

JANASANSADAYA

REPORTS ON THE PRESENT PLIGHT OF THE NATIONAL HUMAN RIGHTS COMMISSION OF SRI LANKA

National Human Rights Commission (HRC) of Sri Lanka was established in the year of 1997, by the “Sri Lanka Human Rights Commission Act” No 21 of 1996. The HRC started to function in July 1997.

01. Functions of the HRC

According to Section 10 of this Act, the functions of the HRC are:

- (a) to inquire into, and investigate complaints regarding procedures, with a view to ensuring compliance with the provisions of the Constitution relating to the fundamental rights and to promoting respect for, and observance of, fundamental rights;
- (b) to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights, and to provide for resolution thereof by conciliation and mediation in accordance with the provisions hereinafter provided;
- (c) to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of the promotion and protection of the fundamental rights;

- (d) to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
- (e) to make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights and;
- (f) to promote awareness of, and provide education in relation to, human rights.

02. Powers of the HRC

The powers vested in the HRC Commission to perform these duties are included in Section 11 of the Act.

- (a) investigate any infringement or imminent infringement of fundamental rights in accordance with the succeeding provisions of the Act;
- (c) intervene in any proceedings relating to the infringement or imminent infringements of fundamental rights pending before any court with the permission of the court;
- (d) monitor the welfare of the persons either by a judicial order or otherwise by regular inspection of the places of detention and to make such recommendations as may be necessary for improving their conditions of detention;

- (e) take such steps as it may be directed to take by the supreme Court in respect of any matter referred to it by the Supreme Court;

03. Members

Members are only by appointment of suitable persons, who will carry out the functions of the HRC.

As per Section 3(I) of the Act, 'person with a knowledge or practical experience on matters relating to human rights' should be appointed as Members.

As per Section 4(II) of the Act, if a Member is engaged in a paid employment which comes into conflict with the duties he/she should be removed from the post.

This condition, which affects the members, should be common to all officers and workers.

The powers to do all the above are vested with the President.

Former Inspector General of Police

The former Inspector General of Police, Ananda Raja is one of the active Members of the present HRC.

During his service as IGP, there were many violations of fundamental rights and actions taken to protect those who violated human rights. At the time he held the post of IGP, he was alleged to have had connections with narcotics dealers.

The Additional Secretary an extraordinary post

Mr. Nimal Punchihewa, the Additional Secretary of the present HRC, is the ex **Chairman of the Land Reform Commission**, and he was awarded an extension of another period by ignoring the accepted principles that no one should be granted an extensions after 60 years.

Connections matter

Further those who have close relationships with high-ranking army officers do hold key decisive positions.

These examples are adequate to understand the present malfunction of the HRC.

04. Power to Visit detention centers

The HRC has a right to enter and inspect any detention centre detaining persons with or without a court order, at any time, but this right is not practiced. Although distant police stations have been selected, visited and inspected, on and off, more to fool the public, but no remedial steps have been taken.

In Police stations, when unlawful detentions are made, such victims are tortured at officers' barracks. The HRC does not have power to visit police barracks. The HRC has been weakened to the extent that it is unable to show that prohibiting entry to police barracks is a violation of the Act.

According to our knowledge not even a single visit had been made to date basing on facts, complaints received on this 'hotline'.

No steps have been taken to either visit a police station in Colombo or a suburb based on a complaint.

In this light it is interesting to question :

Do observation visits take place at least in detention centers adjoining the HRC premises?

If the answer is no to the above, in such circumstances one wonders if there is a need for the HRC?

And for whose benefit dose the HRC work for? Is it the mandate of the HRC to support perpetrators?

As per the powers of the HRC, a complaint is not required to conduct an investigation or an examination for a violation of a fundamental right.

However, there are shameless investigations conducted, reports issued, covering all evils as required by the government. The best example of such an instance was the double murder by Angulana Police. Before and after this incident, how many extra judicial killings have been committed by the Police? Have investigations been conducted on these killings ? Are there reports? No. In all these instances, what the HRC did was to join the so-called national media to white wash and justify these assassinations.

05. Examinations and Investigations

The following examples will show the base quality and responsibility of the HRC:

According to the HRC Act there is no time limitation for presenting a complaint on human rights violations.

However, the present HRC has imposed a time limit for accepting complaints, i.e. the complaint should be made within three months from the date of the incident.

This is a violation of the HRC Act, given to protect persons victimized. (the Act now seems like an Act for protecting the perpetrators).

There are many complaints against the HRC, regarding discouraging, insulting, exposing victim/ complainants who are powerless/ helpless and appear alone before the HRC's investigations.

Some investigation officers of the HRC maintain unethical relationships with perpetrators which makes the victims further vulnerable.

There is even a person who is minor staff grade who is performing the duties of an investigation officer.

The time bar imposed and strict adherence to same by the HRC also goes to show that the HRC goes out of its way to protect perpetrators

Further the HRC further supports the perpetrators by taking steps to avoid the suspension of perpetrators.

There are many instances of incomplete examinations, and other defaults on purpose in support of perpetrators.

Due to the perpetrators connections and friendships with the investigation officers undue pressure and influences exerted on the victims/ complainant

Pressurizing for improper settlement is common, and there is no reduction on the disappearances of files, placing of files down the order, delaying recommendations and not issuing recommendations at all.

