

Briefing Notes



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MASKING INACTION: SRI LANKA: NATIONAL ACTION PLAN FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS 2011-2016



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LIST OF ABBREVIATIONS

GoSL	Government of Sri Lanka
HRC	Human Rights Council
LLRC	Lessons Learned and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MP	Member of Parliament
NAP	National Action Plan
PTA	Prevention of Terrorism Act
TSA	The Social Architect
UN	United Nations
UPR	Universal Periodical Review

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EXECUTIVE SUMMARY



Sri Lanka's National Action Plan for the Protection and Promotion of Human Rights ('National Action Plan', NAP) appeared at the end of 2011. The drafting process had begun in 2008, consequent to a commitment made by the Government of Sri Lanka in the first cycle of the Universal Periodic Review. The first draft of the National Action Plan was formulated in a process which included the representation of civil society representatives and was completed in 2009. However, the process floundered following the abolition of the Ministry of Human Rights in 2010. The subject of human rights was not formally assigned elsewhere within government. The progress of the National Action Plan was subsequently entrusted to the Attorney-General's Department that produced the second draft, and organised further civil society consultations in 2010. However, some civil society representatives complained that the second draft was weaker than the first version, and had removed most of their contributions, revealing the cosmetic quality of non-governmental participation in the process. Thereafter, the momentum for the adoption of the National Action Plan slowed; and its fate appeared to be uncertain.

The government was preoccupied with crisis-management abroad, of its human rights record at home, and particularly, demands for international monitoring of human rights and investigation into alleged war crimes in the final phase of the war in 2009. Over the course of 2011, as efforts began to table a country-specific resolution at the UN Human Rights Council (HRC), the National Action Plan was finally presented to the Cabinet of Ministers that further amended the draft, shortly before the 18th regular session of the Human Rights Council in September. The sudden urgency was prompted by diplomatic exigencies to permit publicity of the NAP as evidence of the government's commitment to the promotion and protection of human rights.

However, the final text of the National Action Plan remained inaccessible and unknown within the country, until its release in December 2011, and was only made available more widely one year later.

The National Action Plan comprises two broad sets of issues grouped into Civil and Political Rights, and Economic, Social and Cultural Rights respectively; as well as six specialised areas: Prevention of Torture, Rights of Women, Protection of Labour Rights, Rights of Migrant Workers, Rights of Children, and the Rights of Internally Displaced Persons. Consistent with best practice, the National Action Plan does not stop with the identification of broad goals: there are dozens of individual issues isolated for attention – many reflect longstanding problems in the legal, administrative and criminal justice systems; key performance indicators are enumerated; as are time-frames for implementation; and key responsible agencies are named.

Considering the mounting political authoritarianism of the Mahinda Rajapaksa administration, and combined with the weakness of democratic movements, institutions and values, the adoption of the National Action Plan registers an advance. Whereas influential discourses within state and society present human rights as alien and imposed from without, the 'home-grown' National Action Plan creates opportunities for domestic advocacy on human rights and is potentially a bridge-head for critical civil society engagement with the state.

The National Action Plan should be supported, and be swiftly implemented. In addition, there should be plural civil society representation in its ongoing monitoring and evaluation; complemented by periodic public consultations, and ongoing information-sharing on its progress.

In every other respect, there is limited reason for optimism. More than 12 months since its adoption, it is not possible to identify where progress has been achieved as a result of the National Action Plan.

There is nothing to show, beyond coordination meetings of government agencies and internal reports that are not available to the public. None of its proposed activities, of three or six month



duration have, to public knowledge, been completed – even after 12 months. In actuality, the NAP has made no appreciable difference to the culture of, and climate for, human rights promotion and protection in Sri Lanka.

No reading of the National Action Plan indicates that its authors have confronted the scale and severity of Sri Lanka's human rights crisis. The right to life, the right not to be tortured, and the freedoms of expression, association and assembly, are violated with impunity. The Prevention of Terrorism Act continues to be used to repress non-violent actions. The centralisation of power in the office and the person of the President unveil the worthlessness of the legislature and the judiciary in checking abuse of authority and defending the rights of citizens. The militarization of state and society has accelerated since the war ended. Post-war reconciliation is platitudinous for the Tamil victims and survivors of the war without truth and justice.

If there is no sober acknowledgement of the human rights crisis in the National Action Plan, there cannot be cause for hope that it will rise to, leave alone meet the challenges of human rights protection in Sri Lanka. If the Government of Sri Lanka cannot be trusted not to back-track on pledges

and commitments in international forums, as well as in its own National Action Plan, then what reassurance is there of sufficient political will for the remaining promises to be honoured?

If there is no transparency in its implementation, no regular consultation with the plurality of civil society, and no discrete allocation of institutional, human and financial resources for its progress, there cannot be any confidence in the progress or in the meaningful realisation of the goals of the National Action Plan.

