CHAPTER - V

HUMAN RIGHTS: NON-GOVERNMENTAL AND STATE ORGANIZATIONS IN SRI LANKA
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In the preceding chapters, various forms of human rights abuses committed by the Government of Sri Lanka (GOSL) and Liberation Tigers of Tamil Eelam (LTTE), and the factors responsible for such abuses have been discussed. In this chapter, the role of the Human Rights Commission of Sri Lanka and various Non-Governmental Organizations (NGOs) organizations working for the protection of human rights in the northern and eastern provinces of Sri Lanka have been examined. However, before the discussion on the role human rights non-governmental organizations (HRNGOs) in protecting and promoting human rights in Sri Lanka’s north and east, a brief discussion of human rights non-governmental organizations (HRNGOs) in general is necessary to better understand their role.

A non-governmental organization (NGO) is a nonprofit entity whose activities are determined by the collective will of its members who belong to one or more communities with which the NGO cooperates. Though there may be no universally accepted definition of NGOs, there is a widespread agreement that their numbers, influence and outreach are at unprecedented levels. In 1948, the United Nations granted 48 NGOs with consultative status who were formally accredited to co-operate and consult with the United Nations.

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Economic and Social Council (UN ECOSOC). In 1998, there were more than 1500 such groups with varying degrees of participation and access.  

NGOs differ from state organizations which are primarily motivated by the need for social coercion. In contrast, NGOs are interested mainly in building communities for which they do not rely upon either coercive forces or profit making. Rather NGOs rely primarily on solidarity between the members of civil society and this solidarity is nurtured by them through decentralized management sustained by voluntary local participation.

There are various types of NGOs. Some NGOs operate at national, local and some at international levels. NGOs can contribute to human resource development by their very existence and through development and introduction of new technologies. They are sometimes the most appropriate agents for initiating development. NGOs are primarily interested in community building and empowering the poor. NGOs can be more efficient and responsive in meeting the needs of the poor because they are located closer to them than governmental agencies. They are more aware of the particularities of local resources and constraints which can make them more innovative in designing development projects. Such close proximity to these groups who need development, makes NGOs more transparent, accountable and more effective than government agencies at times.

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NGOs mainly work as social pressure groups and serves as a forum for exchange of views on domestic issues such as spousal abuse, dowry deaths, alcoholism, human rights and developmental issues. Though NGOs may be effective in improving the situation on such issues, they have various limitations in pursuing their objectives. One of the main limitations that NGOs suffer is their inability to cooperate with other similar organizations and institutions and governmental agencies. Specifically governmental organizations are more authoritative in standard-setting and norm generating but are weak in monitoring and enforcement of state behavior. NGOs have freedom from government control and it enables them to function as an effective watchdog against human rights violations.

NGOs and Human Rights

NGOs in the field of human rights are of two types which may exist in a country. They are human rights international non-governmental organizations (HRINGOs) and local or regional human rights non-governmental organizations (HRNGOs). These organizations take their cue from the most widely endorsed international declarations to promote and protect human rights. Some HRINGOs are the Amnesty International (AI), the Human Rights Watch (HRW), Minority Rights Group (MRG), the Anti-Slavery Society (ASS), the International Committee of Red Cross (ICRC), the International Commission of Jurists (ICJ), etc. These groups have a specific objective to protect human rights. There are also HRNGOs whose human rights concerns are more general. Some of these groups are International League for Human Rights, International Commission of Jurists, etc. These NGOs work to uphold those rights which are listed in the International Covenant on Civil

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and Political Rights (ICCPR). Amnesty International concentrates on activities to promote freedom from torture and the death penalty. The International Committee of Red Cross is concerned with rights in armed conflicts and with the rights of political prisoners. Non-specialist organizations like the International Commission of Jurists have also been primarily concerned with civil and political rights. The commission’s dedication to the universal acceptance of justice has meant that the procedures associated with the Rule of Law, might be held to be more substantive to notions such as distributive justice.\(^8\)

HRNGOs have been instrumental in the global expansion of human rights issues in the post World War II scenario. Organizations such as Amnesty International and Human Rights Watch have played key roles in the formative years of global human rights by promoting international human rights instruments and publicizing gross human rights violations in various countries. HRINGOs’ critical and unsparing reports of local human rights practices all over the world have been essential in the proceedings of United Nations human rights instruments such as the Commission on Human Rights\(^9\) and the Human Rights Council (HRC). Many HRINGOs namely, International Save the Children, (General Status) Amnesty International, Human Rights Watch, International Commission of Jurists, Human Rights Advocates (Special Status), Minority Rights Group (Roster Status), etc,