There is no provision for victims/ complainants to appeal regarding recommendations. However relief is provided for perpetrators appeals, without even allowing opportunities for complainants to present facts.

Not that there are instances of issuing recommendations providing relief for the victimized; on such occasions, there are many instances where perpetrators do not care for such recommendations at all.

As per provisions of the Act, there are no steps taken against the perpetrators and departmental heads who tear and throw away recommendations as pieces of mere papers.

06. Hotline – 0112 689064

‘Hotline’ (01120689064) is a method used to urgently examine and intervene in violations of fundamental rights, especially unlawful arrest, torture.

The ‘hotline’ which was out of order for some time, has been put to use again. However even today, very little of the expected results are gained by this ‘Hotline’.

Firstly, the persons answering the ‘hotline’ does not reveal their identities which is seen as an act of cowardice. Another reason is the high mindedness and arrogance that becomes apparent in their conversations. These attitude dose more harm in an investigator of human rights.

Most of those who call on the 'hotline' are victims, ignorant and innocent persons and those who are not familiar with using telephones. While some officers failing to understand this pressurize the caller by asking unnecessary questions and some start unnecessarily advising what we see as preaching bana (dharma) without realizing that the caller has to pay the charge for the call.

08. Financial aid

As per provisions of the Act, financial aid should be provided to the oppressed complainant. Foremost providing transport expenses for those coming from far away.

09. Regional Officers

We state that the large sums of money spent on the establishment and running of the regional offices is a waste. The friendship the investigation-officers maintain with police officers in those areas puts the victims into great inconvenience.

10. Assisting Courts

According to the HRC Act, assisting the judiciary is a major responsibility. However, this dose not happen at all.

When a fundamental rights petition are filed by the victim for FR violations or a criminal charges was brought against the victim by the police, the HRC apply delaying tactics to encourage perpetrators simultaneously to build pressure on the said victims so that they would withdraw the complaints against FR violators/ the perpetrators.

11. Victimizing the Commission Employees.

According to the HRC Act, and Fundamental Rights established by the Constitution, any person can write or complain directly to the Chairman and Commission of NHRC. This unalienable right was withdrawn from the HRC employees by a circular issued on the advice of Addl. Secretary, Mr. N. Punchihewa and his collaborator, Director Investigation Ms. Samanthi Jayamaha.

This circular says that, all matters should be forwarded to the Chairman and to the Commissioner through Addl. Secretary or Director, Investigation, which completely undermine the status and functions of the Chairman of HRC and the rest of the members of the HRC. This is purposely done to keep the Chairman and the Commissioner completely ignorant about what is going on in the HRC.

Recently, Mr. N. Punchihewa, Addl. Secretary to the HRC announced that the HRC Investigation Officers will be deployed on night visits to police stations to curb tortures. As we motioned earlier, tortures take place in Officers' Barracks, which the HRC officials are barred from visiting by order of the Inspector General of Police with the consent of the Attorney General.

Mr. Punchihewa, who is holding the position of Addl. Secretary, while violating HRC Act, now is trying to fool the general public by issuing a press release like this, which we see as a third grade tactic to misguide the foreign donors and community by the Governments as action to curb police torture.

12. Refused to issue certified copies of Victims/Complainants

Victim/ complainant has a legal right to obtain certified copies of all documents in respect of investigation. For example, certified copies of the Judicial Medical Reports and Medico-Legal Examination Form,

statements given by respondents, relevant extracts from police statements, notices, which are very important to prove the case. Furthermore, these documents are public documents. This right is guaranteed even by higher courts of Sri Lanka, except the HRC.

13. The following selected cases where Janasansadaya has personally intervened prove the above facts

13.01 K A Samarasinghe – Kelinkanda
Complaint No HRC/T/69/01

K A Samarasinghe, age 37, Address : 5th Mile Post, Kelinkanda, Agalawatta

Baduraliya police having taken Samarasinghe into custody on 11/11/2001 for questioning regarding a murder, had subjected him to severe and inhuman torture and detained until 14/11/2001.

Samarasinghe became disabled as a result of this torture. He walked with the help of clutches. He was taken to the Human Rights Commission on December 2001.

Human Rights Commission conducted investigations from year 2002 up to year 2005, and then on the basis of filing a fundamental rights petition, it had been kept in the file.

However, this fundamental rights case was kept aside due to necessary steps not been taken by the lawyer who appeared for Samarasinghe.

Under these conditions, a request was made to the Human Rights Commission on 13/09/2005 to re-commence

examination of the case in the file. As there was no answer, a request was made again on 08/11/2007. Janasansadaya reminded this to the Commission from time to time. As a result, it was called for examination on 06/10/2008.

Although the Commission decided to record the relevant statements on that date, it was not called thereafter. Regarding this, reminders were sent on 06/08/2009 and 21/01/2010.

In the meantime, Samarasinghe received a letter dated 05/10/2010 on 20/10/2011. It read 'examination of the complaint would no longer be carried out on your lack of interest to continue it.' Samarasinghe replied by letter dated 04/11/2011. He is expecting a reply.

13.02 Aravinda Shiran Wickramasinghe – Parakaduwa
Complaint No: HRC/2691/08

Aravinda Shiran Wickramasinghe, age 36, Status: married, profession : teaching, Address: 130/1, Thalavitiya, Parakaduwa

At the time, Shiran was functioning as an advisor to the Youth Federation Society conducted at the New Year festival at Eheliyagoda. While returning home after completing arrangements of that, he was taken into custody by the Eheliyagoda police, beaten and a case was fabricated against him. Against this unlawful act, Aravinda complained to the Human Rights Commission and other authorities on 10/05/2008.

