

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	9
EXECUTIVE SUMMARY	12
INTERNATIONAL LEGAL FRAMEWORK	22
1. International Law Applicable to Sri Lanka	22
2. The Judiciary	30
2.1 Judicial independence	30
2.2 Impartiality of the judiciary	31
2.3 Institutional and financial autonomy	31
2.4 Appointment	31
3. The Role of Lawyers and Prosecutors in the Protection and Promotion of Human Rights	32
4. International Law on States of Emergency	34
4.1 Judicial oversight	36
4.2 The right to a remedy in a state of emergency	37
5. Impunity	37

CHAPTER 1: FORTY YEARS OF EMERGENCY - THE NEXUS BETWEEN EMERGENCY LAWS AND STATE ACCOUNTABILITY	39
1. Historical Context	40
1.1 Post independence period	40
2. Emergency laws under the 1978 Constitution.....	42
3. The Public Security Ordinance No. 25 of 1947 (PSO)	43
4. The Prevention of Terrorism Act (Temporary Provisions) Act No. 48 of 1979 (PTA)	46
4.1 Admission of information obtained by torture or cruel, inhumane or other degrading treatment or punishment.....	52
5. Emergency Regulations	53
6. Prevention of Terrorism Regulations 2011.....	56
7. The Case Law.....	60
7.1 Will Courts intervene in the legality of orders issued under the PTA and the ER?	60
8. Conclusion: The Emergency Regime and Impunity.....	64

CHAPTER 2: IMMUNITY UNDER THE CONSTITUTION AND LEGISLATIVE FRAMEWORK	66
1. Presidential Immunity	67
1.1. The basis for presidential immunity	67
1.2. Restrictions on presidential immunity	68
2. Statutory Immunities	75
2.1. The Indemnity Act	75
2.2. The Penal Code and the Criminal Procedure Code.....	77
2.3. Constitutional restrictions and implied immunities in the Armed Forces.....	79
2.4. Applicability of the Army Act	80
2.5. Military tribunals are competent to try serious human rights violations in Sri Lanka	83
3. Conclusion	88
CHAPTER 3: THE TRANSFORMATION OF THE ATTORNEY-GENERAL.	91
1. Historical Evolution of the Role of the Attorney-General	91
1.1. The politicization of the office.....	91
2. Functions of the Attorney-General's Department.....	101
2.1 The practice of <i>nolle prosequi</i>	102

3. Other statutory powers of the Attorney-General.....	108
3.1 Attorney-General practices – the release of magistrate inquiry Reports	110
3.2 Attorney-General discretionary powers misused – transfers of cases	111
3.3 Sanction for offences against public officials	113
3.4 Prosecutorial decisions – notice to the original complainant	114
3.5 Attorney-General practices – double indictments.....	115
4. The Role of the Attorney-General in prolonging detention under the PTA and Emergency Regulations.....	116
4.1 Arbitrary arrest and detention – The role of the Attorney-General ..	118
5. Review or Revision of Prosecutorial Decisions	123
6. Criticism of the Attorney-General – UN Treaty Bodies.....	124
6.1 Committee against Torture.....	124
6.2 The UN Human Rights Committee	126
7. The Representational Policy of the Attorney-General.....	129
7.1 Habeas corpus applications	129
7.2 Fundamental rights applications	131
8. Commissions of Inquiry and the Role of the Attorney-General ..	132
8.1 A critique of the role of the Attorney-General in COIs	132
9. Conclusion	144

CHAPTER 4: SRI LANKA'S CRISIS OF IMPUNITY.....	145
1. Emblematic Cases of Impunity.....	145
1.1 Five Students in Trincomalee Case (2006).....	145
1.2 The Action Contre la Faim Case (2006).....	148
1.3 The Bindunuwewa case (2000).....	151
1.4 The Mylanthanai Massacre Case (1992)	153
1.5 Richard de Zoysa (1990)	154
2. Acquittals under the Convention against Torture Act.....	156
2.1 Nandini Herath (2001)	157
2.2 Lalith Rajapakse Case (2002).....	158
2.3 The Gerard Perera Case (2002)	159
3. Cases involving the use of information obtained by Torture	163
3.1 The Singarasa case (1993)	163
3.2 Edward Sivalingam's case (2008).....	164
3.3 Tissainayagam's case (2008).....	165
4. Four successful prosecutions	166
4.1 Krishanthi Kumaraswamy's Case (1991)	167
4.2 The Embilipitiya Case (1989).....	168
4.3 High Court Kandy Case No.1284/99 (1988).....	169
4.4 High Court Galle Case No. 1947/2008	171

CHAPTER 5: REFORMING THE SYSTEM.....	173
CHAPTER 6 : RECOMMENDATIONS.....	178
1. Sri Lanka’s emergency laws must comply with international law	178
2. Sri Lanka must take measures to end administrative detention	179
3. Sri Lanka must guarantee the right to effective remedy and reparations for human rights violations and serious violations of international humanitarian law	180
4. Sri Lanka must remove all barriers to State accountability for violations of human rights and humanitarian law	183
5. Sri Lanka must limit or institute greater accountability over the powers of the President.....	184
6. Sri Lanka must take steps to protect judicial independence.....	184
7. Sri Lanka must take steps to strengthen the independence of the Attorney-General	185