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[Home](#) > [Research](#) > [Responses to Information Requests](#)

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[New Search](#) | [About RIRs](#) | [Help](#)

21 January 2010

LKA103343.E

Sri Lanka: Human Rights Commission of Sri Lanka (HRCSL); Commissioner appointments, powers of enforcement and protection for Internally Displaced Persons (IDPs)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The Human Rights Commission of Sri Lanka (HRCSL) *Strategic Plan 2007-2009* includes the following priorities:

- To protect human rights and uphold the rule of law, strengthen the monitoring mechanisms through efficient and effective visiting mechanisms, various fact finding missions, research, public hearings, meetings, etc.
- To improve and adopt new investigating and inquiring techniques to handle fundamental rights cases.
- Strengthening the Human Rights Commission Act No. 21 of 1996.
- Formation of a team on *bill's watch*, to evolve a mechanism on the human rights aspect of any law.
- Special attention will be given to vulnerable groups; especially IDPs who were affected by the armed conflict and tsunami, elders, migrant workers, disabled, women & children.
- Develop an appropriate human rights education system through developing a strong human rights network among government institutions and INGOs, impartial and non-controversial NGOs and UN Agencies, providing public awareness on fundamental rights and other human rights issues, introducing human rights in schools, establishing human rights units in schools, preparation of HRCSL manuals, documents and leaflets, annual reports.
- Strengthening labour rights through discussions and extending human rights education for the government sector as well as to the private sector.
- Improve the administrative efficiency through capacity building of the Commission... . (HRCSL n.d.a, 6-7)

The HRCSL *Strategic Plan 2007-2009* also identifies several specific areas for development, including, but not limited to, formulating a more comprehensive manual on monitoring investigations (HRCSL n.d.a, 12); taking steps to regularize prison visits and incorporating the detention centres run by state forces in the schedule of prison visits (ibid., 13); as well as establishing a new investigation and inquiry procedure on missing persons (ibid., 14). Information on a forthcoming *Strategic Plan* and whether

there will be future changes to the HRCSL could not be found among the sources consulted by the Research Directorate.

According to a May 2009 report published by the Rehabilitation and Research Centre for Torture Victims (RCT), an organization based in Denmark that works to "expose and document torture" (RCT n.d.), the priorities outlined in the HRCSL *Strategic Plan 2007-2009* have not been accomplished (RCT May 2009, 193). The RCT report, authored by the legal consultant for the Colombo-based *Sunday Times* who also writes a regular column on rights (RCT May 2009, 2), further states that it is not discernable that HRCSL investigations have resulted in any prosecutions (ibid., 195).

Commissioner Appointments

The *Human Rights Commission of Sri Lanka - Act. No. 21 of 1996* states that members of the HRCSL are appointed by the President, on the recommendation of the Constitutional Council (Sri Lanka 21 Aug. 1996, Art. 3(2)). A June 2009 AI report states that the HRCSL "lost its constitutionally mandated independence in 2006 when the Constitutional Council, which was charged with appointing its membership, was allowed to lapse" (June 2009, 43). Sources indicate that, in 2006, the President directly appointed members of the HRCSL (AI June 2009, 43; SAHRDC 30 Sept. 2006).

The United States (US) Department of State *Country Reports on Human Rights Practices* indicates that, for several years, Sri Lanka's executive has not appointed the Constitutional Council, thereby inhibiting the independent appointment of members of several Constitutional bodies (US Feb. 2009, Sec. 1e), including those of the HRCSL (ibid., Intro.). Law and Society Trust (LST), a not-for-profit, Colombo-based legal research and advocacy institution that regularly publishes on human rights (LST n.d.), published a report in August 2009 stating the following in regard to HRCSL Commissioner appointments:

The crisis affecting the [HRCSL] has since deepened and taken a new turn through the non-appointment of Commissioners, following the end of the previous term of office of the sitting Commissioners in May 2009. There has been no statement by the [government of Sri Lanka] as to its intentions in this regard. Therefore, the premier national human rights institution of the country has been deliberately rendered leaderless. (6)

When asked whether plans had been released regarding the appointment of new HRCSL Commissioners, a representative of the LST stated in 15 January 2010 correspondence that "there has been no indication from Government as to its intentions." Additionally, the LST Representative stated that the HRCSL has not released any plans regarding future changes to the Commission (LST 15 Jan. 2010).