Accordingly, the Human Rights Commission commenced an examination.

Evidence of eyewitnesses and relevant medical reports needed for the complained incident were provided to the Commission. Medical reports clearly indicated wounds.

In the mean time, police had fabricated a case with seven charges and the case is not over yet.

In such circumstances, a letter dated 02/07/2010 was sent by the Human Rights Commission stating that, 'it is informed that according to the facts revealed during the examination, Sri Lanka Human Rights Commission cannot intervene further regarding this complaint'.

It is not a surprise that Aravinda, who was subjected to severe torture, received a reply like this from the Commission.

However, Aravinda, through another letter, inquired about this from the Director Research and the lady investigation officer immediately. In addition, he presented facts verbally by meeting the said lady investigation officer. Aravinda had pointed out the breach of his fundamental rights, the evidence for that and the counter claims made by the defendant party together with replies filed by him against those.

He inquired as such, how the Commission, concluded that a breach of fundamental rights had not taken place. The lady Director said that there are some shortcomings in the Commissions' investigation and a fresh examination would be started soon.

However, the Commission has not commenced any examination yet. Aravinda has not given up his efforts upto now, and has sent reminders to the Commission regularly. The

last reminder was dated 01/10/2011. However, the Commission is silent.

13.03 **B Wijesinghe Herath –Saliyawewa**
Complaint No: HRC/5367/07/1-19

Wijesinghe Herath, Address: Neela bemma, Saliyawewa
Complainant H A Ranjani (mother of the victim)

Wijesinghe Herath was beaten by forest officers on 16/09/2007. His mother H A Ranjanie has complained regarding this to the Human Rights Commission on the same day.

Wijesinghe Herath has received medical treatment, being warded at the Puttlam hospital. Residents of the area who had seen the attack on Wijesinghe had given evidence. Human Rights Commission has called Wijesinghe and recorded a statement from him. Thereafter the Commission had called four accused persons relating to the case. However, Wijesinghe had identified one person not connected to this case and informed that to the Commission.

The other defendants had given statements and to get down the relevant medical report for that examination, summon been issued to Rathnapura hospital instead of Puttlam hospital,. The complainant had to intervene and correct it.

Until the relevant period expired, the defendants evaded filing objections. On several occasions complainant had drawn the attention of the Commission to that.

Commission did not pay any attention to that and by a letter dated 16/01/2009 stated that 'no fundamental rights violation was revealed according to the constitution in connection with the complaint during the investigation held.'

Can the Commission issue such a verdict without concluding the examination? Does not a fundamental rights violation come to light when evidence, medical reports in connection with this attack were provided on behalf of the complainant?

Complainant had informed Directress, Research and Investigation of the Commission regarding that, in writing. However, the Commission has not given any answer.

Once again, the complainant had reminded on 09/11/2009 presenting details relating to this.

However, the Commission did not reply and when Janasansadaya inquired from the Commission in writing regarding this, the reply to that too was 'no violation of fundamental rights.' without any reasons.

Facts to consider

The bogus case filed by the forest officers against the complainant is still being heard. Since the complainant and his brother had complained regarding this incident to the relevant authorities, there are 3 bogus cases filed against the complainant and her two sons.

Also, since it was revealed that an attack had taken place during the examination conducted by the Saliyawewa police regarding the attack on the complainant's son, Saliyawewa

police had filed a case against 3 forest officers at the Magistrates Court.

As facts are as above, on what basis does the Commission state that there was no fundamental rights violation, after conducting an incomplete examination?

13.04 **G I D Kanthi – Dodangoda**
Complaint NoL HRC/7147/07

G I D Kanthi, Sethsiri Uyana , Matugama Road, Dodangoda

Kanthi's closest neighbour is a police officer employed at the Police Training School. On 19/07/2003 , the wife of this police officer had attacked Kanthi. Regarding this, Kanthi had complained to the Kalutara South police station on the same day. However, no steps had been taken regarding kanthi's complaint. A bogus complaint had been made stating that Kanthi had attacked the neighbouring police officer, Percy Ananda and his wife.

Based on his complaint, Kalutara South police had lodged a bogus case at the Magistrates court. After that, the case had been heard for 4 years and 3 months, kanthi was acquitted and released.

Kanthi, on 03/12/2007 complained to the Human Rights Commission regarding this bogus case and the police not taking steps regarding her complaint.

On her complaint, the Commission commenced an examination and during 3-year period, she was called to the Commission for

about 15 times. However, the relevant defendants had appeared at the Commission only on one occasion.

On this occasion, Kanthi stated to the Commission that the Commission had failed to conduct any examination calling the defendant and she was subjected to further suffering, as the defendant did not come after being informed by the Commission.

Due to that reason, she requested an ex-parte decision against the accused.

The present Officer-in-Charge of the Kalutara south police station appearing on behalf of the defendant accepted at the Commission that no steps had been taken regarding the complaint made by Kanthi to the Kalutara south police station on 19/07/2003.

In the meantime, Mediation Board had called Kanthi on that complaint. Relevant defendants too had been called. Although Kanthi had rejected a settlement, the Mediation Board had again called evidence on 26/04/2010. Even in that instance too, Kanthi had stated to the Mediation Board that she was not agreeable to a settlement.

