was in the chest of drawers in the room. I said files and documents. I was then asked if I was sure it contained files and documents. I said yes. They asked me to open it. When I said I did not have the key since it belonged to my husband, one of the assailants assaulted me. I said they could break open the chest of drawers and see for themselves. They then broke the chest of drawers and took out the drawers and unloaded the files on to the bed. They then went through the files one by one. While they were ransacking my room, one of the assailants received a telephone call on his mobile phone. He then went to a corner of the room and answered the call. Even when I asked one of the assailants hours later as to why they were not leaving after taking whatever they want, he asked another assailant, “Ask what’s to be done now?” I have told all these to the police. All I can say is that these actions of the assailants have left several questions that need to be answered.”⁴⁰

She further elaborated, “It is not safe for journalists who believe in being a voice for the voiceless and seek to report the truth by exposing corruption, fraud and other wrongs that take place in the country. The incidents faced by me in the past few weeks have clearly shown that journalists who follow principled journalism are facing danger.”⁴¹

Later, Mrs. Abeywickrama left for a North American country⁴² on September 17, 2013, as she found her country no longer safe for her.

In a joint appeal to the High Commissioner of the Human Rights, Dr. Navi Pillay, Reporters without Borders (RSF) and its partner organization, Journalists for Democracy in Sri Lanka (JDS), summarised the threat that the media personnel and their institutes face in the present political circumstances in the island nation. “Media workers have been killed, abducted, made to disappear and forced to flee the country while media institutions have been bombed and burnt. Sri Lanka’s only provincially produced newspaper, Jaffna based ‘Uthayan’ alone, has come under brutal attacks over 37 times and at least five of its journalists have been killed since 2002. While all these crimes were committed in an extremely militarised area, no one so far has been brought to book,”⁴³ the appeal pointed.

Many senior journalists still remain outside the country, and the political influence and interference are at the highest levels against the local media in the country. The personal liberties of not only journalists but also the citizens at large are quickly evaporating. Many formally outspoken people are remaining silent out of fear for their lives while landmark cases against media freedom, like the brutal killing of Mr. Lasantha Wickrematunge⁴⁴ and the

⁴⁰ 'Principled journalism brings danger' - Mandana Ismail Abeywickrema
<http://www.jdslanka.org/index.php/2012-01-30-09-31-03/media-a-culture/387-principled-journalism-bringsdanger-mandana-ismail-abeywickrema>

⁴¹ Ibid

⁴² Sri Lanka editor flees after armed attack
<http://english.alarabiya.net/en/media/print/2013/09/18/Sri-Lanka-editor-flees-after-armed-attack.html>

⁴³ RWB and JDS address open letter to Navi Pillay
<http://en.rsf.org/sri-lanka-rwb-and-jds-address-open-letter-to-27-08-2013,45104.html>

⁴⁴ Lasantha Wickrematunge (5 April 1958 – 8 January 2009)

forced disappearances of Mr. Prageeth Eknaligoda⁴⁵ remain under the cynical manipulation of the government with no chance of a fair prosecution in the judicial procedure.

Political influence combined with military influence has evaporated the last milestone of the freedom of expression in the country. Most people who have access to internet have to rely on sources of information and publications based outside the country. The public is losing faith that that the truth will be told by local media. Media personnel are losing the quality of their profession due to this authoritarian government behaviour.

Just a few days before the Commonwealth Meeting in Colombo, security officials raided⁴⁶ a meeting organized by the Free Media Movement, where two foreign activists who had visited a friend in the movement were detained. The security officials raided the place without a warrant. Later, those two activists arrested by the security forces were deported.⁴⁷

Though the incidents of killings, kidnapping, and disappearances of journalists are fewer compared to past years, the reason is not that the government now respects the freedom of expression. They are due to the creation of the culture of silence and the spread the fear in society. According to the New York-based Committee to Protect Journalists (CPJ),⁴⁸ there are over 400 journalists living in exile the world over, and nearly one fourth of them are from Sri Lanka,⁴⁹ a media status any country claiming to be a democracy should do its best to avoid. A noted journalist, editor of a Colombo-based daily, published an account recently, on exiled journalists from Sri Lanka.⁵⁰