\(^9\) The United Nations Commission on Human Rights was a functional commission within the overall framework of the United Nations from 1946 until it was replaced by the United Nations Human Rights Council on March 15, 2006. It was a subsidiary body of the United Nations Economic and Social Council. It was also assisted in its work by the office of the United Nations High Commissioner for Human Rights. The United Nations Commission on Human Rights was the principal mechanism and international forum concerned with the protection and promotion of human rights.
have also gained consultative status in the United Nations (UN) and have been actively promoting their visions of human rights in the new century.\textsuperscript{10}

Article 71 of the United Nations Charter creates provisions for consultations between the Economic and Social Council and non-governmental organizations. Article 71 implemented by the Economic and Social Council (ECOSOC) is regulated by the ECOSOC Resolution 1296 (XLIV) of May 23, 1968. It establishes a formal system that enables NGOs with consultative status to obtain any one of the three types of the consultative status with the United Nations namely (i) General, (ii) Special and (iii) Roster. Consultative status of HRINGOs enables their representatives, subject to conditions and restrictions, to present reports to those organizations (UN, OAS, Council of Europe, and UNESCO) which help in formulating their agenda for the promotion of human rights practice in different countries. General status applies to large international non-governmental organizations whose interests cover most of the Economic and Social Council's Agenda. They can speak before delegates, circulate statements up to 2000 words long and place items on the agenda. They are expected to submit a quadrennial report outlining their contributions to the United Nations. Special status concerns with special competence in some fields of activity of the Council. Non-governmental organizations with special status are also expected to submit quadrennial report, but they cannot place items on the agenda. Written statements are limited to 500 words only. Non-governmental

organizations with Roster status are concerned with one or more specific issues. They may attend meetings, but cannot speak or circulate statements.\textsuperscript{11}

The existence of the consultative system has encouraged the creation of more NGOs and the adoption of similar consultative systems by other international and regional organizations which have resulted in the increase of more HRNGOs.\textsuperscript{12} Consultative status under Article 71 of the Economic and Social Council means that HRNGOs are allowed to sit as observers at public meetings of the Council and the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It also allows HRNGOs, in accordance with the rules established by the Council, to make oral statements and submit written documents. Interventions by HRNGOs at such meetings call for attention to the human rights situation in different countries and also call for investigations to be carried out by the United Nations. They also assist in the actual drafting of declarations and treaties. HRNGOs may also submit reports on alleged violations of human rights, for confidential consideration by the Sub-Commission and the Commission under the ‘1503’ procedure\textsuperscript{13}. The views of HRNGOs are also sought on a wide range of issues for decisions to be taken by the General Assembly, the Economic and

\[\textsuperscript{11} \text{Dharmarajan, Shivani (2001) } \textit{NGOs as Prime Movers, Sectoral Action for Social Development}, \text{n. 4. pp. 209-10.}\]

\[\textsuperscript{12} \text{Ibid, p. 210.}\]

\[\textsuperscript{13} \text{The 1503 procedure is the oldest human rights complaint mechanism in the United Nations system. Under this procedure the Commission on Human Rights, a political body composed of State representatives, generally deals with situations in countries rather than individual complaints. The procedure was substantially amended in 2000 by the Economic and Social Council to make it more efficient, to facilitate dialogue with the Governments concerned and to provide for a more meaningful debate in the final stages of a complaint before the Commission on Human Rights. Under the 1503 procedure, the Commission has the mandate to examine a consistent pattern of proven gross violations of human rights and fundamental freedoms occurring in any country of the world. Any individual or group claiming to be the victim of such human rights violations may submit a complaint, as may any other person or group with direct and reliable knowledge of such violations. Where an NGO submits a complaint, it must be acting in good faith and in accordance with recognized principles of human rights. The organization should also have reliable direct evidence of the situation it is describing.}\]
Social Council, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities.\textsuperscript{14}

HRNGOs resemble domestic pressure groups or lobbies. HRNGOs play an important role in protecting and promoting human rights. Governments which violate human rights always try to evade or make sure that the applicable international human rights norms, institutions and procedures remain weak and ineffective. HRNGOs provide the needed counterpoint to these governmental attitudes and deserve much of the credit for the progress that has been made in recent decades in human rights issues. NGOs employ various methods in pursuit of their goals which differ from one group to another. Some groups resort to only one or a limited number of techniques or activities, be it the preparation of reports, the filing of complaints with international organizations, the promotion of international legislation, lobbying before international and national bodies. Others may use all of the above tools to the protection of specific groups or specific concerns.\textsuperscript{15}

The discussion in the preceding pages shows that NGOs play an important role in protecting and promoting human rights through various methods. Though it appears that NGOs have been effective in promoting human rights, it is also noticed that HRNGOs have their own limitations while pursuing their objectives. In third world countries like Sri Lanka where human rights abuses are increasing due to internal armed conflicts, examining the role of HRNGOs in protecting and promoting human rights will provide a better


\textsuperscript{15} Dharmarajan, Shivani (2001) \textit{NGOs as Prime Movers, Sectoral Action for Social Development}. n. 4. p. 211.
understanding on the issues in specific situation. Therefore, in this chapter, the role of HRNGOs working for the protection and promotion of human rights in the north and east of Sri Lanka has been discussed.

