

CONTENTS

I	OVERVIEW: HUMAN RIGHTS IN SRI LANKA IN 2007	
1.	Introduction	1
2.	Security Situation	5
3.	Militarisation	7
4.	Abductions, Disappearances, Arbitrary Arrests and Detention	8
5.	Freedom of Expression	11
6.	Humanitarian Situation and Internally Displaced Persons	15
7.	Rights of Minorities	17
8.	Children in Armed Conflict	19
9.	Eastern Province	21
10.	Humanitarian Workers	23
11.	The All Party Representative Committee (APRC)	24
12.	Electoral Reforms	26
13.	The Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights (COI)	27
14.	Visits of United Nations Special Rapporteurs and High Commissioner for Human Rights	29
15.	Conclusion	34
II	INTEGRITY OF THE PERSON	
1.	Introduction	35
2.	Legal recognition of the integrity of the person	37
2.1	Sri Lanka's Obligations under International Law	38
2.2	The case of Nallaratnam Singarasa	41
2.3	The effect of the <i>Singarasa</i> judgment on general international obligations of Sri Lanka	43
2.4	The ICCPR Act No 56 of 2007	46
3.	Violations of the Physical Integrity of the Person in 2007	54
3.1	Acts of Terrorism	56
3.2	Detention and Torture	58

3.2.1	Detention under the Emergency Regulations and PTA	58
3.2.2	Torture	58
4.	Abductions, disappearances and extra judicial killings	63
4.1	Abductions	63
4.2	Extra Judicial Killings and Disappearances	65
4.3	Child Soldiers	68
4.4	Forcible Evictions	70
4.5	The physical integrity of the media personnel in Sri Lanka	71
4.6	Right to Movement	74
4.7	Oversight Mechanisms Monitoring the Physical Integrity of the Person	77
5.	Conclusions	82
6.	Recommendations	83
7.	Legislative measures	84
8.	Political will and Commitment	85

III JUDICIAL PROTECTION OF HUMAN RIGHTS

1.	Introduction	87
2.	Judicial Protection by the Supreme Court under the Fundamental Rights Chapter of the Constitution	88
2.1	<i>Dharmawardana v. Constable Gunathilaka and Others</i>	89
2.2	<i>Dhanapala Maturage v. OIC (Special Crimes) Mirihana Police</i>	93
3.	Re: Appointments, Promotions, Extension of and Retirement from services in the Public Service	95
3.1	<i>Lancelot Perera v. National Police Commission and Others –</i> The case of an aggrieved SSP who was denied his promotion to the rank of DIG	95
3.2	<i>Sunil Abeyratne Munasinghe v. Vandergert and Others –</i> An Assistant Superintendent of Surveys complains on being retired from service	98
3.3	<i>Samaraweera v. People's Bank of Sri Lanka –</i> Denial of extension of services	102
4.	Relative Assessment of the Divergent Judicial Approaches	106
5.	The establishment of a principle in Fundamental Rights Jurisprudence	106

5.1	<i>Wijebanda v. Conservator General of Forests, and Others – Denial of permit to quarry/mine silica deposits constituting a classic judicial exposition in a socio-economic context</i>	111
5.2	<i>Rodrigo v. S.I. Kirulapone and Others</i>	119
5.3	<i>Dissanayake v. General Manager Railways and Others – Equal protection as opposed to equal violation of the law</i>	124
6.	Judicial Protection by the Court of Appeal in regard to rights pursued in the form of orders in the nature of writs	126
7.	Conclusion	140

IV ENFORCED DISAPPEARANCES: THE LEGITIMACY OF THE LAW IN GRAVE HUMAN RIGHTS VIOLATIONS

1.	Introduction	145
2.	Sri Lanka's Obligations in terms of International Law Standards	148
3.	The Crime of Enforced Disappearances in International Law	154
4.	Analysis of Criminal Responsibility, in the Absence of the 'Crime' of Disappearances in Sri Lankan law and relevant Prosecutorial Processes	155
4.1	Prosecutorial Strategy	161
4.2	Lack of political and prosecutorial will	164
5.	High Court acquittals in prosecutions relevant to enforced disappearances	166
5.1	High Court Hambantota No 94/99	167
5.1.1	Summary of the evidence as recounted by Court regarding the identity of the accused	168
5.1.2	Rejection of the case for the prosecution and the reasons found in the judgment resulting in acquittal	168
5.1.3	Relevance of the findings of the Commissions of Inquiry appointed to inquire into involuntary removals and disappearances (between January 1988 and 1994)	169
5.1.4	Defective Charge	176
5.2	H.C. Hambantota 14/2001	176