Indeed, it is hard not to see the obvious. As of now, the National Action Plan's importance to the Government of Sri Lanka is for international advocacy on its human rights record and as symbol of its acknowledgement of human rights obligations. There is nothing inherently dishonourable in these ends; provided it is accompanied by sincerity of purpose and substantive improvements in human rights at home. However, where the National Action Plan masks the inaction of the government in confronting abuses and violations by state actors; and is a tool for deflection of its domestic and international obligations, then all who profess concern for human rights should know a fig-leaf when they see it.

GOVERNMENT OF SRI LANKA ON THE DIRECT RELEVANCE OF THE NATIONAL HUMAN RIGHTS ACTION PLAN (NHRAP) TO THE IMPLEMENTATION OF LLRC NATIONAL PLAN OF ACTION (NPOA)

°The Government will engage with stakeholders in connection with the implementation of the National Plan of Action for the Promotion and Protection of Human Rights (NHRAP - 2012 to 2016). The Annual Review of the NHRAP is under way with further information being collected from implementing agencies. The progress achieved will be published on the dedicated NHRAP website.

Referring to the concern expressed on the alleged lack of Government implementation of the interim recommendations and that the National Plan of Action (NPoA) deals with only selected recommendations of the LLRC, I wish to inform this Council that some of the recommendations were already being addressed, including through the National Human Rights Action Plan. They have not been reflected in the NPoA. Further it may be noted that the NPoA is an evolving process."

Excerpt of a speech of Minister Mahinda Samarasinghe at the 22nd session of the Human Rights Council



1. INTRODUCTION



Children, Elderly and Women in a Menik Farm IDP camp 2009: Non-implementation affects them most. Photo: UN.

National Action Plans for the Promotion and Protection of Human Rights were proposed by the Vienna Declaration and Programme of Action of the World Conference on Human Rights in 1993. These action plans were designed to enhance the domestic human rights machinery of the member states of the United Nations; within the framework of international cooperation for the full and effective enjoyment of human rights.

States are encouraged to “consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights”¹. It is further recommended that the United Nations, through its Centre for Human Rights (since superseded by the Office of the High Commissioner for Human Rights), should provide on request, such technical and financial assistance as required for the implementation of action plans on human rights².

The intention of a National Action Plan for the Promotion and Protection of Human Rights (hereafter ‘National Action Plan’ or NAP) is to be a ‘roadmap’ for states on measures within their control for the promotion and protection of human rights.

In general, the NAP will isolate critical or urgent human rights concerns; it will diagnose some of

their causes or origins; it will prescribe appropriate remedies for their amelioration (be it legal or institutional or policy reform); it will identify the responsible or lead actor or agencies within government for administration of those remedies; and it will provide realistic timelines for the process of implementation and achievement of its goals.³

Sri Lanka committed itself to the development of a National Action Plan in 2008 during the first cycle of the Universal Periodic Review of its international human rights obligations.⁴ At that point in time, the civil war was still raging although the government had regained territory in the East of the island, formerly under the control of the Liberation Tigers of Tamil Eelam (LTTE). There was much concern within and outside the island as to the large numbers of internally displaced persons in the North and East; and the serious human rights violations of the right to life, the right not to be tortured, and of freedom of expression in all regions. While the state evidently held the advantage in the military campaign, the imminent end and troubled aftermath of the war was still distant to most.

Sri Lanka released its National Action Plan for the Promotion and Protection of Human Rights that spans the period of 2011-2016, at the end of 2011, therefore of five-year duration.

1 Part II, Para 71, Vienna Declaration and Programme of Action, A/CONF/.157, 12 July 1993, <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en>.

2 Part II, Para 69, Vienna Declaration and Programme of Action.

3 See generally, Commonwealth Secretariat, Commonwealth Model National Plan of Action on Human Rights, London 2007.

4 Rasika Somarathna, “National Action Plan on Human Rights”, Daily News, 14 May 2008 <http://www.dailynews.lk/2008/05/14/news01.asp>.



The significance of this document, beyond its substantive content, is that it presents the Government of Sri Lanka's only official articulation of its analysis of, and vision for, human rights.

Generally, references to human rights in official discourse are negative or pejorative; being associated with demands for accountability for alleged war crimes and in favour of autonomy rights for Tamil-speakers in the North and East. The government of Sri Lanka insists that no crimes against humanity were committed in its military campaign, and in practice, it is opposed to power-sharing through devolved government.

The promotion of human rights is generally associated by the government and large sections of the Sinhala majority citizenry with actors and agencies alleged to be hostile towards the country (which is now equated with the state): for example, local and international non-governmental organisations, the 'Tamil Diaspora', the UN Office of the High Commissioner for Human Rights, and some western states. Human rights, the refrain runs, is a stick being wielded by hypocrites and opportunists to beat Sri Lanka, which ought to be celebrated for having successfully faced down threats to its territorial integrity from a terrorist movement.

Unsurprisingly, therefore, there was no reference to human rights in the 2010 presidential election manifesto of the incumbent. In fact, the then existing Ministry of Human Rights was abolished after the general election that same year; and the subject of human rights was dropped altogether from any of the remaining and newly created Ministries (of which there are no shortage).