The situation is worse. There is hardly space to publish the truth, and access to original sources has been closed by either politicians or military personnel in the country. In the meantime, the President Mahinda Rajapaksa and his family members have created a culture where no one has the right to talk rationally about them. Only praise their work with optimism can be broadcast (Reports show that over three hundred and fifty relatives of President Mahinda Rajapaksa are holding key positions in bureaucracy). The Sri Lanka Campaign⁵¹ shows five extremely important infographics about Sri Lanka, including that of

https://en.wikipedia.org/wiki/Lasantha_Wickrematunge

⁴⁵ Prageeth Eknaligoda

https://en.wikipedia.org/wiki/Prageeth_Eknaligoda

⁴⁶ FMM workshop raided

<http://www.srilankamirror.lk/news/11460-fmm-workshop-raided>

⁴⁷ Sri Lanka to deport Australian media activists

<http://www.theaustralian.com.au/media/sri-lanka-detains-australian-activist-jacqui-park-says-rights-group/story-e6frg996-1226750151883>

⁴⁸ Country Report: Sri Lanka – Committee to Protect Journalists: <https://www.cpj.org/asia/sri-lanka>

⁴⁹ Government aggressively censors outlets, blocks information: <https://www.cpj.org/2013/02/attacks-on-the-press-in-2012-sri-lanka.php>

⁵⁰ Exiled, from journalism : <http://www.ceylontoday.lk/59-31472-news-detail-exiled-from-journalism.html>

⁵¹ The Sri Lanka Campaign is a group of activists: <http://www.srilankacampaign.org/welcome.htm>

the Rajapaksa family.⁵² Under these circumstances, criticizing any family member of the Rajapaksa clan is taboo in the public domain. Those who criticize are treated as traitors of the country.

Religious extremism and a culture of intolerance are key strategies of social control. The Ministry of Defence, under the Secretary, Lt. Col. (Rtd.) Gotabaya Rajapaksa, who is a brother of the President, has direct involvement in sponsoring extremist groups. These groups have been involved in spreading nihilistic and baseless allegations against targeted individuals, including those engaged in journalism. The government is in no mood to lift the ban on targeted websites blocked by the main internet service provider in the country, while the court has dismissed the case filed by the Free Media Movement, a media watchdog, against the blockage.

The system has developed rotten, degenerated, and vitiated layers to cover up reality. These developments are used as a counterbalance against those who question the government. It was in September 2013 that President Mahinda Rajapaksa, in an interview with Al Jazeera,⁵³ said that there is an exaggeration made by certain groups about his government and that people are spreading baseless allegations against him.

Under the name of the mega development and patriotism there are grave dangers prevailing against freedom of expression in the country, while the society at large suffers in anxiety. Either obedience or keeping away are most suitable strategies that would be followed by journalists, forget engaging in public awareness or talking against the situation. It is time for the international community, with the help of the United Nations, to urge the government to live up to its obligations to allow freedom of expression.

Land Rights⁵⁴

Acknowledging that land is one of the most fundamental resources necessary for human beings to survive, post-war Sri Lanka has seen major scale development particularly in the former war affected areas. Yet political motivations compelling acquisitions/evictions have led to tensions within communities. A careful analysis of the Sri Lankan experience clearly demonstrates a pattern where regardless of the law, government power is increasingly being used in order to acquire land for development purposes or for militarization. In this context the absence of transparency in the functioning of state organs in regard to acquisition/eviction procedures has resulted in the process becoming less participative and clearly arbitrary and this is in particular seen most evidently in the former war affected

⁵² Five infographics about Sri Lanka: <http://blog.srilankacampaign.org/2013/03/five-infographics-about-sri-lanka.html>

⁵³ Mahinda Rajapaksa: 'This is all propaganda': <http://www.aljazeera.com/programmes/talktojazeera/2013/09/mahinda-rajapaksa-this-all-propaganda-201392716130376448.html>

⁵⁴ The AHRC acknowledges the contribution to this Chapter, by the Law and Society Trust, with their study titled '*Not this Good Earth; Rights to Land, Displaced Persons, and the Law in Sri Lanka*' by Jayantha De Almeida Guneratne, Kishali Pinto Jayawardena and Radhika Guneratne, Law and Society Trust, October 2013.



regions of the North and East with the resulting impact most felt by tenants without security of tenure, women and children who do not have title documents to land.