5.3	HC/ Hambantota 24/2002	176
5.4	HC/Galle/2073	178
5.4.1	Belated complaint to the Police	179
5.4.2	Failure to name the accused in the first complaint	179
5.4.3	Re the abduction	180
5.4.4	Re: Unlawful detention and subsequent disappearance	180
6.	High Court convictions in prosecutions relevant to enforced disappearances	182
6.1	High Court Kandy Case No 1284/99	182
6.2	High Court Galle No 1947	186
7.	Conclusion	190

V INTERNAL DISPLACEMENT AND HUMANITARIAN CONCERNS: HUMAN RIGHTS IN THE CONTEXT OF THE CONFLICT

1.	Introduction	192
2.	Sri Lanka scenario: 2007	193
3.	Facts and Figures regarding Internally Displaced Persons in Sri Lanka in 2007	198
4.	Nature of Displacement	212
5.	Institutional and Legal Framework for protection of the rights of IDPs	215
6.	National mechanisms and institutions mandated with paying attention to the internally displaced	218
7.	Key issues regarding the situation of IDPs in 2007	222
7.1	Registration and definition	222
7.2	Protection and Security	224
7.3	Consultation and Participation of IDPs in decision-making	227
7.4	Restriction on movement	227
8.	Militarisation	229
9.	The politicisation of humanitarian assistance	231
10.	Threats and attacks on humanitarian actors	234
11.	Women	237

12.	Children	237
13.	Conclusion	238
13.1	Human Rights Violations suffered by IDPs: 2007	240
13.1.1	Extra-judicial executions	240
13.1.2	Deaths due to shelling and mines	243
13.1.3	Abductions	245
13.1.4	Missing IDPs	246
13.1.5	IDP Arrcsts	246

VI CONSTITUTIONAL REFORM IN THE MIDST OF VIOLENT CONFLICT

1.	Introduction	247
2.	The Majority Report	249
2.1	Root Causes	249
2.2	Nature of the State	249
2.3	Unit of devolution	250
2.4	Merger of the North and East	250
2.5	Powers	253
2.6	Asymmetry for the North East	253
2.7	Defence, Law and Order	254
2.8	Supremacy of the Constitution and Constitutional Court	254
2.9	Presidential Intervention	254
2.10	Second Chamber	255
2.11	Provincial Government	255
2.12	Two Vice Presidents	255
2.13	Rights	256
2.14	Language	256
2.15	Land	256
2.16	Indian Tamil Zonal Councils	257
2.17	Centre Provincial Disputes	257
2.18	Fiscal Devolution	258
2.19	Local Government	258
2.20	Changes to Provincial Functions	258
3.	The Minority Report	258
3.1	Unit of Devolution	259
3.2	Central Territories	259

3.3	Presidential Intervention	259
3.4	Powers	260
3.5	Second Chamber	260
3.6	Language	261
3.7	Tamils of Indian Origin	261
3.8	Land and Water Commissions	261
3.9	Constitutional Court	261
3.10	Law and Order, Land	262
4.	The Tissa Vitharana Proposals	262
5.	The APRC Process: The Tensions between the Rhetoric and the Reality	264
5.1	Enriching the Discourse around the APRC	266
6.	Conclusion: The lack of Political Courage	270