Subsequently, and only because the continuing and major diplomatic challenge for the government of Sri Lanka is on human rights protection and the overlapping issue of minority and autonomy rights, some functions were assigned to the Ministry of External Affairs headed by Professor G. L. Peiris MP; and some others were assigned to a newly minted 'Special Envoy on Human Rights', who is also the former Minister of Human Rights and presently Minister of Plantation Industries,

Mr. Mahinda Samarasinghe MP. The tensions and tussles between the two Ministers, and the poor coordination that has followed, are public knowledge and regularly surface in the government's preparations for Geneva-based UN meetings and mechanisms such as sessions of the Human Rights Council. The enduring impression is one of crisis-management and fire-fighting, rather than of earnestness in human rights promotion and protection by the government.

In the face of suspicion and hostility within his own government, in any matter concerning engagement on human rights, the Special Envoy on Human Rights has underlined that "the National Human Rights Action Plan was not drafted on a demand by the international community", and attempted to redeem it by association with economic development and the head of state and government: "the country will enjoy economic, social and political stability with the implementation of this plan backed by the massive development drive that is being carried out by the government under the directive of President Mahinda Rajapaksa"⁵.

Some questions that frame any reading of Sri Lanka's National Action Plan are as follows: What is the government's analysis of human rights problems in Sri Lanka?

What areas does the government believe to be priorities for attention? Which groups and individuals does the government believe to be most vulnerable to human rights violations? What are the measures the government believes to be appropriate and effective in addressing human rights problems? Which state agencies does the government believe to be appropriate for remedial action? What milestones have been identified by the government to signal progress? Within what timeframe does the government believe that the necessary actions can be executed?

However, before making some observations on Sri Lanka's National Action Plan on the Promotion and Protection of Human Rights, it is necessary to briefly recall the methodology and process of its formulation.

⁵ Chaminda Perera, "HR Action Plan spurring wide benefits", Daily News, 10 December 2011, <http://www.dailynews.lk/2011/12/10/news01.asp>.



2. THE PROCESS

The process by which the National Action Plan is designed is of utmost importance. The desired approach is one that is consultative, participatory and consensual. The process matters because its nature and quality will determine whether the final document is simply the viewpoint of the state or also enjoys the endorsement of non-state actors; whether sufficient momentum is generated for its progress and realisation; and the level of awareness and understanding of its contents by public officials and the general public. As the government of Sri Lanka itself noted: “The participatory approach adopted in developing the National Action Plan is based on the firm belief of the Government that the process of developing the plan is as important as the outcome”⁶.

Therefore, some preliminary questions would be as follows: Did the government seek advice and inputs from the national human rights institution/s and non-state agencies such as human rights non-governmental organisations; business associations; academics and researchers; professional associations etc.? **Did the government ensure the representation of these stakeholders in the drafting process, including those who may be politically antagonistic towards the government? Was their participation substantive or solely symbolic? Was there facilitation towards consensus building, not based on the lowest-common-denominator, but rather upon adherence to international human rights obligations? Did the final text reflect at least some of the aspirations of non-state representatives; and can it be said to have the support, in general, of all stakeholders?**

When the Sri Lankan government began formulating its National Action Plan in 2008, with financial support from the United Nations Development Programme, this responsibility was entrusted to the Ministry of Disaster Management and Human Rights headed by Mr. Mahinda Samarasinghe MP. The process began with the drafting of issue papers in two general areas: Civil and Political Rights; Economic, Social and Cultural Rights, as well as six specialised ones: Prevention of Torture, Rights of Internally Displaced Persons, Protection of Labour Rights, Rights of Children, Rights of Women and Rights of Migrant Workers.

The drafting committees included equal representation from government and civil society; the Human Rights Commission of Sri Lanka was represented by senior staff on four of those committees. There was diversity of genders, ethnicities and political opinions among the selected civil society representatives. While there was good representation of women from state agencies, there was no ethnic diversity reflecting the overwhelmingly Sinhala Buddhist composition of the public service. This process was coordinated by a consultant specifically recruited for this task, and who was based at the Ministry of Disaster Management and Human Rights.

A consultation with selected civil society organisations and activists was conducted in February 2009, at which a stock-taking document on the process, some of the urgent issues and challenges, and the future steps for finalisation of the National Action Plan was circulated⁷. The broad objectives of the NAP were reported as:

- “Achievement of genuine and substantive improvements in the observance of human rights;
- Promotion of greater awareness of human rights, both in the general public and in specific sectors; and
- Promotion of coordination of human rights activity among diverse government agencies and non-governmental organizations”⁸.