From a comparative perspective, it may be relevant to note that for around a century, colonial land acquisition legislation in the entire sub-continent, was not accompanied by corresponding legally enforceable resettlement and rehabilitation norms. In Sri Lanka, the government agencies, entrusted with the duty to provide an equitable framework for resettlement of internally displaced persons, have not done their job.

Justice indeed must be done according to law; but we ask the question; Is justice currently being done according to law in the context of state practice with regard to the 'wholesale' acquisition of privately owned land in Sri Lanka? The same question applies in regard to hasty evictions from state lands occupied by individuals whose families have been living in those lands for generations. This trend is now seen in rural communities all over the country.

Moreover, the impact of recent government-led initiatives in regard to post-war development is worrying. The general thrust of the National Physical Plan⁵⁵ forms an important part of these concerns. Acts such as the Tourist Development Act No 14 of 1968 , and the Strategic Development Projects Act, No.14 of 2008 are particularly used very frequently in the North and Eastern areas of the country. These laws enable the acquisition of properties of private landowners without prior payment of compensation, for strategic development purposes such as the development of tourism. When compensation for such acquired land is claimed against the State, the State may well submit, that, there are no funds to defray such compensation. Would then, the judiciary in the country be able to compel the State to pay such compensation? The answer to such a question (going by recent judicial precedents) appears unfortunately to be in the negative.

Constitutional Protections & Legislative Guarantees

The Constitution of Sri Lanka does not recognize the right to own land as an expressed fundamental right. However, an acquisition by the State may be challenged on the ground of arbitrary action postulated by the concept of the Rule of Law, flowing from the right to equality under Article 12 (1) of the Constitution. An acquisition could also be challenged under Article 140 of the Constitution through an application for an Order in the nature of a Writ. Our appellate courts have consistently held that, when the Minister of Lands declares by Gazette under the provisions of the Land Acquisition Act that, any land is required for a public purpose, such executive fiat cannot be questioned in any court.

Acquisition of Private Lands

⁵⁵ (Approved on 03/07/2007 by the National Physical Planning Council chaired by the President as per Section 3 (1) of the Tourist Country Planning (Amendment) Act No 49 of 2000) to be implemented over a period of 20 years (2011-2030)



There were many statutes enacted to deal with Land and which made provision for the issuing of permits, grants, licences, etc since the 19th century. At present, lands are acquired by the State using the Land Acquisition Act and the Urban Development Authority Act. The Minister of Lands is empowered to acquire a privately owned land under the Land Acquisition Act while the President of Sri Lanka could sanction an acquisition under the Urban Development Authority Act.

The requirement of any private property being required for a public purpose and the payment of “just compensation” operate as conditions precedent to the actual “taking” of a private land by the government. The Land Acquisition Act of Sri Lanka confers power on the Minister to set in motion the exercise of acquiring private land for “a public purpose” by merely declaring that by gazette notification he is empowered to state that, a private land is required for a ‘public purpose’. The Act does not require the Minister to state the public purpose for which such private land is required. In a series of decisions of the Appellate Courts of Sri Lanka discussed in the study it had been consistently held that, the Minister is not obliged to state ‘the public purpose.’

