

**12<sup>th</sup> ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL  
HUMAN RIGHTS INSTITUTIONS – 24<sup>TH</sup> TO 28<sup>TH</sup> SEPTEMBER 2007 AT  
SYDNEY, AUSTRALIA**

**REPORT OF HUMAN RIGHTS COMMISSION OF SRI LANKA**

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Human Rights Commission of Sri Lanka was brought into operation by Human Rights Commission of Sri Lanka Act. No. 21 of 1996. Five Commissioners are appointed by His Excellency The President in terms of section 3 of the Act which is reproduced below:

*“The Commission shall consist of five members, chosen from among persons having knowledge of, or practical experience in, matters relating to human rights.*

*The members of the Commission shall be appointed by the President, on the recommendation of the Constitutional Council:*

*Provided however, that during the period commencing on the appointed date and ending on the date when the Constitutional Council is established, members of the Commission shall be appointed by the President on the recommendation of the Prime Minister in consultation with the Speaker and the Leader of the Opposition.*

*In making recommendations, under subsection (2) the Constitutional Council and the Prime Minister shall have regard to the necessity of the minorities being represented of the Commission*

*One of the members so appointed shall be nominated by the President to be the Chairman of the Commission*

*Every member of the Commission shall hold office for a period of three years*

*The office of a member shall become vacant:*

*Upon the death of such member;*

*Upon such member resigning such office by writing addressed to the President;*

*Upon such member being removed from office on any ground specified in section 4 ; or*

*On the expiration of his term of office”*

As the Constitutional Council is not functioning His Excellency the President acted under the proviso aforementioned.

Even before the 17<sup>th</sup> Amendment of the Constitution came in to operation in 2002 H.E. The President acted under the proviso.

In this connection we wish to quote the following which is an extract from the stocktaking report of the UNDP for the year 2007 on the strategic plan 2003 – 2006, Human Rights Commission of Sri Lanka by Peter Hosking released in April 2007.

### **“Commissioner Appointments**

With the exception of the Chairman, whose predecessor died in office in December 2006, the current members of the Commission were appointed by the President in April 2006. The Chairman was appointed in December 2006. These appointments were regarded as controversial because they were made in the absence of a recommendation from the Constitutional Council as required by the 17<sup>th</sup> Amendment to the Constitution (Art 41B(1)).

The position of the members of the HRCSL is that their appointments are lawful unless and until they are ruled unconstitutional by the Supreme Court. In that event they will resign, but in the meantime they consider themselves obliged to carry out their mandate in conformity with the Human Rights Commission Act. Inevitably, in these circumstances the Commission’s independence has been questioned in some quarters. Clearly, Commissioners have not been appointed via the kind of process that is stipulated in the Constitution and that most observers feel is the best guarantee of independence from the executive branch.

Whether or not they have been appointed by an independent process is, however, is a different question to whether the current Commissioners are in fact acting independently. There have been many instances around the world of commissioners asserting their independence, and reflecting this in their actions, despite not being appointed by a bi-partisan process. Equally, no appointment process, no matter how inclusive, can *guarantee* independence.

No-one spoken to in the course of this exercise suggested that there was clear evidence that Commissioners were not acting independently although some noted a different attitude to some issues and were concerned that this might indicate a less independent approach.

While all of the Commission’s stakeholders would prefer (some strongly so) that the appointments had been made in accordance with the Constitution, no-one was able to identify any instances where the failure to do so had demonstrably affected Commissioner’s performance of their responsibilities. Some commentators did observe that the current Commission exhibited a much lower profile than its predecessor. That in itself might indicate a reluctance to challenge the Executive. There is another, perhaps more likely, explanation for this, however. The Commission comprises three retired judges and two lawyers. The judicial tradition is to “listen, not talk”, lest the judge compromise the need to appear non-partisan and free from bias.”

It will therefore be seen that the members of the Commission are lawfully appointed and they can not be removed except by Parliament on proved misconduct, or on other grounds enumerated in the Section (4) of the Act.

As the work load of the Commission is very heavy and because of some agitations His Excellency The President has appointed adhoc special commissions to deal with allegations of serious violations of Human Rights. There are four such Commissions headed by retired Judicial officers. One Commission is headed by a Retired Supreme Court Judge. The other three are by a Retired High Court Judge of Sri Lanka who is also a member of this Commission.