The drafts were consolidated at the Ministry of Disaster Management and Human Rights.⁹ The

7 One commentator’s analysis of the stock-taking report is of equal application to the final version of the National Action Plan: “a disappointing and rather timorous document for several reasons, chief among which is its authors’ apparent preoccupation with accommodating the sensitivities of the government. This is particularly so in regard to the government’s policy on conflict resolution, and which forms the basis for the undemanding nature of its recommendations”, see Asanga Welikala, “The farcical ‘National Action Plan for the Promotion and Protection of Human Rights’ in Sri Lanka”, groundviews.org, 8 March 2009, <http://groundviews.org/2009/03/08/the-farcical-national-action-plan-for-the-promotion-and-protection-of-human-rights-in-sri-lanka/>.

8 Rohan Perera and Minari Fernando, Report on the First Phase of Consultations in the Development of the National Action Plan for the Promotion and Protection of Human Rights, Ministry of Disaster Management and Human Rights, undated, (background paper for the Consultation on Developing a National Action Plan for the Promotion and Protection of Human Rights in Sri Lanka, Galle Face Hotel, Colombo, 24 February 2009).

9 Rasika Somarathna, “Action Plan mooted”, Daily News, 10 September 2010, <http://www.dailynews.lk/2010/09/10/news21.asp>.

6 “Govt. to finalize draft Action Plan on HR”, Daily News, 6 February 2010, <http://www.dailynews.lk/2010/02/06/news20.asp>.



National Action Plan Steering Committee, consisting of the chairpersons of the drafting committees as well as other experts, was charged with overseeing this stage. Later, the second draft was presented at focus group discussions that included representatives from government, the private sector, non-governmental organisations, and the Human Rights Commission, over the course of 2010.

This process was managed by the Attorney-General's department. In between, following the abolition of the Ministry of Human Rights in 2010, there was confusion as to responsibility for the completion of the National Action Plan.



Mr. Mohan Peiris who was in charge of the completion of the National Action Plan later became presidential adviser, GoSL delegate to UNHRC and finally the Chief Justice. Photo: UN.

Curiously, the Attorney-General's department, then headed by the former Legal Counsel to the Ministry of Defence Mr. Mohan Pieris PC, was delegated this task. The Attorney-General's proximity to influential state actors, and active participation in the government's delegations to Geneva prior to his appointment, made him a natural choice. Upon his retirement as Attorney-General, Mr. Pieris was appointed as Senior Legal Advisor to the Cabinet of Ministers and more recently was elevated to the Supreme Court of Sri Lanka as its Chief Justice following the controversial impeachment of his predecessor, confirming his close relationship with the government.

The official account proceeds to record, that the National Action Plan "was further revised and finalised following the focus group discussions in May 2011"¹⁰. Thereafter, it was presented to the Cabinet of Ministers in September 2011. It is known that there were amendments made by the Cabinet,¹¹ though their precise nature is unknown. It has been reported that President Rajapaksa had previously objected to the decriminalisation of same-sex relationships,¹² which was therefore dropped from the final version. The National Action Plan was finally released in December 2011, though not before a further Cabinet-level review of its contents. It took a further year until it was made available online in December 2012.¹³

However, the authorised version of the consultative process and civil society participation has been contradicted by some non-governmental activists.

According to the university academic and constitutional expert, Mr Rohan Edrisinha, civil society representatives only contributed to the first draft, and thereafter were "neither involved with nor privy to the final version"¹⁴. The revised version had weakened and diluted several aspects of the first draft in his view.

In February 2012, the government announced the constitution of the ministerial sub-committee, chaired by the Special Envoy on Human Rights, for the implementation of the National Action Plan. The timing of the announcement after months of inaction was on the eve of the 19th session of the UN Human Rights Council in Geneva that March; where notice of the country-specific resolution on Sri Lanka had been served. Clearly, the flurry of activity was intended to pre-empt criticism of the government's disinterest in the National Action Plan, and to dilute the resolution that was to be tabled. Thereafter, once again, there has been a lull in taking forward the process of implementation.

¹⁰ Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights 2011-2016, at p. 5.

¹¹ "Cabinet nod for human rights action plan", Daily News, 9 September 2011, <http://www.dailynews.lk/2011/09/09/newso3.asp>; Rasika Somarathna, "Action Plan for rights protection", Daily News, 7 October 2011, <http://www.dailynews.lk/2011/10/07/polo1.asp>.

¹² "MR vetoes gay rights", The Sunday Times, 11 September 2011, <http://sundaytimes.lk/110911/Columns/cafe.html>.

¹³ Rasika Somarathna, "NHRAP published on the internet", Daily News, 11 December 2012, <http://www.dailynews.lk/2012/12/11/news20.asp>.

¹⁴ Namini Wijedasa, "Watered down version of National Action Plan to be presented in Geneva UN", transcurrents.com, 25 December 2011, <http://transcurrents.com/news-views/archives/6920>. (Originally published in Sunday LakkimaNews).



3. NATIONAL ACTION PLAN FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS (2011-2016)

The National Action Plan is divided into eight substantive sections, that are presented in the following order: Civil and Political Rights; Economic, Social and Cultural Rights; Prevention of Torture; Rights of Women; Labour Rights; Rights of Migrant Workers; Rights of Children; and Rights of Internally Displaced Persons.¹⁵ The logical framework format of the NAP is helpful in aiding its accessibility and assimilation, though the correspondence between some of the activities and the asserted goals is contentious.