The overall pattern of how privately owned land is being acquired by State authorities reveals that, on the presentation of bogus deeds coupled with brute force, owners of land possessing *prima facie* valid deeds are being told to vacate on the strength of such bogus deeds. This plight is being particularly faced by Tamil and Muslim citizens, due to the militarization of the North and East, in the post-war years. Those who had been compelled to vacate their lands during the war are now faced with frauds that are perpetrated on them by persons possessing political influence and power. In the Southern regions meanwhile, the poor and marginalized Sinhalese citizenry is pitted against the might of a pronounced State policy centered on the acquiring of private properties citing an urgent public purpose and in many cases, selling them to private companies thereafter for hotel development. Administrative practice during the period under review during consultations with provincial land commissioners and officers discloses several instances where the Urban Development Authority (UDA) as well as local authorities have acquired private land ostensibly for the purposes of urgent public purpose but thereafter used the land so acquired to construct hotels

The Impact of Devolution

In 1987, Parliament passed the 13th Amendment to the Constitution and insofar as lands were concerned, the President of the Republic was ultimately vested with the power to make grant or dispose of such land. Though the 13th Amendment made provision for a National Land Commission, (the constitution of which includes members of Provincial Councils) which was empowered to formulate a National Lands Policy, this has not been established up to date. In particular instances, the interplay between the dual authority bestowed in respect of matters concerning lands on both the Centre and the Provinces has resulted in increasingly complex legal dilemmas which highlighted yet unresolved fundamental ambiguities inherent in the 13th Amendment with regard to powers of the Provincial Councils concerning land.

Case Studies



Several case studies set out below highlights that people from almost all parts of Sri Lanka have faced issues with regard to the acquisition of their lands by the State.

- In the North and East, the issue of High Security Zones (HSZs) established during the war and now evolved into military strongholds, impacts negatively on the livelihoods of the owners of the lands situated in the HSZs.
- In Sampoor, in the Trincomalee District land previously designated as an HSZ is now being used for a new coal power project initiated in collaboration with India.
- In Thiriyai, a mainly Sinhala populated village the government is refusing to let many villagers who had been displaced due to the war return on the pretext of claims by the Forest Department to their lands.
- In the Batticaloa District, Pavachikudiyena or Paduvankarai Muslims who had been chased away or fled during the conflict are now returning to their lands but the Tamils who are currently in occupation of those lands are unwilling to return them creating much tension between the communities.
- In the Ampara District, in Panama the mostly Sinhalese villagers around the area have lost their lands to armed groups who have attacked and evicted them from their lands.
- In Olvuil, people have lost their lands for the construction of a commercial port.
- In a village called Kesankerni (Ashraffnagar) the inhabitants are being deprived of their land for the establishment of a military camp in the area.
- In the Northern Province, meetings with villagers confirmed that even outside the so-called High Security Zones (HSZs) the SL military has appropriated acres of land in the peninsula from civic bodies and private owners.
- In Karainagar for example, the SL Navy has appropriated lands from the local government bodies.
- In April 2013 a notice by the Land Acquiring Officer for Jaffna acting upon the instructions of the Minister of Land, was issued notice of the acquisition of a vast tract of land (6381 acres, 38.97 perches) within the Tellipalai HSZ in Valigamam North for the purported reason of building a Defence Battalion Headquarters [Jaffna]. More than 2000 affected landowners have filed fundamental rights and writ petitions in Court contesting this purported land grab.
- In the Southern Province, land has been acquired for many developmental projects including the newly established Mattala Airport and the Hambantota Port.
- In the Uva Province, the Uma Oya multipurpose project has given rise to many concerns regarding the impact on livelihood of the persons.



- In the Central Province, in Dambulla, the declaration of a Sacred Area within the town led to many landowners being sent quit notices.
- In Negombo, in the Western Province there has been a remarkable increase in the un-authorized filling up of 'lagoon lands' by persons having political patronage, several local politicians have been directly accused of acquiring vast tracts of a mangrove forest belt spanning on a 36-acre strip along the Negombo lagoon, historically identified as a marshy land rich in bio diversity.

Therefore, it would appear that Sri Lanka's public authorities (no doubt subjected to enormous political pressure in many instances) are not adhering to stipulated legal procedure in regard to the acquisition of land. Granted, laws impacting on the land rights of individuals in Sri Lanka are presently governed by statutes dating back more than a 1 ½ century, and therefore perhaps could be described as archaic. Nevertheless, if the political regime is sensitive and functions within a Rule of Law framework, the existing legal framework still carries potential, with appropriate modifications and/or amendments to cater for those who have lost their lands as a result of conflict as well as post-war development in Sri Lanka. Yet the problem in Sri Lanka is the non-adherence of the political establishment any sort of a rule of law framework which has pervaded the economic, social, civil and political rights of all.