Human Rights NGOs in Sri Lanka

Sri Lanka, since the early 1970s faced armed rebellion (LTTE) which came as the response to the state’s repression on Tamil minorities. The armed rebellion also threatened the territorial integrity of Sri Lanka. The state’s response to the armed rebellion was to suppress militancy with its military forces. In such a situation where the state and the armed group, namely the LTTE, showed total disregard to human rights, HRNGOs in Sri Lanka seemed to have played a role in the protection and promotion of human rights in the northern and eastern provinces.

Sri Lanka has a long tradition of NGOs and voluntary welfarist associations, but the 1980s and the 1990s saw a rapid growth of foreign aid funding and a corresponding growth in NGOs whose activities included development of economic, religious and political concerns and their intellectual approaches span a spectrum from political advocacy to neutral humanitarianism. Some NGOs were seen working closely with the Government of Sri Lanka while others keep a distance from governmental programmes. There has also been a proliferation of NGOs in Sri Lanka which have diverse backgrounds, agenda and activities. Based on their objective and activities, HRNGOs in Sri Lanka can be divided into first and second generation HRNGOs. NGOs in Sri Lanka which functioned before the armed conflict were primarily church-based, welfare and charity organizations. Those
NGOs which came into being after the conflict intensified in the 1980s was due to the availability of foreign funding since the early 1990s. In addition to local HRNGOs, a number of HRINGOs worked in Sri Lanka such as Save the Children Fund (SCF), Amnesty International, Human Rights Watch, Peace Brigades International (PBI), etc. Most of these organizations started to work as relief agencies in the north and east of Sri Lanka. Some of these NGOs like SCF and Oxfam have moved into development and rehabilitation activities. Apart from the International Committee of Red Cross (ICRC), few HRINGOs were involved in protection and promotion of human rights in the areas of conflict resolution.16

HRINGOs which worked in Sri Lanka such as the Amnesty International, Human Rights Watch, and Peace Brigades International are no longer present. This is due to the Sri Lankan Government’s demand that if they wished to remain and work in Sri Lanka, they have to submit their reports to the government authorities prior to their publication.17 The only HRINGO which is present in Sri Lanka and has its offices and personnel functioning at present is the International Committee of the Red Cross (ICRC). Although, offices of the ICRC are present in Sri Lanka, it is confined to exchanging the bodies of between the LTTE and Government of Sri Lanka’s and vice-versa, who were killed during combat.18

In Sri Lanka there are more than thirty local HRNGOs working for the protection and promotion of human rights. However, about five HRNGOs work actively on human

18 Based on an interview with a Professor in Colombo University, Sri Lanka on 4/10/08.
rights issues in the north and east of Sri Lanka. Therefore, in this chapter, the role of the of five major HRNGOs and their role in protecting and promoting human rights in the north and east of Sri Lanka have been discussed in detail. The five NGOs are, (i) the Home for Human Rights (HHR), (ii) the Law and Society Trust (LST), (iii) the Information Monitor (INFORM), (iv) the Center for Policy Alternatives (CPA) and (v) the Consortium of Humanitarian Agencies (CHA).\textsuperscript{19}

**Home for Human Rights (HHR)**

Home for Human Rights (HHR) was established in 1977 by three attorneys concerned about human rights violations in the Jaffna region. It was one of the first legal aid organization created to support victims and survivors of the conflict between the government of Sri Lanka and the LTTE. At present the HHR has five field offices which provide a wide range of services to victims or survivors of human rights violations.\textsuperscript{20} The field offices are in Akkaraipattu, Batticaloa, Hatton, Jaffna and Mannar with its head office in Colombo.\textsuperscript{21}

**Law and Society Trust (LST)**

The Law and Society Trust (LST) was founded in 1982, by Neelan Tiruchelvam, who was a member of Parliament of Sri Lanka. He was assassinated by an LTTE suicide bomber in July 1999. The Law and Society Trust was formed to create a society free from

\textsuperscript{19} Based on the field survey to Sri Lanka between 27/09/08 to 23/10/09.
\textsuperscript{20} Based on an interview with the Executive Director of the Home for Human Rights on 12/10/08.
\textsuperscript{21} Ibid.
war discrimination and social injustice and based on human dignity for all citizens of Sri Lanka. It has its office in Colombo.\textsuperscript{22}

**Information Monitor (INFORM)**

Established in 1989, the Inform Human Rights Documentation Center works primarily as a documentation center on human rights violations. The organization is based in Colombo and collects information of alleged human rights violations in Sri Lanka. The information collected is published in its monthly reports.\textsuperscript{23}