A mother calling for information on her disappeared son walks to a Kovil carrying a burning camphor pot, December 2012. Photo: Dushiyanthini Kanagasabapathipillai.

The acknowledgment of both civil and political, as well as economic, social and cultural rights is important as the discourses deployed by, and resources at the disposal of, President Mahinda Rajapaksa's administration have been applied to 'economic development' – which is equated with the progressive realisation of socio-economic

rights – whereas civil and political rights has been marginal in state rhetoric. It is also noteworthy that the prevalence of torture is, by virtue of inclusion in the National Action Plan, admitted to be a systemic and long-term human rights problem in Sri Lanka.

VULNERABLE GROUPS WITHIN SOCIETY

Further, the government has recognised that there are particularly vulnerable groups within society that require specific and targeted measures for their protection: that is, women, children, workers (within the country), migrant workers, and internally displaced persons. In every society there are groups and communities that are particularly vulnerable to human rights violations, and those identified in the National Action Plan could be joined by several others. However, it is legitimate for government to prioritise or focus on selected groups; and equally legitimate for there to be robust debate and discussion on its choices and their rationale.

Owing to lack of information on the status of implementation, and constraints of space in this paper, a technical and detailed analysis of the National Action Plan is precluded. Hence, some critical observations follow, with selected reference to the chapter on Civil and Political Rights.

Many of the activities relate to awareness-raising on human rights (p. 10, Goal 1.2). Clearly, human rights education should be ongoing and should be integral not only in the training of public and judicial officers but also to the school curriculum. However, the most effective means of raising the consciousness of duty-bearers and claim-holders is the enforcement of rights and deterrent action for the violation of rights. When the abuse of rights becomes so routine as to be the norm, and when violators and their victims know that there is impunity for these abuses; knowledge of human rights is of academic interest alone.

Even one successful prosecution for any of the numerous killings and assaults of media workers in recent years, would have much more impact than innumerable workshops on freedom of opinion and expression.

¹⁵ Online in Sinhala, Tamil and English at <http://hractionplan.gov.lk/>.



Empty Chairs: Commemoration of journalists killed, abducted and tortured in Sri Lanka; No murder No abduction No assault has been investigated to a completion

STRENGTHENING THE HUMAN RIGHTS COMMISSION

Strengthening the Human Rights Commission is another theme in this section. The reforms proposed in the National Action Plan are unobjectionable, but even if every one of them were realised, they are inadequate to transform the national human rights institution into a defender of peoples' rights. The National Action Plan ignores, as it must, the fundamental issue of the lack of independence of the Human Rights Commission. Its members are directly appointed by the President, and at least one among them has taken it upon himself to publicly associate himself with the government's disinformation campaign on the 19th session of the Human Rights Council last year, and more recently, with its politically motivated impeachment of the former Chief Justice. Many of its own staff believe that the Human Rights Commission is an appendage of the state, and should not take up issues and complaints that are politically sensitive or embarrassing to the government.

THE RIGHT TO LIFE

The National Action Plan rightly seeks to ensure and protect the right to life (p. 17, Goal 7.1), but is silent on the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. The Government of Sri Lanka rejected recommendations during the second cycle of the Universal Periodic Review to ratify the Convention; and to invite the Working Group on Enforced or Involuntary Disappearances. Recommendations for abolition of the death penalty were also rejected.

Across the chapters of the National Action Plan, the most important reforms are subject to “review” or “study” or consideration by a committee. In other words, action that is dilatory or ducks immediate and decisive change, by postponing it or awaiting favourable political signals.

SELF-CONGRATULATION

It is significant that the respective sections or chapters of the National Action Plan are prefaced with self-congratulatory and disingenuous references on the government's commitment to human rights: for instance, the promised inclusion of a comprehensive Bill of Rights into the Constitution – which four years after its drafting began in 2008, and more than three years after its finalisation at the end of 2009,¹⁶ remains to be done; or the criminalisation of torture by the 1994 Convention Against Torture (CAT) Act – that in spite of its title does not fully incorporate the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁷ contributed to a mere five convictions in the period between its enactment and up to the middle of 2012.¹⁸

What would have been appropriate and relevant in a National Action Plan is a sober assessment

¹⁶ Rajiva Wijesinha, “The Bill of Rights”, Daily News, 10 August 2012, <http://www.dailynews.lk/2012/08/10/fea05.asp>; also “Kick-starting multiculturalism”, Daily News, 28 December 2012, <http://www.dailynews.lk/2012/12/28/fea04.asp>.

¹⁷ Kishali Pinto-Jayawardena, *The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka*, Rehabilitation and Research Centre for Torture Victims, Copenhagen 2009, at p. 11.