Sri Lanka's Debt Burden

Sri Lanka has come under severe criticism regarding Government borrowings at high interest rates, borrowings which for the most part are being used to repay previous debts. Critics point out that despite the Government claiming that these borrowings is for development purposes, the monies in fact are channeled to pay salaries and pension payments of government employees, almost half of whom consists of armed forces and police personnel. Money is also allocated to provide food and other facilities for the armed forces. In the not so distant past the interest rates of government borrowings were around 2 - 2.5 percent. However the government today, borrows at around 9 percent which rate is unprecedented. The loans are not obtained on soft conditions as in the past when 10-15 year grace periods were given for repayments together 35 - 40 years' time for physical repayment of such loans. Presently the Government borrows from the Banks on their own terms. The critics have also pointed out that all this will lead to more and more borrowings and to a situation where the Government will be compelled to maintaining its cash flow, through borrowings, only.

The implication of all this is that the Government is unable to provide for facilities to stabilize the country by strengthening its prime and basic national institutions. Instead, the state of collapse of these institutions will continue, thus forcing the Government to rely on the recourse to naked force, to safeguard rule. This situation will negatively affect all institution particularly relating to the administration of justice. These institutions will continue to be relegated as unimportant and too cumbersome to maintain. The result would be for the Government to rely on "more efficient methods" such as direct use of force by way of extra judicial killings, torture and ill treatment and deprivation of liberties of its own citizens without any regard for due process.

Appropriation Bill 2014 & Debt

The Appropriation Bill for the year 2014 was presented by the President on October 4, 2013. According to the Bill⁵⁶, the expenditure estimated was approximately Rs. 1,542 billion and loans authorized to not exceed Rs. 1,100 billion. Further, it showed that Sri Lanka plans Rs. 234 billion of foreign borrowing in 2014, including Rs. 97.5 billion commercial borrowing, which is only a fraction lower than the previous year's allocation of Rs. 247.1 billion⁵⁷. It bears clear the Government's attempt to grant blanket authorization to raise Rs. 1,100 billion as loans during 2014 - which figure is over 71 percent of the projected total expenditure of Rs. 1,542 billion.

What is pertinent to note, is that provisions in the Bill does not provide for Parliamentary authorization nor review by the Parliament of individual Government loans. Therefore the Government is given a free hand in raising, the entire borrowings to the tune of Rs. 1,100 billion through domestic and foreign loans at interest rates set by those Banks.

This reveals that the government can arbitrarily - sans Parliamentary approval - decide to raise loans which will drag the country into a deepening debt crisis.

Inadequate State response worsening crisis

In 2013, the Sri Lankan Rupee depreciated 3.6 percent and is now under heavy pressure due to the lack of export earnings and reductions in the remittances of expatriate workers. The situation has worsened due increased demands of importers and failure to obtain the necessary foreign direct investments (FDI). In 2013, the government encouraged financial institutions and the commercial and state banks to take international loans. Following this the Sampath Bank of Sri Lanka raised USD \$ 500 million from international markets. Further, the National Savings Bank of Sri Lanka also issued bonds worth USD \$ 800 million for a 5 year bond plan.

Further, the Central Bank of Sri Lanka also relaxed financial regulations, allowing the private sector Banks, to apply for international loans.

The continuing trend in demanding foreign currencies for a higher rate of imports would create further depreciation of the Rupee. Further depreciation of the Rupee would create even more pressure on the government to repay its loans. The private entities and the banks would also face the same pressure. Thus pressure escalating on these main institutions would eventually as explained earlier result in the collapse of the basic national institutions in the country.