Kanthi had informed also that situation, to the Commission. In that, the relevant defendants, in order to get released from charges against them, had directed her complaint to the Mediation Board after 9 years. Further, requested in writing on 06.08.2010, to issue a recommendation regarding this.

Even when the facts were such, the complainant had been called again on 15/10/2010. On that date, the first defendant had appeared before the Commission.

On that occasion, the complainant, Kanthi clearly said that there is a court order stating that her fundamental rights had been breached, and as her being called by the Mediation Board is an evidence, to provide a recommendation.

Kanthi had requested to provide a recommendation in this connection on 02/04/2011 too. However, the recommendation of the Commission was that no action would be taken in view of lack of interest by the complainant.

**13.05 Seelawansa Hitihamilage Don Samantha Priyalal-
Gurulubedda**

Complain t No: HRC/2359/10/1-23

S H D Samantha Priyalal, age 39 years, Hedillegama,
Gurulubedda, Baduraliya

Baduraliya police had unlawfully taken Samantha Priyalal into custody on 29/06/2010 and after an inhuman torment; a bogus case had been filed against him on 17/09/2010. Samantha had complained to the authorities including Human Rights Commission against this unlawful act.

At that time, a fundamental rights case was filed in the Supreme Court under SC/FR/433/10 against violation of his fundamental rights.

The Human Rights Commission commenced an examination of Samantha's complaint.

After filing the fundamental rights case, Samantha and his witnesses started facing influences from police officers.

Accordingly, Samantha made a complaint again regarding that to the authorities including the Human Rights Commission requesting to stop influencing.

Although the Human Rights Commission had called Samantha and the defendants on 07/10/2010 for an examination, the relevant defendants did not appear at the examination.

This date was the first date Samantha was called for his complaint, as Samantha was not allowed to make a statement to the Commission on any previous occasion. By that time, permission had not been granted by the Supreme Court for Samatha's fundamental rights case.

The Commission alleging that Samantha had not informed the Commission regarding the fundamental rights case filed on 07/10/2010, had informed that further examination on Samantha's complaint would not be carried out.

For that, Samantha stated that with his second complaint, he had informed the existence of a fundamental rights case that he was called to the commission for the first time today and approval had not been granted for the fundamental rights case upto then.

Then the commission stated that examination would be suspended pending the fundamental rights case.

It was informed that the complainant was against the suspension of examination. However, the commission concluded the examination without paying any attention to that.

When Samantha's fundamental rights case was called at the Supreme Court on 16.02.2011, the Supreme Court ordered to call this case after the Police case filed against Samantha at the Magistrates court is over.

Permission had not been granted for Samantha's fundamental rights petition too.

Human Rights Commission is the only institution other than the Supreme Court which could mete out justice for the violation of Samantha's fundamental rights. However, the Human Rights Commission had deprived Samantha of that position.

13.06 **K.K.Rupa Indrani**
 Complaint No: HRC/968/10/1-vi

K.K.Rupa Indrani, Age – 41 years, Don Gedara, Malavangoda, Kalawila Beruwala.

Rupa Indrani complained to the Commission on 09.03.2010 that herself and her brother were arrested by officers of Aluthgama Police on a warrant obtained by them by making a false statement that summon served on her was delivered.

Human Rights Commission had commenced an examination and called both the complainants and the defendants for examinations on 9 days. Although summons had been issued to the first defendant, officer-in-charge of the Aluthgama police, that officer did not appear at the Commission.

Although 2 officers participated on behalf of him, one officer did not know anything to say in connection with the incident.

The other officer was the officer who recorded the complainant's statement at the time of the arrest.

The officer-in-charge was called on 19/08/2010 and the officer who represented him informed that he could not come because he was attending High Court for a case. However, inquiries by the complainant in this regard had revealed that he was on duty at the police station, on that day.

In this connection, the complainant had informed the Commission to verify facts as the particular defendant was misleading the Commission thereby making the complainant suffer.

However, the Commission did not pay any attention to that.

The officer who stated that notice was given to the complainant had been called to the Commission but he never participated in the examination on the right date, at the right time.

On 21/01/2011, the complainant and defendant, the officer who had served the summons to complainant were called to the Commission at 2.00 p.m. Complainant party was at the Commission at 12.30 p.m. but was not called for examination although they waited till 2.20 p.m. The defendant did not appear at the Commission at any time.

The relevant investigation officer saw the complainant at the Commission well ahead of the time. After that when the complainant inquired whether the examination would be started, the investigation officer said that the examination was concluded since the relevant defendant was present and the relevant complainant was not present.

On that occasion, the complainant objected and stated that the investigation officer saw their presence and the defendant was not present. Also informed that the typist calls both parties in complaint for examination by number order but on that day it did not happen that way.

Then what the investigation officer said was that, 'if you all do not need to come to your own complaint, we do not need conduct an examination'.

Since the complainant wanted to get justice meted out on this, stated that although the defendants evaded the commission, the complainant party was present at the commission.

It was emphasized that statement on that should never have been made by an investigation officer.

Thereafter, called again for an examination again on 15/02/2011. There, the complainant informed in writing that the complainant party no longer participate in investigations; complainant party had provided the relevant statements and evidences; signature on the register for service of summons to the defendant was not that of the complainant, it is a bogus one and if it is hers, it is her to confirm.