¹⁸ Kishali Pinto-Jayawardena, “Clownishness directed at the world at large”, The Sunday Times, 10 June 2012, <http://www.sundaytimes.lk/120610/Columns/focus.html>.

and self-critical analysis of the overall status or situation of human rights in Sri Lanka in the selected areas of focus.

The range of documented human rights violations in the recent past include enforced disappearances, extra-judicial killings, custodial torture, lengthy pre-trial detention, rights of prisoners, impunity of state actors, structural discrimination against minorities, attacks on media institutions and freedom of expression, and hate-campaigns against human rights defenders.¹⁹

No such accounting has been made, probably because it would have been too controversial within the government, and would have also called into question some of the corresponding silences in the National Action Plan.

The approach taken by the government underlines the instrumental value of the National Action Plan as a tool of international human rights diplomacy; and is indicative of the chasm of perception of human rights violations between critical civil society organisations and human rights defenders, and the government of Sri Lanka.

Aside from what is absent from the National Action Plan, it should be observed that the actions and omissions of the Rajapaksa administration contradict, if not reverse, the often modest reforms that are promised.



Colombo: Protester against the 48 hour Detention Act, Photo taken on 22 January 2013.

¹⁹ US Department of State, 2011 Country Reports on Human Rights Practices: Sri Lanka, Bureau of Democracy, Human Rights and Labor, Washington D.C. 2012, <http://www.state.gov/documents/organization/186687.pdf>.

ARRESTS AND DETENTIONS

One issue rightly identified in the NAP is that the law on arrests and detentions has not been followed in practice, such that suspects are not always produced before a magistrate within 24 hours of arrest. Instead of taking forward the constructive activities proposed in the NAP, the Government of Sri Lanka has extended the permissible period before production, to 48 hours, through an amendment to the Criminal Procedure Code on 22 January 2013. This regressive measure has been denounced by rights activists as legitimising the common practice of arresting someone before there are sufficient grounds for detention and using the detention as an opportunity to coerce information or a confession or to otherwise continue with their investigations while denying the fundamental right to liberty.²⁰

THE PREVENTION OF TERRORISM ACT

The Prevention of Terrorism Act (PTA) that has long been faulted for its inconsistencies with Sri Lanka's human rights obligations. The use of the PTA has continued well after the end of the war – most recently employed in a large number of arrests in the Jaffna peninsula – because of the extraordinary powers of arrest and detention that it grants state security agencies. Instead of repealing or at least rectifying the PTA, as promised in the NAP (p. 16, Goal 5.1), the Government has strengthened its provisions consequent to the lifting of the state of emergency in August of 2011.²¹

Instead of extending the time for judicial review of Bills, as promised in the NAP (p. 12, Goal 1.3), the government has continued to steamroller controversial legislation, as “urgent in the national interest”, stifling public debate and limiting the opportunity for public interest challenges. This abuse of the Constitution hastened the 2010 enactment of the Eighteenth Amendment to the Constitution²² that centralises power further in the Executive, or more precisely, the Office of the President; as well as the legislation on expropriation of privately-owned enterprises and assets in 2011,²³ among numerous other instances.

²⁰ M. A. Sumanthiran, “The 48-hour detention law”, Ceylon Today, 21 January 2013, <http://www.ceylontoday.lk/78-22355-news-detail-the-48-hour-detention-law.html>.

²¹ J. C. Weliamuna, “Lifting of the Emergency: Exposing the Sham Exercise”, Daily FT, 17 September 2011, <http://www.ft.lk/2011/09/17/lifting-of-the-emergency-exposing-the-sham-exercise/#more-48182>.

²² Groundviews, The 18th Amendment to the Constitution: Process and Substance, 2 September 2010, <http://groundviews.org/2010/09/02/the-18th-amendment-to-the-constitution-process-and-substance/>.

²³ Transparency International Sri Lanka, Urgent Bills, Transparency and Human Rights, Colombo 2011, http://www.tisirilanka.org/pub/reports/Urgent_Eng_Long.pdf.



4. THE IMPLEMENTATION OF THE NATIONAL ACTION PLAN

According to the National Action Plan, its implementation²⁴ is to be overseen by a Cabinet Sub-Committee, which consists of ministers in the government and therefore is an appropriately high-level group. This correctly recognises the importance of the National Action Plan, and the need for political actors to advocate for it, when the bureaucracy, the criminal justice system, and law enforcement agencies may be less enthusiastic or even obstructive of changes in law and policy.

NO DIALOGUE ON IMPLEMENTATION

The Sub-Committee of members of the Cabinet is to be supported by a Monitoring Committee comprising senior government officials. A mechanism for regular dialogue with civil society and with state institutions is promised, though its modalities are unspecified. An innovative idea is to encourage citizen participation through an interactive website and the use of social media, albeit as only around 10-12 percent of Sri Lankans are believed to use the internet, accessibility would still be quite limited, while the social profile of potential participants would also be narrow.