⁵⁶ Clause 2(1) of the Appropriation Bill

⁵⁷ Appropriation Bill, 4 Oct. 2013, issued on 07.10.2013 at the Gazette of the Democratic Socialist Republic of Sri Lanka

Past Human Rights Violations, Including Alleged War Crimes

Sri Lanka does not have a tradition of investigating allegations of gross violations of human rights, particularly associated with periods of insurgencies during its post-independence history. Commencing early 1971, there had been allegations of serious violations such as large scale killings following arrests that also included forced disappearances. There had also been allegations of serious violations relating to torture and ill-treatment during the aftermath of the 1971 insurgency. The total number of people allegedly killed – most following arrests and forced detention in the immediate aftermath of the 1971 insurgency – is estimated at around 10,000 persons.

In the South of the country, a further period of insurgency and counter insurgency related violence took place between 1987 and 1991. According to reports of several Commissions appointed to inquire into involuntary disappearances, the figure was set around 30,000 persons – all of whom were alleged to have been abducted or disappeared during this period. Despite the availability of such extensive information, no serious criminal investigation was ever carried out into these allegations.

In the North and East, from the early 1980s till May 2009, there had been a protracted conflict, where both the LTTE and the Sri Lankan armed forces stand accused of conducting extraordinary forms of cruelty and violence – some of which have been characterized as possible war crimes. Particular attention has been drawn to the final period of the conflict, a time related to which serious allegations are being brought forth, of killings in large scale of civilians, rape of women, forced disappearances, torture, and other forms of violence. Such accusations are made against both the LTTE and the Sri Lankan armed forces.

This particular conflict was one of extraordinary confrontations, described by one President as a *'killing match'*. The LTTE claimed that the only means of penetrating the defences of the armed forces was the use of suicide bombers, and it engaged on a mass scale in the training and in the use of such suicide bombers. To meet the demands of this cruel and gruesome conflict, it is alleged that many persons were forcibly recruited by the LTTE into their ranks. Among those forcibly recruited were also child soldiers. The retaliation by the armed forces was also extraordinarily violent in nature.

In a phase that is demanding inquiries into all violations, the Government's official stand, is that raking the past will only serve to create fresh wounds and therefore the approach should be one of "restorative justice" – in the resettlement of victims and rehabilitation of persons rather than a resort towards criminal justice. However, this approach is unable to create the necessary environment for a full revelation of what has taken place on the ground. It is rather an abuse of the principle tenets of restorative justice, to claim that justice can be meted out in any old way – without the full and complete revelation of what has taken place on the ground.

The Government is set to lose a big stake in allowing any type of real investigation into what has taken place during the time in question. It is obvious that the Government is already aware of the many details of the actual events. Therefore, obstructing a criminal investigation



is more for the purpose of burying even the available evidence and thus to create a vacuum in history or a memory loss relating to this entire period of the conflict. However, the very enterprise of attempting to create a memory loss is an 'unrealistic project'. There are large numbers of survivors of violence both from the LTTE as well as from of Government armed forces. While many of these persons, are living in the north and east of Sri Lanka, there are also others who live, in other parts of the country and, those who live outside of Sri Lanka. To demand that all these persons should suppress whatever knowledge they have, of what happened, is to make an impossible demand, which in any case is also a cruel demand in itself.

The basic premise of civilization is that people who have become victims of violence and injustice, should be allowed to be placed before the rest of the society, their story of what transpired and how. This is at minimum what a civilized society could offer to those who have become victim to the worst kinds of actions against them at the hands of people of that very society. No Government has a right, to make such a demand. The people also have to know that such demands are being asked from those who have lived through extraordinary forms of suffering.

Therefore, the demand that the Government is making, to suppress this requirement of providing an opportunity for the victims to be able to state their sufferings before the other members of the society is basically unethical and immoral. Such unethical and immoral demands, is a direct challenge to the very moral and ethical foundations of the entire society. By making such a demand, the Government of Sri Lanka is pushing the Sri Lankan society into a situation which cannot be justified in any manner whatsoever. If this approach proposed by the Government is to succeed, the Sri Lankan State will remain in a state of ethical and moral chaos for a long time to come.

Preventing people who are suffering from pain from speaking out could be done only by imposing extraordinary forms of repression throughout the country. It is only if the people live in a state of extraordinary fear that they would keep silent about their pain and suffering. Therefore, the large scale presence of the military and the intelligence services, in the north and east in particular, is no surprise.