**Centre for Policy Alternatives (CPA)**

The Centre for Policy Alternatives (CPA) was formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening. CPA is committed to programmes of research and advocacy. CPA is an independent non-partisan organization which is funded by the international and bilateral funding agencies and foundations.\textsuperscript{24}

**Consortium of Humanitarian Agencies (CHA)**

The Consortium of Humanitarian Agencies (CHA) was formed in 1997. The Consortium of Humanitarian Agencies is an association of agencies working to support the work on human rights issues in Sri Lanka. It functions as a network of humanitarian agencies and has a full-fledged secretariat. CHA has its offices in Amparai, Badulla,

\textsuperscript{22} Based on an interview with the Chairman of the Law and society Trust on 28/09/08.
\textsuperscript{23} Based on an interview with the Executive Director of INFORM on 03/10/08.
\textsuperscript{24} \url{http://www.cpalanka.org/index.php}. 26/06/09.
Batticaloa, Galle, Hambantota, Jaffna, Kalutara, Mannar, Matara, Puttalam and Trincomalee districts of Sri Lanka.\textsuperscript{25}

**Common Objectives of the HRNGOs**

In Sri Lanka HRNGOs have the following objectives: (i) providing human rights education, (ii) counseling victims of human rights violations, (iii) providing rehabilitation to the victims, (iv) providing socio-economic development at the grassroots level, (v) documentation of human rights abuses, (vi) conducting research on human rights issues, (vii) to contribute to public accountability in governance creating awareness in society in respect of public policy and implementation and (viii) to provide policy alternatives aimed at safeguarding and strengthening democracy, pluralism, the rule of law, human rights and social justice.\textsuperscript{26}

**Role of HRNGOs in Sri Lanka**

HRNGOs in general have the grass-roots knowledge and direct contact with the victims and have established relations and trust with victim communities and other civil society groups, including religious groups, unions and other institutions. The following are the different ways in which HRNGOs potentially play a role in protecting and promoting human rights:

- Document patterns of violations.
- Conduct forensic examinations.

\textsuperscript{25} Based on an interview with the Director of the Consortium of Humanitarian Agencies on 05/10/08.

\textsuperscript{26} Based on an interview with the executive members of various HRNGOs in Sri Lanka between 27/09/08 to 06/10/08.
- Publish reports and other information on violations.
- Submit information on violations of the norms of the national courts or the International Criminal Court (ICC).
- Provide general legal memoranda and research assistance to national courts or the International Criminal Court.
- Monitor national proceedings on human rights violations and report to the public or to the International Criminal Court.
- Explain the International Criminal Court the role of the Office of the Prosecutor (OTP) to affected communities.
- Advise the Office of the Prosecutor on communication with victims and witnesses in affected communities.
- Provide the International Criminal Court with information regarding displacement of people and flows of refugees.
- Identify potential witnesses and act as a channel to reach and gain trust of such individuals for the Office of the Prosecutor.
- Advise the Office of the Prosecutor on witness protection.
- Provide support to victims or witness such as psychological, medical and humanitarian support after they have been interviewed by the Office of the Prosecutor.
- Organize victims for the purpose of participation and reparations.
- Provide training to those lawyers who might represent victims or suspects accused.
• Act as *amicus curiae* (friend of the court) in court proceedings.\(^7\)

Notwithstanding the stated role and functions, HRNGOs in Sri Lanka, play a limited role in protecting and promoting human rights. This is because of governmental restrictions placed on these organizations to work primarily in the north and east of Sri Lanka. HRNGOs in Sri Lanka (i) receive complaints on violations of human rights, (ii) investigate those complaints received on alleged violations, (iii) provide legal aid for individual victims of human rights violations, (iv) co-ordinate work with national and international HRNGOs, (v) publish reports on human rights violations and (vi) provide education on human rights to civilians as well as government personnel.\(^8\) HRNGOs in Sri Lanka provide human rights education by conducting seminars, conferences, workshops and awareness programmes. Participants to these educational programmes are mainly students and teachers from schools, colleges and universities and also, human rights activists, social workers, civil servants, armed forces personnel, victims of human rights abuses, community leaders, leaders of political parties, etc. These programmes are usually conducted two to three times in a year.\(^9\) Only the Consortium of Humanitarian Agencies conducts such programmes every three months and organizes open discussions annually.


\(^{28}\) Based on interviews conducted with executive members of HRNGOs in Sri Lanka between 27/09/08 to 24/20/08.