When Minister Samarasinghe sought to accept funding of US\$150,000 from the United Nations Development Programme for the implementation process, this was rejected by President Rajapaksa.²⁵ It is believed that the administration was concerned that donor funding would be used as leverage for 'political agendas' (other than its own). However, there was no financial provision for the NAP in the 2012 budget. The budget for 2013 is asserted to have allocations to resource the NAP, but it has not been possible to disaggregate the amount.

THE LONGHEST TIMELINE FOR IMPLEMENTATION IS 12 MONTHS

As the NAP was released in December 2011, and as the longest of the individual timelines for implementation is 12 months, the Government of Sri Lanka reported at the second cycle of the Universal Periodic Review (UPR) that "implementation, including monitoring and evaluation, is currently underway"²⁶.

KEEPING THE HRC IN THE DARK

The Government's UPR report assured that the Cabinet of Ministers will be advised of strengths and weaknesses in implementation following an annual performance review, and that "revisions and refinements of targets will be decided on by the Cabinet"²⁷. Conveniently, the initial evaluation was scheduled to be in December 2012 or January 2013 and therefore after its UPR review. As the UPR concluded shortly afterwards, there was no possibility for the Human Rights Council to verify whether the evaluation was conducted, nor whether there is actual implementation.

Here, a familiar pattern emerges. Whether reporting to a UN Treaty Body or to the UN Human Rights Council, the government will always claim that some significant measure or milestone – such as the adoption of legislation in accordance with international obligations such as the Witness and Victim Assistance and Protection Act, or institutional advance such as the National Commission on Women – is imminent. The international mechanisms have no alternative but to take the government at its word and customarily express their appreciation and encouragement of those efforts. The session usually ends on that hopeful note. The government delegation returns to the island in relief. No further progress is made; and no reference to its past promises, until the next event in the UN human rights calendar.

²⁴ Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights 2011-2016, at p. 6.

²⁵ "President rejects UN funds for HR", The Sunday Times, 18 December 2011, http://www.sundaytimes.lk/111218/News/nws_01.html.

²⁶ National Report: Sri Lanka, Fourteenth Session of the UN Human Rights Council Working Group on the Universal Periodic Review, A/HRC/WG.6/14/LKA/1, 10 August 2012, Para 46 at p. 10, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/158/92/PDF/G1215892.pdf?OpenElement>.

²⁷ National Report: Sri Lanka, Fourteenth Session of the UN Human Rights Council Working Group on the Universal Periodic Review, A/HRC/WG.6/14/LKA/1, 10 August 2012, Para 50 at p. 26.



,NO SENSE OF EMERGENCY‘

Now, what is the situation in reality? According to the Convenor of the Task Force for implementation of the National Action Plan: “The Minister is supposed to chair the Inter-Ministerial Committee that is tasked with implementing the Plan, and he has set up a Task Force to expedite this, but neither body has power or even influence to ensure that things move quickly ... we still do not have effective means of coordination, and the classic government approach to action means that there is no sense of urgency”²⁸.

The table below presents the status of implementation of a handful of issues that were to have been completed before December 2012, and excluding those that require constitutional reform or review by a parliamentary select committee, by way of illustration:



Waiting for Justice: How long they should wait?

REFERENCE	KEY PERFORMANCE INDICATOR	TIMEFRAME	STATUS
Civil and Political Rights: Issue 7.1c	Police Orders and Military Directives amended to provide for vicarious liability of senior police and military personnel with regard to disappearances of persons involuntarily removed, abducted or in the unlawful custody of subordinate officers	Around or after June 2012	Not Done
Civil and Political Rights: Issue 7.1d	Witness and Victim Assistance and Protection Bill enacted	Around or after June 2012	Not Done
Civil and Political Rights: Issue 8.1a	Amend the existing rules to empower magistrates and other law enforcement agencies to undertake visits to places of detention	Around or after June 2012	Not Done
Civil and Political Rights: Issue 8.1c	Guidelines on safeguards for protection during and following arrest and detention issued	Around or after March 2012	Not Done
Rights of Women: Issue 6.1B	Third Schedule of the Land Development Ordinance amended to provide for equal rights of succession for male and female relatives	June 2012	Not Done
Rights of Women: Issue 6.1C	Vagrancy Ordinance amended to address discriminatory provisions/treatment of women	June 2012	Not Done
Rights of Internally Displaced Persons: Issue 1.1a	National Policy on Displacement drawing from Guiding Principles on International Displacement adopted	Around or after June 2012	Not Done
Right to Information 13.1	Adopt legislation to ensure right to information	Around Dec 2012	Not Done
Freedom of Expression 14.1a	Review Official Secrets Act, circulars, Establishments Code for public access to information issued	Around May 2012	Not Done

²⁸ Rajiva Wijesinha, “Human Rights means time lines..”, Daily News, 21 December 2012, <http://www.dailynews.lk/2012/12/21/fea01.asp>.



As Professor Rajiva Wijesinha MP emphatically notes, “the timelines in the Action Plan are being ignored”²⁹.