### **Capacity Building of the HRC of Sri Lanka**

The Human Rights Commission of Sri Lanka raised funds and resources to develop its capacity. The Treasury contribution was increased from Rs. 65.61 to Rs. 111.3 Million in the year 2007. The total salary component is about 55 M approximately. The funding by the UNDP (Dept. for International Development) for the Backlog Project ceased although agreements were signed for the release of funds.

The fleet of vehicles is getting older and not roadworthy. The utilization of hired vehicles had eased the problems of mobility.

A new procedure has been adopted in weeding out cases not coming within the mandate of the Commission and the petitioners are informed immediately so that they could seek relief elsewhere for eg. Supreme Court, Ombudsman, Petition Committee of the Parliament or Appeal Tribunal against the decision of the Public Service Commission.

The website launched is being up dated with the assistance of UNDP and its consultant Ms. Yuanee Thampoe. They also assisted us by providing Data Base servers and other equipments such as laptops, fax machines and Printers.

There is a need to expand the office and locate in a spacious premises. This would be possible only in 2010 with the construction of a new secretariat by the Government. Extensive training programmes were conducted for the staff of the HRC on sexual harassment in work place, preserving environment, stock verification, Human Trafficking programmes and work management.

The programmes could be done with the funding assistance from Donors such as UNICEF, UNDP, CIDA, Norad, Asia Foundation and American Solidarity Centre for Labour Solidarity in Sri Lanka.

As the UNDP backed out of funding the Backlog Project, this year continuation of the programme is possible out of Treasury funds.

All vacancies in the top management and all vacancies in subordinate grade have been filled.

The Commission is comprised of 4 functional Divisions headed by a Director, namely

Administration & Finance Division, Inquiring & Investigation Division, Monitoring & Review Division and Education & Special Programmes Division.

The Commission closely collaborates with the Donor Agencies, NGOs and the Ministry of Disaster Management and Human Rights by providing information reported to the Commission and also examining the problems of social, cultural and economic nature in the activities of protection and promotion of human rights.

## **INQUIRIES AND INVESTIGATION DIVISION**

The Division is headed by the Director and the primary duty of the Division is to act under directives of the Commission in respect of complaints received by the Commission.

The Division maintains an orderly system for the receipt and registering of complaints and orderly system for filtering of complaints to determine whether they are within the commission's mandate, in terms of the Law.

The Commission received 7617 complaints related to Human Rights issues in 2006 and 5005 are within the mandate of Human Rights Commission. Highest proportion of the complaints related to employment. 20% of the complaints are on torture arrest and detention. Other matters are connected with School Admission, University Admission inaction, harassments and other matters such as property or land.

Total number of cases concluded for the year 2006 is 5639. Cases were concluded by way of Recommendation or referring to other authorities or terminated if petitioner is not interested or he withdraws, Relief is granted if there is fundamental right violation revealed during the investigation.

Division Staff consist of Investigation officers, Legal officers and Regional Coordinators, Stenographers and clerks. Further Commission engaged Retired Judges and practicing Lawyers to work on part time basis to clear the backlog of cases.

The Staff of the Division visit Police Stations and monitor persons detained by judicial order or otherwise and take appropriate actions. The Division maintains data base on Detention Orders.

Every day one Officer is allocated for public hearing and complainants can get advice on their Human Rights related matters.

Human Rights Hot line is active 24 hours daily and Public can contact the Commission through the Hot line. Immediate actions are taken on arrest and detentions by contacting relevant authorities.

## **ACTIVITIES OF THE MONITORING AND REVIEW DIVISION**

**South Asia Regional Initiative Equity / Support (SARIQ) Programme; Protection and promotion of the rights of the children through awareness Workshops**

The Monitoring & Review Division of the Human Rights Commission has conducted a series of island wide awareness workshops on the protection and promotion of Child Rights with partial funding support from the SARI Equity / Support Program. This project commenced in January 2005 and concluded in October 2006.

### **Project outcome**

It is evident that the less awareness about new changes in the law relating to child rights was seen. HRC was able to observe some progressive steps taken by the state officials regarding protecting and promoting child rights. Also the programme helped the participants to gain knowledge regarding what was unknown to them in respect of child rights. Some doubts related to implementation of child rights were solved by this programme and widen the scope of knowledge on child rights. Moreover, it assisted to give speedy solutions to child rights violations.

### **International Children's Day Celebration 2006**

The Commission celebrated the International Children's Day this year as well. An art and essay competition was held with the participation of students from 13 schools in the Zonal Education Division of Colombo which hold classes in both Sinhala and Tamil media.