It was shown that also the originals of documents were never produced for examination, no evidence had been produced to verify the signature, at the time of arrest the complainant had given a statement saying that summons was not served on her, commission had not paid attention on steps taken by the officer in charge, commission had not paid attention to the bogus examination conducted by the Assistant Superintendant of Police and requested to issue a recommendation

considering the foregoing facts without letting the complainant suffer furthermore.

After that notification, on 10/08/2011, the Commission had informed the complainant that as no fundamental rights violation was revealed relating to the complaint, the matters with the file were concluded.

Against that, an objection with facts was forwarded to Priyantha Perera, Chairman of the Human Rights Commission on 03/09/2011 requesting a fair examination to be held in this connection.

However, no communication had been made to the complainant regarding that by the commission, up to now.

13.07 **A A Cyril Amaratunga**
 Complaint No: HRC/3812/07

A A Cyril Amaratunga, age 49 years, unmarried, Galahitiya, Parakaduwa

While, Mr Cyril Amaratunga was at the Kuruwita police station on 13.05.2007, to see one of his friends, Aruna, held under arrest, Sub Inspector Amaratunga had beaten him on his left ear. As a result Mr Cyril's left ear had burst.

Against this, he had complained to authorities including Human Rights Commission on 19/08/2007. Human Rights Commission started an examination and accordingly a recommendation had been made on 22/01/2009. It reads as follows:

'It was confirmed that the defendant had beaten the complainant. The beating had taken place not at the time when the complainant was in custody. It is evident that even at the police station, a private beating had taken place, which can be seen from the injuries suffered by the complainant and as no steps had been taken to proceed a case against the defendant, recommended officer- in-charge, Kuruwita, to file a case in the court.'

Cyril Amaratunga appealing against that recommendation stated that a violation of fundamental rights should be viewed on whether a person exercising the powers of an executive or administrator had done that and/or not on whether person whose fundamental rights were violated was under arrest.

The Commission is silent.

Although Cyril on several occasions reminded the Commission in this connection, the Commission did not reply.

13.08 **Ajith Navaratne Bandara**
 Complaint No: HRC/T/16/01

R M Ajith Navaratnea Bandara, Sangabo Mawatha, Diggala Road, Keselwatta, Panadura

Ajith Nawarathne had directed this complaint to the Human Rights Commission against taking him into custody unlawfully by Panadura north police on 02/05/2001, beating and filing a case.

Police had produced Ajith before the District Medical Officer of the Panadura Base Hospital and obtained a medical report. Ajith complained against that report to the Sri Lanka Medical

Council and accordingly, the Medical Council had taken disciplinary actions against that doctor.

When facts were such, Sri Lanka Human Rights Commission got Ajith to agree to a conditional settlement on 13/11/2001.

Settlement conditions:

- 1 to withdraw the case filed by police against Ajith
- 2 Expenses incurred on that case to be reimbursed
- 3 To provide Rs 2000 for the suffering due to the beating

After agreeing to these conditions, the two parties signed in the presence of the present Legal Secretary, Nimal Punchihewa. However, the police did not effect the settlement conditions.

As per instructions of Ajith's lawyer, a request was made to the Commission to issue a copy of the settlement.

The copy provided by the Commission, only stated that a settlement was reached by receiving Rs 2000. However, the withdrawal of the case and the reimbursement of expenses incurred on the case were not mentioned. From that Ajith understood that he was misled by the Commission

Ajith, objecting the Commission, complained to the then Chairman, Radhika Kumaraswamy. On that complaint, the Commission commenced a fresh inquiry and conducted an examination calling both parties. Concluding that examination in year 2005, investigation officer, lawyer Hisselle stated that a recommendation would be made.

However, Ajith had not received a recommendation to-date. Although reminders were sent to the Commission on several occasions, justice was not meted out.

13.09 **Thewage Inoj Prasad Rathnapala**
Complaint No: HRC/1357/2011

Thewage Inoj Prasad Rathnapala, age 30 years, married, 2 children , employment – Culinary expert, address 152, Batuwandara, Madapatha

Inoj was beaten by an unknown gang on 17/05/2010. Inoj later identified the attackers. Among them was an officer of the traffic section of Piliyandala police.

Inoj gave a statement to the police to that effect. Police filed the case against those who beat Inoj. However, the police officer who was involved in the beating was not made an accused.

Police had left out that police officer who repeatedly beat Inoj, from the case filed.

Although the court ordered the Assistant Superintendent of Police to show cause, he evaded the court.

Inoj had complained to the Human Rights Commission against Piliyandala police and the Assistant Superintendent of Police.

Human Rights Commission had replied Inoj that this does not come under their subject-stream.

Inoj writing to the Human Rights Commission a letter dated 04/06/2008 inquired like this 'do not myself have a right to get justice done against the police officer who beat me' and 'whether that does not belong to the subject stream of the Human Rights Commission'.

However, the Commission is silent.

13.10 **G Piyawathie**
Complaint No: HRC/370/1/03 1-iii

G Piyawathie, 72 acres, Kindelpitiya, Millewa

She complained to the Human Rights Commission that a son related to her , Sunil Hemachandra, was taken into custody by Moragahahena police on 23.07.2003 and beaten, died after admission to the hospital.

