

# CONTENTS

CONTRIBUTORS	x
REVIEWERS	xi
ABBREVIATIONS & ACRONYMS	xiii
FOREWORD	xv
INTRODUCTION	xvii
MAP	xxv

## I. OVERVIEW OF THE STATE OF HUMAN RIGHTS IN 2011-2012

1. Introduction	1
2. Accountability and Reconciliation: Domestic and International Efforts	4
2.1 The emerging demand for accountability	4
2.2 The UN Secretary General's Panel of Experts	7
2.3 The Lessons Learnt and Reconciliation Commission	11
2.4 The UN Human Rights Council Resolution	14
3. The Post-War Human Rights Record	16
3.1 Extra-judicial killings and enforced disappearances	17
3.2 Demilitarisation and the Rule of Law	20
3.3 Detention policies	23
3.4 Media freedom	25
4. Conclusion	27

## II. JUDICIAL PROTECTION OF HUMAN RIGHTS

1. Introduction	29
2. Notable Trends during the Period of 2011-2012	31
3. Fundamental Rights Cases Concerning Discrimination in Admission to Universities	33
3.1 Right to education	35
3.2 Right to equality and permissible classifications	36
3.3 No evidence rule	37
3.4 No prior announcement or intimation re an alteration in the method of calculating Z-Score	38
3.5 Legitimate expectation	39
3.6 The Petitioner's legitimate expectation	41
3.7 Right to equality & legitimate expectation	43
4. Fundamental Rights Cases Concerning Discrimination in Admission to Schools	44
4.1 Right to equality	46
4.2 Burden of proof	46
4.3 Reasonableness of the application of the Circular	48
4.4 One month time period	50
5. Fundamental Rights Cases Concerning Discrimination in Workplace	51
5.1 Permissible classifications	53
5.2 Legitimate expectation	57
6. Fundamental Rights Cases Concerning Arbitrary Arrests and Detentions	58
6.1 Vires of police officers' actions	59
7. Fundamental Rights Cases Concerning Presidential Immunity under the Constitution	60
7.1 Interpretation of presidential immunity	62

8.	Fundamental Rights Cases Concerning Procedural Rules Applicable in Fundamental Rights Applications	64
8.1	One month time rule	65
8.2	Locus standi	67
8.3	Executive & administrative actions	70
8.4	Performance of functions of a public nature	72
8.5	Degree of control exercised by the state	72
9.	Conclusion	73

### **III. IMPLEMENTATION OF LLRC RECOMMENDATIONS: RESTITUTION & RECONCILIATION**

1.	Introduction	77
2.	Definitions	79
3.	Analysis of the LLRC Report	83
3.1	Reconciliation	83
3.2	Restitution	93
4.	Analysis of the National Plan of Action to Implement the Recommendations of the LLRC	97
5.	Implementation of Key Recommendations on Restitution & Reconciliation	103
5.1	Restitution	103
5.2	Reconciliation	104
5.3	Militarisation	104
5.4	Language	108
5.5	Rights of numerical minorities	108
5.6	IDPs	110
6	Conclusion	111

<b>IV. IMPLEMENTATION OF LLRC</b>	
<b>RECOMMENDATIONS ON RESETTLEMENT</b>	
1. Introduction	113
2. Legal Framework	
2.1 Domestic framework	114
2.2 International framework	115
3. LLRC Recommendations with Significant Developments in the Years 2011-2012	117
3.1 Granting legal ownership of land to resettled IDPs	117
3.2 Land policy of the Government cannot be used as an instrument to effect unnatural demographic changes in a given Province	123
3.3 Land in 'High Security Zones'	124
3.4 Other areas of importance/concern	134
4. Conclusion and General Recommendations	136
<b>V. THE NATIONAL HUMAN RIGHTS ACTION PLAN</b>	
1. Introduction	139
2. NHRAP: An Overview	141
2.1 Some key goals: general areas	141
2.2 Some key goals: specialized areas	142
3. Potential Contribution of the NHRAP	144
4. Critical Considerations	145
4.1 Omissions & gaps	146
4.2 Problems of implementation and monitoring progress	149
4.3 The broader political context	152
5. Conclusion	155

<b>SCHEDULE I</b>	
UN Conventions on Human Rights & International Conventions on Terrorism signed, ratified or acceded to by Sri Lanka as at 31 December 2012	157
<b>SCHEDULE II</b>	
ILO Conventions Ratified by Sri Lanka as at 31 December 2012	163
<b>SCHEDULE III</b>	
Humanitarian Law Conventions Ratified by Sri Lanka as at 31 December 2012	167
<b>SCHEDULE IV</b>	
Some Human Rights Instruments NOT Ratified by Sri Lanka as at 31 <sup>st</sup> December 2012	169
<b>SCHEDULE V</b>	
Fundamental Rights (FR) Cases Decided during the year 2011/2012	173
<b>SCHEDULE VI</b>	
Cases cited in – Sri Lanka and other Jurisdictions	179
<b>BIBLIOGRAPHY</b>	183
<b>INDEX</b>	197