### **International Women's Day Celebration – 2006**

The Commission conducted a workshop to mark the International Women's Day 2006 on 7<sup>th</sup> March 2006 at the Sri Lanka Foundation Institute (SLFI). This Workshop was focused on issues relevant to women.

### Issues Discussed -

Policy on Sexual Harassment in Work places”

Act on Prevention of Domestic Violence

In October 2005, Parliament passed an Act to prevent domestic violence. Prevention of Domestic Violence Act No 34 of 2005 has a proactive approach. It offers a victim or a potential victim of domestic violence the right to make an application to the Magistrate's Court for a Protection Order for the prevention of domestic violence. The provisions of the Act and its application, constraints and difficulties that could be faced in the implementation of the Act as well as the methods needed to get the optimum benefits under the Act were highlighted in the presentation.

### **Report on the Women Migrant Workers**

With a view to promoting safe migration of women migrant workers, the Commission set up a Committee in February 2005 to examine existing procedures for the protection of women migrant workers with a special focus on domestic workers or housemaids.

## **War widows**

The presentation focused on a project that was being implemented by the HRC. The objectives of the project were to identify the problems of war widows, examine the legislative and institutional frameworks available for providing assistance to widows and examine the adequacy of protection given to war widows by the state and other agencies. Some of the difficulties faced in the implementation of the Project were also discussed in the presentation and the panel discussion that followed. The primary objective of the Project was to analyze the present situation in order to improve the efforts made for benefiting war widows.

## **Awareness Programme on Child Rights for the Junior Staff of State Children's Homes**

Human Rights Commission of Sri Lanka is always in the forefront in protecting human rights all over the country. The Commission pays much attention to rights of vulnerable groups especially to children. Intervention by adults in protecting and promoting child rights is essential as a child is not capable of standing on his or her own behalf.

## **Empowering Sri Lanka Police on Child Rights**

The conflict between the implementation of human rights and executing Police powers is always reiterated in Sri Lanka. This discussion has drawn the attention of the Human Rights Commission regarding the importance of educating the Police about human rights; especially about child rights. Hence a series of awareness programmes in order to educate the Police officers is seen as vital.

## **Human rights awareness programme for state officers-**

This programme has been held on 08<sup>th</sup> June 2007 at the Auditorium of Ministry of Urban Development from 9.30 a.m. to 3.30 p.m. Heads of departments and senior officers such as Additional Secretaries, Senior Assistant Secretaries, Assistant Secretaries, Assistant General Managers, Directors, Assistant Directors, Administrative officers attached to the Ministry of Urban Development participated in this event. There were about fifty state officials in this programme.

## **Programme on children affected by the armed conflict-**

Organized a meeting to discuss the draft "project proposal on strengthening the capacity of the Human Rights Commission to respond to child rights violations in relation to children affected by the armed conflict". This discussion has been held with the donors on 14.06.2007 to seek their financial assistance for same.

## **RESEARCHES**

### **Report of State Children's homes in Sri Lanka**

#### Objective of this report:

Responding to the complaints of human rights violations, the Human Rights Commission has undertaken an investigation of Sri Lanka's state children's homes. The objective of this report is to draw attention to the human rights situation in these state homes across Sri Lanka and to ensure compliance with international and domestic human rights standards. The data is collected from the surprise visits carried out by the Monitoring and Review Division of the Commission.

### **Research on the "right to housing of upcountry Tamils in estate sector".**

The objective of this research was to make an analysis of the current situation of housing in plantation sector and to give recommendations to the state authorities on the development of the right to housing in plantation sector. Research on ILO's standards on child labour and their applicability in Sri Lanka.

### **Establishing Human Rights Units in schools**

The Monitoring and Review Division has noticed that the human rights education to school students would be very useful. While implementing various programs in collaboration with education authorities, some school principals have emphasized the same.

Even though many advocacy programs are carried by various state and non state organizations, less attention is focused on this issue. This situation is worse, when considering Tamil medium schools. Therefore, providing awareness on human rights to school students has become a timely need.

On the other hand, making school children aware of human rights is an investment for the future. Providing awareness to school children results in building a future society which respects human rights. Moreover, the longevity in decisions taken in the school education level, capability of having an island-wide network etc have been identified as justifications to the possibility of promoting human rights at school level. Hence, the Monitoring and Review Division propose to establish Human Rights units at school level. nsden as an investment for the future. Providing awareness to school children meansd

### **International Human Rights Day Celebration – 2006**

The Programme for International Human Rights Day Celebration was held at Divisional Secretariat of Tangalle on 30<sup>th</sup> November 2006.