Powers of Enforcement

The RCT report states that though the HRCSL is mandated to investigate rights violations, it is not empowered to enforce its recommendations (RCT May 2009, 17). According to a 2008 interview with Justice D. Jayawickrama, a Commissioner of the HRCSL, in the Colombo-based *Sunday Times*, if someone involved in a complaint refuses to follow HRCSL recommendations "we would call on him and insist on his co-operation and if he continues to refuse to comply, we report the matter to the President" (29 June 2008). The President is then responsible for informing Parliament in order to establish "a course of action" (*Sunday Times* 29 June 2008). The 2009 RCT report states that the political will to make this procedure function effectively is lacking (May 2009, 197). The HRCSL *Strategic Plan 2007-2009* includes a section on strengthening the Human Rights Commission (HRC) Act to include powers of enforcement, such as disciplinary action (n.d.a, 16). The August 2009 LST report indicates "that no such amendments have been presented to-date" (21).

The RCT report notes that, in particular, the police and the military have ignored HRCSL directions (May 2009, 197). The August 2009 LST report indicates that there is no legal requirement for authorities to cooperate with the HRCSL (LST Aug. 2009, 9). According to the LST report, "while routine inspections of police stations and prisons take place, the perception is that the Commission does not enjoy the full cooperation of the Government" (ibid.). The HRCSL reportedly does not have permission to visit military or paramilitary camps where those suspected of affiliation with the Liberation Tigers of Tamil Eelam (LTTE) are taken for interrogations (LST Aug. 2009, 10). Additionally, *Country Reports 2008* indicates that the HRCSL stopped providing statistics on "forced disappearances" by state authorities, paramilitary groups or the LTTE, reportedly as a result of government pressure (US 25 Feb. 2009, Sec. 1b).

According to the LST report, investigating officers of the HRCSL have been threatened by military and police personnel while pursuing their inquiries (Aug. 2009, 9-10). Sources indicate that complainants have also been at risk of harm, due to a lack of proper investigation procedures at the HRCSL (RCT May 2009, 195; LST Aug. 2009, 18-19). For instance, the May 2009 RCT report indicates that HRCSL investigators have revealed to alleged perpetrators the personal information of complainants, without offering complainants protection (May 2009, 195). Similarly, the August 2009 LST report states that in many cases HRCSL staff have revealed the identity of complainants to the police, "including when the perpetrator is a police officer or is protected by the police, leading to further retribution" (Aug. 2009, 18-19).

Internally Displaced Persons (IDPs)

The HRCSL *Strategic Plan 2007-2009* also includes a section on implementing special protection for IDPs, including conducting protection assessments and facilitating the return of IDPs to their homes (n.d.a, 16). In July 2009, the Colombo-based *Daily News* published a Parliamentary address by the Minister of Disaster Management and Human Rights that indicated that the Vavuniya office of the HRCSL (in northern Sri Lanka) would be "strengthened to improve their capacity to respond to protection issues... with a view to identifying and resolving [IDP] grievances" (25 July 2009).

The National Protection and Durable Solutions for Internally Displaced Persons Project, run by the HRCSL, publishes annual and monthly reports on its website (HRCSL n.d.b.). The monthly report from November 2009 outlines project activities, including protection monitoring, coordination, training, advocacy and a fact-finding mission (HRCSL Nov. 2009). Protection monitoring involves identifying IDP resource needs and the right to compensation (ibid., 5). Additionally, the Project addresses complaints that include unlawful arrest and detention, as well as disappearances (ibid., 5-8). The Project activities also include facilitating coordination between government institutions that service IDPs, and offering human rights training to government staff and army officers in affected regions (HRCSL Nov. 2009, 10-13).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral Sources: Attempts to contact the Human Rights Commission of Sri Lanka (HRCSL) were not successful. The Asian Human Rights Commission (AHRC) did not respond within the time constraints of this Response.

Internet sources, including: Amnesty International (AI), Asian Human Rights Commission (AHRC), Centre for Policy Alternatives (CPA), *Daily Mirror* [Colombo], European Country of Origin Information Network (ecoi.net), Factiva, Human Rights Watch (HRW), Internal Displacement Monitoring Centre (IDMC), International Bar Association (IBA), Ministry of Resettlement and Disaster Relief Services - Sri Lanka, Minority Rights Group International (MRGI), People's Watch, TamilNet, University Teachers for Human Rights Jaffna (UTHRJ).

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