\(^{29}\) Based on interviews with executive members and general secretaries of HRNGOs in Sri Lanka between 27/09/08 to 24/20/08.
Limitations of the Role of HRNGOs in Sri Lanka

Although HRNGOs are expected to make significant contributions for the betterment in the practice of human rights, there are a number of important factors which place limitations on their role in protecting, promoting and investigating human rights violations. Firstly, HRNGOs and activists are not trained in documenting and investigating human rights violations. Though they might be trained in some cases their role, however, in documenting and investigating human rights violations it is different from that of the International Criminal Court or of any court whether national or international. Secondly, a particular concern of HRNGOs is protecting confidential relationships including the identities of sources. HRNGOs are understandably concerned with the security of individuals with whom they interact. Often HRNGOs have longstanding presence in the area where violations take place and have a strong interest in preserving their long term ability to protect and support victims of human rights violations. It should also be noted that HRNGOs are always not able to operate freely and in many countries such as Sri Lanka, they are vulnerable to interference in their work from government officials and non-official agencies. Thus, they may not be in a position to operate independently and impartially. For instance, in any given conflict, a HRNGO may be closely associated with one party to the conflict or have a particular political or other agenda which could carry a bias in their documentation of human rights violations.  

In Sri Lanka, HRNGOs suffer from other limitations as well which prevent them from functioning effectively. The most important factor in the limitations for HRNGOs is security concerns. HRNGOs are often placed in precarious conditions with regard to their

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30 Based on an interview with the Executive Director Consortium of Humanitarian Agencies on 03/10/08.
security. If a HRNGO is said to sympathize with the rights of the Tamils in Sri Lanka, they are often labeled as traitors to the nation and receive threats to their life from paramilitaries and other governmental agencies. It is also alleged that anyone who sympathizes with the rights of the Tamils, he or she is labeled as supporters of LTTE. Therefore, they receive threats and warning letters from various agencies of the government such as the police, army personnel, special task force, political party leaders, etc. HRNGOs in Sri Lanka lack funding, professionalism and lack of coordination with other human rights agencies. The other factor which prevents these organizations from functioning effectively is the restrictions placed by the government to work in these vulnerable regions of north and east of Sri Lanka on grounds of war and security reasons. Censorship is another important factor which hampers the work of these organizations. It is also found that HRINGOs such as Amnesty International, Peace Brigades International, etc, left Sri Lanka due to censorship of their work by the government. Peace Brigades International (PBI) stated in its news release that HRINGOs are forced to leave Sri Lanka because of the demand by the Sri Lankan Government to submit its report and findings before publication. This demand made by the GOSL is understood by the HRNGOs as a move to censor such reports before release. HRNGOs also state that most of the civilians in the conflict zones do not have any knowledge of the existence of such organizations leave alone accessing their support.

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31 Based on an interview with the executive director of Centre for Policy Alternatives in Colombo on 1/10/08.
32 Based on an interview with the executive director of Home for Human Rights in Colombo on 29/09/08.
33 Dharmarajan, Shivani (2001) NGOs as Prime Movers, Sectoral Action for Social Development, n. 4, pp. 209-10, and also based on interviews with Executive Directors and General Secretaries of Various NGOs in Sri Lanka between 27/09/08 to 24/10/08.
34 Based on interviews with Executive Directors and General Secretaries of various NGOs in Sri Lanka between 1/10/08 to 6/10/08.
Various views expressed by the respondents revealed that HRNGOs in Sri Lanka are not very effective in protecting and promoting human rights in the north and east. 28 percent of the respondents felt that the HRNGOs are effective in protecting and promoting human rights whereas 20 percent said that they are not effective in the Tamil areas of Sri Lanka. The remaining 52 percent of the respondents said they are not aware about the effectiveness of the HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka. Therefore, we can understand that the people in Sri Lanka feel that the HRNGOs in Sri Lanka do not play an effective role in protecting and promoting human rights in Sri Lanka.
With regard to the limitation faced by HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka various opinions were expressed by the respondents. 20 percent of the respondents said that the government posed obstacles while another 20 percent stated that there is no effective planning made by HRNGOs in Sri Lanka to protect and promote human rights in the Tamil areas of Sri Lanka. 17 percent of the respondents said that intimidation by the government and the LTTE was one of the limitations faced by HRNGOs in Sri Lanka while 16 percent of the respondents stated that HRNGOs faced security problems while working for the protection and promotion of human rights in the region. 15 percent of the respondents said that fear was another limitation while the remaining 12 percent of the respondents stated that HRNGOs lacked proper financial support to protect and promote human rights in the Tamil areas of Sri Lanka. Thus, Figure
5.2 clearly revealed the various limitations faced by HRNGOs in protecting and promoting human rights in the Tamil areas of Sri Lanka.

Hence, from the discussion it is revealed that HRNGOs in Sri Lanka are not very effective in protecting and promoting human rights in the Tamil areas of Sri Lanka. Although, HRNGOs in Sri Lanka have represented many cases in relation to human rights violations in the courts, they have not been able to achieve any positive results for the victims they have represented. For example, the Nallaratnam Singarasa vs Attorney General of Sri Lanka, case, where the victim (Nallaratnam Singarasa) was represented by the Home for Human Rights and other lawyers did not produce any positive results for the victim. Although, it was alleged that charges against Singarasa were fabricated by statements which were obtained through torture, they were accepted by the Supreme Court of Sri Lanka as *prima facie* evidence against him.