Sunil Hemachandra won Rs 3.0 million from a lottery and Moragahahena police had sought a tribute from him. Since he had refused to pay a tribute, this had been done as revenge.

What did the Commission do regarding Piyawathie's complaint? Examination continued for a number of years. Human Rights Commission maintained a separate unit to examine assassinations sans a court ruling and that unit too examined this.

What was the result of that examination? When the fundamental rights case filed at the Supreme Court regarding this incident was taken up for hearing, the court inquired, regarding the present status of the examination started by the Human Rights Commission (required it) to be submitted.

According to the complainant, Piyawathie on 04/08/2008 inquired in writing regarding that. For that inquiry, Lawyer Samantha Jayamanne , Director Investigations and Examinations, has stated to the complainant as follows:

The letter sent to Piyawathie on 21/08/2008

English Translation of the letter

21.08.2008

HUMAN RIGHTS COMMISSION OF SRI LANKA

Nrs. G. Piyawathi
72 Acres
Kidelpitiya
Millewa

Complaint number HRC/3701/03/

From the examination of the file it appeared that when carrying an investigation by the commission on the subject complain, it was revealed that the complainant had filed a court case at the supreme court under case number SC/FR/429/03, due to which the investigation had been suspended

This letter was issued on the request made by complainant by letter dated 14/08/2008

Signed by:
Samanthi Jayamanna
The Director (Research and Investigation)
Human Rights Commission of Sri Lanka

13. 11 **I . M Pathma Wijesuriya, 2. Mudannayakege Christine**
Complaint No : AP/HRC/173/2005

19th Mile Post, Anuradhapura Road, Saliyawewa

The above mentioned complainants presented a complaint against the Saliyawewa police. That complaint was made against taking bribes, sexual harassment, beatings and damage to properties by Saliyawewa police.

That complaint was examined by the Anuradhapura Regional Office of the Human Rights Commission: lawyer M K Kalinga Ravindra functioned as the Legal Officer.

Complainants associated with the case, filed a fundamental rights case under No: 298/05.

In the meantime, the Human Rights Commission issued a recommendation on 09/01/2007. It said that, “Kindly be advised that the file was closed since there was no revelation of violation of fundamental rights”. As per that investigation report;

- 1 Taking petitioners into custody had not caused a violation of fundamental rights.
- 2 Although from the facts presented by the Commission, it can be seen that the petitioners were tormented by the defendants, a decision cannot be made at once, since subjecting to torment was not definitely proved.
- 3 The argument put up by petitioners, that no action had been taken against police assistant Ranasinghe, is not

true. By now, his service had been suspended and a case had been filed against him at the Puttalam Magistrates court.

- 4 Petitioners have presented the facts hiding some. As revealed, the woman petitioner had planned, got down police assistant Ranaweera and had beaten him. Therefore, petitioners had presented the petition in an unreal status. An extra advantage would have been expected through presenting this petition to the commission.
- 5 Apart from all this, the recommendation includes this note too. When taking into custody these petitioners, it is not an essential legal matter to read out the allegation made against them.

The Supreme Court by now has made a decision that fundamental rights of Pathma Christine had been violated and it has gone into law records.

Pathma and Christine presenting a letter dated 09/04/2008 to the Chairman regarding the decision of the Human Rights Commission said;

- 1 We (I and my husband) complained to you, not to take any extra advantage. Myself and my husband expected only justice and reasonability.
- 2 The decision of the fundamental rights case filed by myself and my husband concerning our matter had been issued

- 4 Who had acted with the expectation of an extra advantage was the investigation officer, lawyer Mr M K Kalinga Ravindra and not us. By now the decision of the fundamental rights case has been issued. Enclose that too.

They also requested that disciplinary steps to be taken against this officer. However, in this connection, no reply has been received from the commission to-date.

14. Respondent rejecting decisions of the Human Rights Commission

Recommendations issued by the Human Rights Commission to provide relief for complainants are not put into effect. Given below are some examples for that. Regarding these, complainants had reported to Human Rights Commission. However not a step had been taken by the Human Rights Commission.

14.01 Complaint No: **HRC/I/260/02-**

Date recommendation was given: 12/12/2005

Complainant : Mr. M Dayarathne, Hettiyamulla,
Bombuwela,
Kalutara

Respondent : H M B Senarath perera, Prison
Officer
Rajaka Division
Welikada Prison
Welikada

14.02 Complaint No: **HRC/T/48/01**

Date recommendation was given: 31/08/2005

Complainant : Ranjanie Rupika
Girikola,
Agalawatta

Respondent : Senaka Abeysekera Samarasinghe
Inspector of Police
Police Station, Matugama

14.03 Complaint No: **HRC/f/04/02**

Date recommendation was given: 19/07/2005

Complainant : 1. T K Shiran Shashika,
1 post, Hiniduma
2. E A Kasun Madushanka
Priya Sevana , Hiniduma

Respondent : 1. Police Constable 38638- Udeni Adikari
2. Sub Police Constable 2147-K P Gamage
Police Station, Hiniduma
3. P A Saman Kumara C/O The Principal
(Canteen owner- Mallika Maha
Vidyalaya Hiniduma)