VII CORRUPTION AND GOOD GOVERNANCE

1.	Introduction	271
2.	The COPE Report	274
3.	Major corruption scandals revealed	277
3.1	Corruption in the Defence Sector – MIG Deal and Lanka Logistics	277
3.2	Mihin Air	279
3.3	VAT Scam	279
3.4	Mavilaru fraud	281
3.5	Amalgamation of the National Procurement Agency	282
3.6	Escalating Ministerial Expenditure	282
4.	Right to Information and Curbing Corruption	284
5.	Surveys of Corruption in Sri Lanka	284
6.	Impact of Corruption on Poverty and Economic Growth	286
7.	Tsunami Recovery Process	286
8	Success Stories	288
8.1	Sri Lanka Anti-Corruption Action Plan	288
8.2	Initiative by the Private Sector	289
9.	Legal and Institutional Framework	290
10.	Other Anti-Corruption Initiatives in a Nutshell	292

11.	The Sri Lankan Situation from an International Perspective	293
12.	Corruption Perception Index	294
13.	Conclusion	294

VIII RIGHT TO EDUCATION

1.	Introduction	297
2.	International Covenants	298
2.1	Content of the Covenants	298
2.2	Implementation Issues	300
3.	Evolution of Education System	306
3.1	The Colonial Heritage	306
3.2	Early Post-Independence Changes	308
3.3	Post 1977 Developments	310
3.4	Genesis of Grade 1 Admission Problem	314
4.	Supreme Court Directives & Implementation	318
4.1	Judgment	318
4.2	Implications of the New System	322
5.	Recommendations	326
5.1	Removal of the State Monopoly	326
5.2	Voucher System	331
5.3	G.C.E (O.L.) Failure Rate	333
6.	Conclusion	336

IX WORKERS RIGHTS

1.	Introduction	339
1.1	Labour Force Composition	341
2.	Labour Relations	342
2.1	Anti-Union Discrimination in Free Trade Zones	344
2.2	CCS Elsuma Dispute	345
3.	'War on Terrorism'	348
4.	Legal Reforms	351
4.1	Penal Code (Amendment) Act, No 16 of 2006	352
4.2	Employment of Women Young Persons and Children (Amendment) Act, No 24 of 2006	353

4.3	Social Security Benefits Scheme for Media Personnel Act, No 29 of 2006	354
4.4	Workmen's Compensation (Amendment) Act, No 10 of 2005	356
4.5	Budgetary Relief Allowance of Workers Act, No 36 of 2005	357
5.	ILO Case No 2519 (Re Sri Lanka Ports Authority Trade Union Action)	359
5.1	Background	360
5.2	Issues and Arguments	361
5.2.1	Essential Services Order 2006	363
5.3	Decision and Recommendation	365
5.4	Outcome	367
6.	Collective Agreement No 37	368
7.	National Policy on Decent Work	370
8.	Unemployment Insurance Scheme Proposal	373
9.	Application of ILO Conventions and Recommendations	375
9.1	Convention No 87 (Concerning Freedom of Association and Protection of the Right to Organise)	376
9.2	Convention No 98 (Concerning Right to Organise and Collective Bargaining)	377
9.3	Convention No 182 (Concerning Worst Forms of Child Labour)	378
9.4	Convention No 100 (Concerning Equal Remuneration)	379
9.5	Convention No 111 (Concerning Discrimination in Employment and Occupation)	379
9.6	Convention No 111 (Concerning Right of Association in Agriculture)	380
9.7	Convention No 81 (Concerning Labour Inspection)	380
10.	Conclusion	381

SCHEDULE I	
UN Conventions on Human Rights and International Conventions on Terrorism Signed, Ratified or Acceded to by Sri Lanka as at 31 st December 2007	383
SCHEDULE II	
ILO Conventions Ratified by Sri Lanka as at 31 st December 2007	387
SCHEDULE III	
Humanitarian Law Conventions Ratified by Sri Lanka as at 31 st December 2007	391
SCHEDULE IV	
Some Human Rights Instruments Not Ratified by Sri Lanka as at 31 st December 2007	392
SCHEDULE V	
Fundamental Rights (FR) Cases Decided in 2007	394
SCHEDULE VI	
Cases Cited – Sri Lanka and other jurisdictions	396
BIBLIOGRAPHY	401
INDEX	419