Ninety seven state officers who are attached to planning of programmes of divisional secretariats in Hambanthota district participated in this programme.

## **International Women's Day Celebration- 2007**

As the main programme of the series the International Women's Day celebration organized by the Division was held at the Divisional Secretariat Auditorium of Dehiwala on 13<sup>th</sup> March 2007. Justice S. Anandacoomaraswamy, Chairman of the HRCSL was the chief guest at this event. In addition, Mr. Arsaratnam SSP Mount Lavinia, Mrs. Suneetha Cooray, Divisional Secretary-Dehiwala, participated as guests.

## **EDUCATION & SPECIAL PROGRAMMES DIVISION**

### **New Developments Of The Division**

Vacancy on the Education Officer was filled in October, 2005. The Legal Officer, Education & Special programmes returned in 2006 March to Sri Lanka after completing her Masters in International & Human Rights Law. Her thesis is on the Right to Education of the Indigenous Community in Sri Lanka. The Director's position was vacant and was filled from September, 2007.

### **Providing Education**

The Division extended its activities to cover many areas. Took action to regularize work and new strategies were taken for the up-liftment of the work initially carried out. This was done in two ways, for the development of the knowledge of the other various stake-holders in Sri Lanka and the Human Rights Commission of Sri Lanka's (HRCSL) staff.

### **Different Human Rights Education Programmes**

Priority was given for human rights education programmes; on Civil and Political Rights (as in a wider spectrum as international human rights law as well as fundamental rights enshrined in the Constitution). Initially, human rights programmes were only focused on such rights and prevention of torture since the prevailed situations in Sri Lanka made focussing on these rights. In mid 2005 programmes on Economic Social and Cultural rights were introduced.

There is a monthly special lecture series going on at the Commission's Head Office for the time being. Even if the Division has the urge to extend these programmes to the Regional Office Staff the HRCSL has not been able to do so due to financial constraints. Nevertheless, the opening we made to overcome this situation is to at least record the lectures and make them available to the Regional Offices.

Apart from the above, with partner organizations the Education & Special programmes Division has conducted programmes on Prevention of Human-Trafficking for the government officials including the various institutions that come under the Sri Lankan Police such as the Women's and Children's Units, Fraud Bureau, Excise Department, Narcotics Bureau.

In 2006 took the initiation to appoint a Commissioner in charge to look into matters relating to migrant workers. Currently, the Legal Officer, Education is holding

discussions to conduct a programme (in Tamil and Sinhala languages) to train Attorneys-at-Law who are willing to work as volunteers in protecting the rights of migrant workers at different levels.

Officers of the Education Division have delivered lectures upon invitations by other stakeholders. The Education Division has contributed to other stakeholders' workshops or awareness programmes by installing HRCSL stalls at the demonstration premises.

In all the programmes awareness was made to the mandate and work of the HRCSL.

### **Publications**

Because of the monetary constraints, the Education & Special programmes Division in 2002 started a News Letter which is in a preliminary stage, only to be circulated within the HRCSL, having in mind of doing it in a larger scale in the future. Then the media consultant took the next step of issuing HRCSL bulletins. In 2007 the UNDP agreed to fund the first publication of the HRCSL quarterly news letter, which is in progress. In order to develop media coverage, the Daily News of Ceylon has reserved half a page on every Monday to publish the activities of the Commission for the protection and promotion of Human Rights.

Apart from the above, the Division took the initiative to formulate various publications relating to human rights training programmes; leaflets, documentations, manuals, background papers, etc.

### **Events**

Corresponding to various international dates set by the United Nations the Education Division conducts programmes. E.g., the International Human Rights Day, International Day in Support of Victims of Aggression are some of them.

### **Special Emphasis**

The Education & Special programmes Division had to give special emphasis to urgent target that had to be fulfilled in the month of April, 2007 under the patronage of the UNDP. The Division as a team, with other officer of the HRCSL and outside research officers took the initiative and proceeded to conduct three researches on Farmers Rights, Patients Rights and FTZ Workers Rights, two Demonstration Programme on Torture Prevention, 2007-09 HRCSL Strategic Plan, Regional Coordinators Meeting, HRCSL Web, HRCSL Quarterly News Letter.

On the programmes conducted on Prevention of Human – Trafficking a report is to be published on the recommendation of the participants to the government of Sri Lanka and other partner organizations of the HRCSL as well as to the HRCSL and the civil society on the methods that has to be used and the bottlenecks they have come across with the system in preventing human – trafficking.