While such a presence may have been a result of many considerations, keeping the people silent about their own grievances is certainly one of the main reasons for the presence of the armed forces in large numbers in these areas.

In the coming months, providing opportunities for people to state what has happened to them and to speak out of their sufferings and to be heard will become one of the major issues of political and social discourse in Sri Lanka. The reason for this is the resolution which the United States of America placed before the United Nations Human Rights Council last year. This resolution will reach a crucial stage during the sessions of the Council, fixed for March 2014.

The gist of the demands now is that either the Government should make genuine and credible investigations possible or pressure will be exercised on the Human Rights Council to initiate an international inquiry. For anyone who takes a balanced view, it is impossible not to support this basic demand on the Sri Lankan Government. It is simply an unavoidable, legal as well as an ethical and a moral, obligation of the Sri Lankan State to provide for such an



inquiry through its own initiative. People of Sri Lanka have a legitimate right, and also an obligation, to demand that the Government complies with its obligations.

Conclusion: The Future

Human Rights strategies of all different groups, local and international, those who have interest in the general human rights situation and those who have specific interests for example, the minorities, gender specific issues, issues relating to children, issues relating to migrant workers and all others – if they are not to become victims of the formidable and adverse political environment growing in Sri Lanka – should all learn to converge around a common strategy for the defense of themselves and their rights. Merely maintaining narrow interests for whatever reason, will only bring greater danger to each of these groups as well as to everyone in general.

The development of common strategies around which everyone can converge requires agreement on the overall situation and the common problems faced by all. If one were to use a metaphor used by perhaps one of the greatest thinkers of our times John Rawls, we should be able to stand behind “the veil of ignorance”, where we could forget purely from a strategic point of view, the specificities, of individuals or specific groups and look to the basic dangers faced by all. This, is the necessary pre-condition for developing a collective agreement and a collective will to fight against the great political evil that poses a danger to everyone. In this regard, the following aspects are vital, a *sine qua non*: the development of a common strategy between the minorities and those who belong to the majority on the basis of common threats faced by all to all of their basic rights. In fact such a common danger exists and it should be obvious to all.

If the ‘authoritarian project’ expands further and if the armed forces are absorbed into that project and if Sri Lanka is to become a beehive for intelligence services, there is no hope of a decent life for anyone in the land. This is the common danger. If this is understood despite the grave misunderstandings and great amount of bitterness that exists between the minorities and the majority community, it is still possible, on the basis of common interests to get together and to put up a determined fight for survival - together. If all the intelligent and the creative energies, of the more thinking and articulate elements of the country put their heads and also their emotions together, Sri Lankans can once again - in fact in a far better way - organize themselves together, as they have in the past, as they demonstrated in the 1953 ‘Hartal’. There is a reason, more so today, for that kind of genuine and realistic unity which requires much more than mere sentimental speeches of unity.

The international community needs to understand that the threat is faced by the entire peoples and all the systems within Sri Lanka. During the long conflict, between the LTTE and the Sri Lankan military, the world, at large misconceived the Sri Lankan problem as purely an ethnic conflict. Without doubt, there were serious aspects of ethnicity and discrimination of the minorities. However, the overall problem that developed in Sri Lanka since the Constitutions of 1972 and 1978, was and is one of, undermining the democratic framework and this is a matter that affects everyone. The international community is yet to come to grips with the totality of this situation, although there had been some understanding within the United Nations and within the developed world.



It is in the best interest of everyone in Sri Lanka - irrespective of whatever community they belong - to bring about a common understanding within the international community of the totality of this problem that all Sri Lankans face today. Every step, that the international community could take, without understanding the overall situation, could result in extreme and great divisions in the country which could negatively affect all. It is to be hoped that the perspective within the international community will be based on an understanding that encompasses the totality of the problem and will be on a basis that is just, towards everyone.

Back to democracy, back to the rule of law, and an end to the 'authoritarian project', which includes the military, should be the overall perspective and the slogan for the future if, the despicable and dismal situation that Sri Lanka now finds itself in, is to come to an end.