He has previously voiced his frustration that although some of the key responsible agencies have been collecting information on progress towards implementation of the NAP, typically, these reports are not made public or available as they should on the National Action Plan website,³⁰ which prevents public scrutiny of government action or inaction, and which does not encourage awareness and understanding of the NAP by claim-holders.

WHERE ARE THE MONITORING AND EVALUATION?

Implementation of the NAP is also supposed to include civil society representatives in monitoring and evaluation.³¹ However, it is not known which, if any, of the state agencies have institutionalised mechanisms for civil society consultations – with the exception of the Ministry of National Languages and Social Integration, and whether even in that Ministry there are discussions with civil society activists to monitor the progress of the National Action Plan.

Whereas the government report for the Universal Periodic Review commends Sri Lanka’s “clear commitment and progress”³² on implementation of its National Action Plan, patently there is neither “commitment” nor “progress”.

²⁹ Rajiva Wijesinha, “Tired of being called a nuisance”, Daily News, 4 February 2013, <http://www.dailynews.lk/2013/02/04/fea02.asp>.

³⁰ Dinouk Colombage, “Progress on NHRAP Expected by the End of The Month”, The Sunday Leader, 8 April 2012, <http://www.thesundayleader.lk/2012/04/08/progress-on-nhrap-expected-by-the-end-of-the-month/>.

³¹ National Report: Sri Lanka, Fourteenth Session of the UN Human Rights Council Working Group on the Universal Periodic Review, A/HRC/WG.6/14/LKA/1, 10 August 2012, Table 1: Para 37 at p. 19, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/158/92/PDF/G1215892.pdf?OpenElement>.

³² Report of the Working Group on the Universal Periodic Review: Sri Lanka, A/HRC/22/16, 18 December 2012, Para 7 at p. 3, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/188/71/PDF/G1218871.pdf?OpenElement>.



5. CONCLUSIONS

Although the National Action Plan for the Protection and Promotion of Human Rights was released more than 2 years after the end of the war, it doesn't really register the significance of this historical moment. Considering the prolonged nature of the ethnic conflict in Sri Lanka and the multitude of human rights violations experienced by conflict-affected communities, the lacuna is glaring.

To be sure, there is reference to the reintegration of women ex-combatants and the socio-economic needs of war widows (p. 69, Goal 7.1 and 7.2 respectively); psycho-social support and access to services and rehabilitation for children affected by armed conflict (p. 105, Goal 4.3 and 4.4 respectively); and of course, an entire chapter on internally displaced persons – including those affected by conflict. However, the commitments reaffirm ongoing government programmes and policy, rather than chart new initiatives and approaches secured by human rights obligations and norms.

NAP AND LLRC: THE CORRELATION

Certainly, the final report and recommendations of the government-appointed Lessons Learned and Reconciliation Commission or LLRC (also released in December 2011), could be argued by the Government of Sri Lanka to be complementary to the National Action Plan and compensatory of the latter's neglect of issues and violations that are specific to communities in the conflict-affected Northern and Eastern provinces.

The state-generated LLRC Action Plan of July 2012 does cross-refer to the National Action Plan and indicates that implementation of the NAP will also respond to some LLRC recommendations.

However, as is well-known, the LLRC report, its merits aside, also side-stepped issues of violations of international humanitarian and human rights law relating to the conduct and conclusion of the military campaign in the Vanni. The LLRC Action Plan selects only part of the LLRC recommendations, and assigns key roles to state agen-

cies that are accused of human rights abuses and unlikely to challenge themselves.

This underlines the importance of a credible National Action Plan for the Protection and Promotion of Human Rights. An Action Plan that is programmatic in so far as it takes forwards the scope and depth of human rights protection and promotion in Sri Lanka; and not pragmatic through affirmation of current perspectives and policies. An Action Plan that is backed by political will to confront and remedy the horrors and traumas of human rights abuses; rather than subordinated to political convenience and expediency.

More than one year since the adoption of Sri Lanka's National Action Plan for the Protection and Promotion of Human Rights, even incremental progress in its most innocuous activities is absent.

The low level of awareness of the National Action Plan within key state agencies, and therefore also of their specific responsibilities; coupled with the perceptible lack of 'ownership' of the government gives no confidence that its progress will accelerate over time.

NO IMPROVEMENT ON THE GROUND

On the ground, the National Action Plan has resulted in no improvements or positive change for human rights protection in Sri Lanka. As important as some of its commitments are, without their translation from the NAP to action, they are empty promises. Furthermore, unless the implementation of the National Action Plan is anchored within larger state reforms that reverse authoritarianism and militarization, serious violations of human rights will be unabated.

Until and unless such structural changes are effected the National Action Plan for the Protection and Promotion of Human Rights only serves to mask the inaction of the state in respecting, protecting and fulfilling its obligations to the peoples of Sri Lanka.



*Waiting for Justice
on 24 January 2013 in Colombo.
Photo: www.vikalpa.org.*

**To deny people their human rights
is to challenge their very humanity.**

Nelson Mandela