14.04 Complaint No: **HRC/I/393/02**

Date recommendation was given: 04/10/2005

Complainant : R P D Wimalasara
Pahala Pannikawa, Kanaththewewa

Respondent : Police Constable Siyambalapitiya

Police Station, Wariyapola

14.05 Complaint No: **HRC/320/04**
Date recommendation was given: 24/08/2005

Complainant : Dayarathna Fernando
Hirigalgodella, Nagahaduwa, Payagala

Respondent : 1. Sub Inspector Police Stanly Perera
2. Police Assistant Ranatunga
Corruption Protection Unit, Kalutara

14.06 Complaint No: **HRC/3652/2008**
Date recommendation was given: 22/03/2010

Complainant : N Y R Sampath
Bandaranayake pura, Udawatte, Galle

Respondent : 1. Police Constable 4051 Dhammika
2. Sub Inspector of Police Wijekoon
3. Inspector of Police 56042 Cyril
Jayasekera
Police Station, Udugama

14.07 Complaint No: **HRC/5333/07**
Date of recommendation given: 04/06/2009

Complainant : H S Junaid
Abanhenawewa, Siyambalagas kotuwa

Respondent : 1. M N Maharroof , Madeena National

School, Siyambalagas kotuwa
2. Principal, Madeena National School
Siyambalagas kotuwa

14.08 Complaint No: **HRC/5048/04/ liv**
Date recommendation was given: 04/07/2006

Complainant : Rathnasiri Senadheera
2 Acres, Ilimbe Junction, Horana

Respondent : Sub Inspector of Police Saliya
Police Station, Horana

14.09 Complaint No: **HRC/6456/07**
Date recommendation was given: 31/07/2009

Complainant : S R Priyantha
Gabadagoda Road, Payagala

Respondent : Sub Inspector of Police Sannasgala
Police Station, Payagala

14.10 Complaint No: **HRC/MT/167/06/N**
Date recommendation was given: 09/09/2008

Complainant : H Kusumawathie
Mihindu Mawatha, Galle

Defendants : 1. Chief Inspector of Police Chaminda
Rathnaweera (OIC)
2. Inspector of Police I J Kumara

3. Police Constable 17165 Chaminda
Police Station, Poddala

14.11 Complaint No: **HRC/3686/05**

Date recommendation was given: 26/05/2008

Respondent : H M Susantha Herath
Hewatenna, Panliyedde

Defendants : 1. Sub Inspector of Police Ellepola
2. Police Constable 5587 Perera
3. Sub Police Constable 29677 Dais
Police station, Gokarella

14.12 Complaint No: **HRC/6236/04/I-2, HRC/6251/04/I-2**

Date recommendation was given: 20/08/2007

Complainant : M S R Peiris
No 30, Gnanaloka Mawatha,
Egoda Uyana, Moratuwa

Respondent : 1. Headquarters Inspector
2. Police Constable 5232 W A C Jayantha
de Silva
3. Police Constable 11429 Jayantha
Fernando
Police Station, Maratuwa

14.13 Complaint No: **HRC/570/07**

Date recommendation was given: 30/07/2008

Complainant : W K Sisira Perera
73, Madola, Avissawella

Respondent :1. A M Thanuja Kumarage, St
Mary's college, Awissawella
2. Zonal Director of Education,
Department of Education, 76, Ananda
Coomaraswamy Mawatha, Colombo 07

14.14 Complaint NO: **HRC/5133/04/I-iv**
Date recommendation was given: 03/03/2006

Complainant : Ranawaka Arachchige Hemasiri
Athwelpitiya, Ekneligoda, Kuruwita

Respondent : 1. Sub Police Constable 62071 Sunil
2. Police Constable 29992 Nimalweera
Police Station, Kuruwita

14.15 Complaint No: **HRC/7850/03/I-ii**
Date recommendation was given: 07/02/2006

Complainant : A G Sandanayake
Pubudugama, Madurankuliya

Respondent : 1. Officer In Charge
2. Police Constable 23629 Ranjith
3. Police Constable 17446 Dissanayake
4. Sub Police Constable 36223 Nishantha
Dharmapriya
5. Gramarakshaka Niladari 5793 Ruwan
Wijesinghe
6. Sub Police Constable Alton

Karunasheela
Police Station, Mundalama

14.16 Complaint No: **HRC/I/854/02**
Date recommendation was given: 06/04/2011

Complainant : A M Kusumawathie
Uppuwatta, Warapitiya, Dharga Town

Respondent : Sub Inspector of Police H P Nishantha
Parhirana, Tourist Police Station,
Moragalla, Aluthgama

14.17 Complain No: **HRC/927/06**
Date recommendation was given: 31/03/2009

Complainant : D K Gunawardena
Gallage Mandiya
Nivithigala

Respondent : 1. Saman Iddamalgoda, Nivithigala Primary
School Nivithigala
2. Principal, Nivithigala Primary School
Nivithigala
3. Zonal Director of Education, Zonal
Education Office, Nivithigala
4. Provincial Director of Education,
Provtncial Director of Education Office,
Ratnapura

14.18 Complaint No: **HRC/3848/04, HRC/3836/04**

Date recommendation was given: 31/07/2009

Complainant : 1. V P L Chandrika
62, Awasa Watte, Andadola,
Wathugedara
2. L A Harendra,
59, , Awasa Watte, Andadola,
Wathugedara

Respondent : 1. Officer –In-Charge (Crime Division)
2. Police Constable 1999 Dambagalle
Sirikumara
3 Headquarters Inspector of Police
Police Station, Ambalangoda