**Major State Organizations and Human Rights**

National Human Rights Commissions have been established in several parts of the world. The first human rights commission was set up in Saskatchewan (Canada) in 1947 and since then several countries have established similar commissions. Human rights commissions gained importance after United Nations began to actively promote the creation of such organizations. It was after the Centre for Human Rights in Geneva organized a meeting in 1991 to discuss on issues relating to national human rights organizations that active promotion for the establishment of such organizations developed. One of the results of this meeting was a statement of principles entitled “Principles
Relating to the Status and Functioning of National Institutions for the Protection of Human Rights” which also is known as the Paris Principles. The Paris Principles emphasizes that, human rights commissions should operate freely from government interference and they should have necessary resources and infrastructure to function effectively. The Paris Principles also draw attention to the flexibility of human rights commissions and emphasizes that the members of these commissions should be drawn from different segments of society. Some HRINGOs like Amnesty International emphasizes that while human rights commissions can be an important mechanism for the protection of human rights, they can never replace, and should not in any way diminish the legal structures enforced by an independent and impartial judiciary. However, one potential problem is that for many governments establish human rights commissions to boost its human rights practice in the eyes of the global community.35

In the Middle East and North Africa, these National Human Rights Institutions emerged since the 1990s. For example, National Human Rights Commissions were established in Morocco (1990), Tunisia (1991), Algeria (1992), Palestine (1993), Yemen (1997), Jordan (2000), Qatar (2003), Egypt (2003), and Saudi Arabia announced in 2003. Even Iraq’s Interim Constitution calls for the creation of a National Human Rights Commission in Article 50.36 National Human Rights Institutions were also established in South Asian Countries. For example, National Human Rights Commissions were also established in Pakistan (1987), India (1993), Sri Lanka (1996), Nepal (2000), and

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Bangladesh (2008). National Human Rights Institutions are becoming increasingly active in the emerging global network of sub-state actors committed to human rights and interacting regularly with foreign counterparts and with international and local non-governmental organizations. Despite the resilience of authoritarianism and the persistence of human rights violations in the region, National Human Rights Institutions, sometimes even improve the conditions faced by individuals and groups. After the World Conference on Human Rights in Vienna (1993) which called for the creation of National Human Rights Institutions, many nations around the world, responded by establishing them. Although, few government sponsored human rights institutions existed during the cold war, their proliferation accelerated dramatically with the surge of democratization in the 1990s. Since then, atleast 100 countries had established a National Human Rights Institution or were in the process of creating one.

National Human Rights Institutions (NHRI) are sometimes called National Human Rights Commissions (NHRC). They are quasi-official organizations, or permanent bodies established by the states to implement internationally recognized human rights norms within their domestic jurisdictions. Despite their apparent similarities, these institutions can vary considerably, as state institutions reconstitute international standards to meet local needs and often to suite a range of underlying political purposes. In general, however all National Human Rights Commissions have the dual task of protecting and promoting human rights norms. Protection refers to investigation and redress of human rights

39 *Ibid*, pp.281-302
violations, including punishing the perpetrators and compensating victims. Promotion involves human rights education, such as training personnel, formulating school curricula, and building awareness of human rights issues. While some institutions include a more traditional ombudsman function focused on addressing administrative abuses, others have considerable powers of investigation and legal standing. Still others are entrusted only to perform a weak advisory function.

Although, it is difficult to assess the full effects of these institutions clearly, their existence is nonetheless paradoxical. On the one hand, states creating them are often the principal violators of human rights in their nation. In such cases national leaders may be motivated by a desire to appease critics, while controlling the human rights agenda. It is often found that National Human Rights Commissions created by the states tend to be organizationally weak and substantially ineffective. On the other hand, even when National Human Rights Commissions are constrained severely in what they can do, their very existence may limit state action with regard to human rights issues in many ways. By committing formally to international norms or inserting talk for human rights into public discourse, states with National Human Rights Commissions are legitimizing the idea of human rights and perhaps unwittingly, contributing to the construction of new social demands. While it is unclear if National Human Rights Commissions will close the gap between human rights rhetoric and practice in specific instances, these institutions do generate demonstrable and potentially vital pressures for social and political change.40

A Human Rights Commission (HRC) is a state sponsored and state funded entity set up under an act of Parliament or under the Constitution with the broad objective of protecting and promoting human rights. With this overall objective in mind, a Human Rights Commission may perform a range of functions. These functions include, dispute resolution through adjudication or mediation, human rights education documentation and research, advising governments on human rights issues, and setting human rights standards.\footnote{Gomez, Mario (1998) ‘Sri Lanka’s New Human Rights Commission’, \textit{Human Rights Quarterly}, 20(2): 281-302.}

**Human Rights Commission of Sri Lanka**

Sri Lanka, which has been experiencing ethnic conflict and armed resistance from the Tamil minorities in the north and east since independence, has been witnessing various forms of gross human rights abuses committed by both the government and the armed group, the LTTE. In July 1996, the Sri Lankan Parliament passed legislation for the establishment of a permanent Human Rights Commission. The Human Rights Commission of Sri Lanka (HRCSL) Act No. 21 of 1996 contemplated an institution that would perform a broad range of functions, such as investigating and mediating human rights violations and advising the government on appropriate legislative and administrative procedures.\footnote{\textit{Ibid}, pp. 281-302.} The draft legislation on human rights commission was prepared by the Law and Society Trust, Colombo, a human rights non-governmental organization based in Colombo in early 1990. This draft law was discussed at an All Party Conference (APC) which was modified by the Legal Draftsman Department and discussed further at several subsequent sessions of the All Party Conference. This draft after discussions emerged as the Human Rights
Commission of Sri Lanka Act No. 21 of 1996.\textsuperscript{43} It was expected that the Human Rights Commission would play a vital role in promoting and protecting human rights in Sri Lanka. The HRCSL’s mission was to protect and promote human rights by adhering to universally recognized norms and principles with a special emphasis on the fundamental rights guaranteed under the Sri Lankan Constitution for the citizens of Sri Lanka.\textsuperscript{44}

\textbf{Powers and Functions of the Human Rights Commission of Sri Lanka}

The functions of the Human Rights Commission of Sri Lanka are to: (i) inquire and investigate complaints regarding procedures, with a view to ensuring compliance with the provision of the constitution relating to promoting respect for and observance of fundamental rights, (ii) examine complaints regarding infringements or imminent infringements of fundamental rights, (iii) advise and assist the government in formulating legislation and administrative directives and procedures in the furtherance of fundamental rights, (iv) make recommendations to the government regarding measures which should be taken to ensure that national laws and administrative practices in the country are in accordance with the international human rights norms and standards, (v) make recommendations to the government to accede to treaties and other international instruments in the field of human rights, and, (vi) promote awareness through education about human rights.\textsuperscript{45}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{43} \textit{Ibid}, pp.281-302.
\item \textsuperscript{44} Based on an interview with the Chairman of the Human Rights Commission of Sri Lanka.
\item \textsuperscript{45} Article 10 (a- f) Human Rights Commission of Sri Lanka Act, No. 21, 1996. Sri Lanka.
\end{itemize}
\end{footnotesize}
Article 11 of the Human Rights Commission of Sri Lanka Act (1996) states that for the purpose of discharging its functions, the commission may exercise any or all of the following powers:

- Investigate any infringement or imminent infringement of fundamental rights in accordance with the succeeding provisions of this act.
- Appoint sub-committees at the provincial level to get reports on the status of human rights.
- Intervene in any proceedings relating to infringement or imminent infringement of fundamental rights before any court, with the permission of that particular court.
- Monitor the welfare of persons detained either by a judicial order or regular visits to places of detentions.
- Undertake research on human rights and its violations in Sri Lanka.
- Promote awareness of human rights, by conducting programmes, seminars and workshops and to disseminate and to distribute the results of such research.
- Do all such other things that are necessary or conducive to discharge its functions.\(^{46}\)

The Human Rights Commission of Sri Lanka Act of 1996 has also empowered the commission to intervene in ongoing litigation or to initiate new litigation. The Human Rights Commission with the permission of the court can intervene in any proceeding where an infringement or imminent infringement of a fundamental right is disclosed. In addition, when an investigation conducted by the Human Rights Commission discloses an

infringement or imminent infringement of fundamental rights, the Commission may refer the matter to any court having jurisdiction to hear and determine such matter in accordance with the rules of the court as prescribed. The Human Rights Commission also has the power to initiate investigations where there is an alleged human rights violation. The Commission may also take the help of HRNGOs, local bar associations and other civil society groups to facilitate investigations of human rights violations being perpetrated against particular groups.

When an investigation into a complaint received by the Human Rights Commission of Sri Lanka discloses infringement of a fundamental right, the commission can refer the matter for mediation or conciliation. When attempts for mediation or conciliation fail, the commission can pressurize the authorities to take necessary action relating to prosecution or other proceedings that can be instituted against those infringing fundamental rights. The commission may also refer the matter to any court having jurisdiction to hear and determine such matter in accordance with such rules of the court as prescribed. The Human Rights Commission can make recommendations to the appropriate authority to prevent or provide remedy for such infringement or the continuation of such violations.