14.19 Complaint No: **HRC5307/07, HRC/5413/07**
Date recommendation was given: 22/08/2011

Complainant : 1. S Siripala
No 475, Godaparagaha Watte
Kiriberiya
Panadura

Respondent : 1. Chief Inspector of Police Amaratunga
2. Sub Inspector of Police Ruparathne
3. Police Sergeant Thenuwara
4. Police Sergeant 12382 Wickrmasinghe
5. Police Constable 35840 Gunawardena
Police Station, Panadura

14.20 Complaint No: **HRC/4186/06/L-6**
Date recommendation was given: 28/02/2007

Complainant : 1. N K Violet
Durekkanda, Malwala Junction
Ratnapura

: 1. Sub Inspector of Police Dinesh Priyankara
Dharmadasa
2. Sub Police Constable 14916 Padmalal
Balapitiya
3. Police A S 2788 Arawe Gedara
Gnanapala
4. Sub Police Constable 28469 Premadasa
Waduge
5. Sub Police Constable 10184 Namasiri
Rathne
6. Police Constable 23053 B L Padma Sri
Nandana
Police Station, Ratnapura, Wewelwatte
Police Post

POST SCRIPT

The rule of law has collapsed, institutions established from time immemorial to mete out justice have become inactive; as such there is no impact or advantage in becoming signatories to international charters and agreements regarding the promotion or protection of Human Rights. While local laws protecting rights are in the same manner are of no effect.

From time to time a whitewash is done by introducing such laws to indicate that first place is given to the protection of the rights of the public. The money spent on such publicity by the State and non-governmental organizations is huge.

Human Rights Commission is one such example and is an addition to the collection of inactive institutions for meting out justice.

In this environment, it is now time to question the real role of the Human Rights Commission.

Study the Human Rights Commission Act of Sri Lanka very well. The powers vested to fulfill the duties and who is to carry out these powers ? Public has a right to question such appointments.

Keeping in mind these questions, let us take the following demands to the public.

Sri Lanka Human Rights Commission

Public Demands

Prime duties of the Sri Lanka Human Rights Commission should be :

- A) Prevention of torture, cruel, inhuman or degrading/insulting treatment and punishment
- B) Arranging relief for those who were subjected to torture, cruel, inhuman degrading or insulting treatment and punishment.
- C) Actively contributing to take legal and disciplinary steps against torture, cruel, inhuman degrading or insulting treatment and punishment.

- D) Building up public opinion against torture, cruel, inhuman, degrading or insulting treatment and punishment.

To effectively maintain these activities :

- 1) The present “011 – 2689064 – Hot line” service should be operated in the following manner

- 1.1 “Hot line” to be effectively operated throughout 24 hours. A separate and permanent unit for that to be established in the premises of the Commission and trained officers to be appointed.

To provide suitable training to officers answering the Hot Line on etiquette and courtesy. Officers managing the hotline to disclose their identity to the caller.

- 1.2 Registering all calls received on the “Hot line”. And providing a reference number to the caller.

- 1.3 Actions taken depending on the complaint received, to be properly recorded.

- 1.4 A certified copy containing such details to be issued to the complainant for the use in future court litigation.

- 2 In order to minimize torture, cruel, inhuman, degrading treatment and punishment after unlawful arrest, to carry out inspections of Premises in detention centers.

- 2.1 Colombo and Welikada Prison complexes to be subjected to regular inspections. Conducting

examinations, obtaining information from detainees, assisting detainees and their relatives to take legal action, publishing reports on those.

2.2 Taking steps to remove the decision taken by the Attorney General and Inspector General of Police who is responsible for obstructing inspection of barracks in police stations.

2.3 Conducting an inspection by visiting the relevant places, no sooner a complaint is received to the effect that torture is happening after an unlawful arrest. Starting this from Colombo and suburbs. Publishing those reports. To provide observation reports to affected parties for submission in case matters.

3 Establishing a team of investigation officers capable of listening to those subjected to torture coming to the Human Rights Commission to complain, advising and assisting them to compile information and preparing a proper written complaint.

4 To take steps to stop the method of investigation where those subjected to torture are made to wait along with perpetrators subjecting them to threats and shame, forthwith.

A) At no time of the investigation should the victims have to face the perpetrators.

B) Examinations to be conducted with statements made
by both parties and relevant documents.

- 5 Exercising influence on the relevant department to take legal action and disciplinary action against perpetrators and making legal and departmental provisions for that.
- 6 In order to educate the public on torture and existing laws and practices, steps to be taken for notices containing such laws and provisions to be published in newspapers.
- 7 In order that Human Rights Commission of Sri Lanka can certify impartiality, knowledge and honesty of all officers including the Commissioners in the protecting and promoting fundamental rights established by the constitution:
 - a) Appoint Commissioners and staff cadre knowledgeable and well versed in the provisions of the Act.
 - b) All should have humane qualities.
 - c) Should be persons with an understanding on human rights rather than book knowledge.
 - d) Past activities should not have violated human rights.
 - e) Should not be allowed to hold conflicting posts.
 - f) All Commissioners, examining officers, inspectors should declare assets.

- g) Staff cadre including all Commissioners to be made aware that they are dependent on public finances, and should respect their employers - the public

What should be done

- To encourage discussion regarding these demands among the public .
- Strengthen the victims and representatives of the victims to work, challenge and demand that their rights are respected.
- Give publicity to violation of procedures and rights as much as possible.

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