The Human Rights Commission of Sri Lanka Act also assigns a very specific power to the Commission, in relation to supervising the arrest and detention of persons under the Emergency Regulations or the Prevention of Terrorism Act. According to the legislation,

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50 Article 15 (3) (a) (b) (c) Human Rights Commission of Sri Lanka Act, No. 21, 1996. Sri Lanka.
the person making such arrest or detention is under the duty to inform the Commission of the arrest or detention forthwith and in any case not later than 48 hours from the time of arrest or detention. The place at which the person detained is also to be informed to the Human Rights Commission of Sri Lanka.\(^{51}\)

From the discussion of the powers and functions of the Human Rights Commission of Sri Lanka, it is clear that the role of the commission in protection of human rights is very significant. The provisions of the Human Rights Commission of Sri Lanka Act No. 21, enables the commission to play an effective and important role in protecting and promoting human rights in Sri Lanka. However, although the Human Rights Commission of Sri Lanka has enough powers to play a vital role in the protection and promotion of human rights, it has not been able to function in the manner as expected. The Human Rights Commission of Sri Lanka has not been able to achieve much success due to the war between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. In such a situation where the government is skeptical about publishing reports of blatant violations of human rights, by its agencies, the Human Rights Commission of Sri Lanka has been merely playing the role of documentation of human rights violations. The Human Rights Commission of Sri Lanka has published its reports and findings on human rights violations in Sri Lanka. The Commission’s functions are also limited because of the government’s interference into the commission’s activities. The Human Rights Commission of Sri Lanka also stands degraded because of its inefficiency in protecting and promoting human rights

The HRCSL's powers and functions are limited because it does not have the authority to arrest or punish a person found guilty of violating human rights. The HRCSL can only recommend to the Courts in Sri Lanka to take necessary action against the perpetrator of such violations. In this connection, fundamental rights case No. BC/02-11/04, is relevant. This case was relating a Tamil woman who complained to the Batticaloa High Court stating that she had been tortured and raped by the police after her arrest. She also alleged that twelve police officers had raped her continuously one after the other. Following the complaint made by the Tamil woman, the Judge ordered that she be examined by the Judicial Medical Officer, Batticaloa. Upon examination, the Judicial Medical Officer's report disclosed 22 marks of injuries on her body and 4 on her breasts alone. The report further stated that rape was possible. The HRCSL in this case recommended that Rupees Two Lakhs be awarded to the victim as compensation and the perpetrators be punished accordingly. However, the perpetrators were not punished and the compensation was not paid fully to the victim.52

When asked about the role of the Human Rights Commission of Sri Lanka, opinions expressed by the respondents were varied. However, the opinions expressed revealed that the human rights commission of Sri Lanka is involved in safeguarding human rights, receiving complaints of alleged human rights violations, investigating and monitoring the welfare of detainees in places of detention, intervening in court proceedings with the permission of the court, representing cases in the courts after thorough investigation of complaints received on alleged human rights violations and also a failure in the Tamil areas of Sri Lanka.
23 percent of the respondents said that safeguarding of human rights was the primary role and 22 percent stated that the commission receives complaints of alleged human rights violations. 20 percent of the respondents said that the commission was involved in investigating and monitoring the welfare of detainees in places of detention while another 10 percent said that the commission intervenes in Court proceedings relating to human rights violations with the permission of the Court. The Human Rights Commission of Sri Lanka was thought to be a failure in the Tamil areas of Sri Lanka by 10 percent of the respondents. 9 percent of the total respondents said that the Commission was involved in undertaking research on human rights issues throughout Sri Lanka and also in the Tamil areas of Sri Lanka. The remaining 6 percent of the respondents said that the Human Rights Commission of Sri Lanka represents cases in the Courts after thorough investigations of complaints received on human rights violations.

Although, the respondents stated the various functions of the Human Rights Commission of Sri Lanka they also said that it should or ought to perform the functions as provided in the Human Rights Commission of Sri Lanka Act No. 21 of 1996. They also stated that the commission has failed to protect and promote human rights effectively in the Tamil areas of Sri Lanka.

Thus, from the discussion on the role of major HRNGOs and state organizations it is seen that the legal framework for the protection of human rights is very strong. But whether it is of HRNGOs, HRNGOs or the Human Rights Commission of Sri Lanka, their practical role is very limited in the protection and promotion of human rights. HRNGOs
also state that the presence of HRNGOs is necessary to improve the situation in the north and east of Sri Lanka. It was also stated by HRNGOs, that human rights abuses could be prevented effectively if HRNGOs and their offices were present in these regions. While these groups were present, both the government agencies and the LTTE were found to have refrained from abusing human rights at least to a certain extent. Therefore, the role of HRNGOs and major state organizations in protecting and promoting human rights in the north and east of Sri Lanka appears to be very limited though their legal framework is very strong.

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53 Based on an interview with a professor in Peradeniya University, Kandy on 6/10/08, Sri Lanka.