



Monitoring Mission
for Sri Lanka

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Stop blocking a UN human rights monitoring mission in Sri Lanka

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Lesson Series 54

Human rights monitoring in Sri Lanka

Summary

This lesson discusses the role of human rights monitoring missions. In particular, it focuses on how such a mission could help to protect citizens' rights in Sri Lanka, which is facing a particularly dire situation at present.

There have been numerous calls for a UN human rights team to be present in Sri Lanka, and this lesson looks at the benefits of such a presence, as well as its possible shape.



Theme: Human rights monitoring in Sri Lanka

The Issue

Human rights monitoring is an old concept. It is important for a variety of reasons, many of which are specific to the country situations. Monitoring missions under the UN umbrella have been used worldwide at various times, to curb atrocious human rights abuse by state and non state actors, as well as to enforce ceasefires and peace agreements. Such missions can help countries build up their own justice systems and institutions to monitor and prevent further abuse.

The Lessons

Lesson 1 looks at the grave human rights situation in Sri Lanka, and how a UN human rights field presence could help to stabilize it.

Cover image of AHRC petition to urge for UN monitoring mission in Sri Lanka: <http://campaigns.ahrchk.net/monitoringsl/>

Lesson 1

A. The situation of human rights in Sri Lanka

Several local civil groups, together with the Asian Human Rights Commission (AHRC), issued the following 'wish list' for 2007. The list is a good indicator of the rule of law and justice problems facing Sri Lanka—then and now.

SRI LANKA: New Year's Wish List for 2007

1. That fundamental rights guaranteed in the Constitution be fully honored; the right against illegal arrest (Article 13.1), the right against illegal detention (article 13.2), the right against torture (Article 11) to be fully respected and implemented, that steps are taken to ensure the right to personal security; that extrajudicial killings and abductions and disappearances be brought to an end by special and firm measures. That the freedom of expression and publication and the rights of the media are fully respected, protected and fulfilled.
2. That all crimes and abuses of human rights will be promptly and competently investigated according to the procedures required by law and the independence and the security of the investigators be guaranteed.
3. That the Attorney General's Department will be provided with all the necessary human and other resources to ensure speedy prosecution of all cases with particular emphasis on cases relating to human rights abuses.
4. That the right to fair trial be ensured by ending the delays in courts, the absence of witness protection, the reinstatement of the hearing of a trial from beginning to end without undue postponements, resolving of problems relating to resource limitations in courts and bringing about the necessary legal amendments to overcome obstructions for the implementation of fair trial.
5. That the problems of the displaced persons will receive national attention and speedy measures to ensure respect for their dignity under human rights and humanitarian law.

6. That the rights of children be ensured with adequate measures to implement the relevant laws and the improvement of those laws.
7. That practical measures are taken to end discrimination against women in relation to education, employment and participation in social, cultural and political life.
8. That measures are taken speedily to realize equality to all minorities and that practical steps are taken to ensure the easy use of languages that will guarantee fairness to all.
9. That the constitutional crisis over the independent institutions created under the 17th Amendment is brought to an end with the appointment of an independent Constitutional Council and that measures are taken to restore the rule of law through practical measures to improve all the institutions.
10. That practical measures are taken to bring about a law in order to make the views of the United Nations Human Rights Committee implementable within the legal framework of Sri Lanka.
11. That the state accede to the Convention for the Prevention of Forced Disappearances and the Optional Protocol to the Convention against Torture (CAT)

**This statement represents the views of the AHRC and the following organisations based in Sri Lanka: People against Torture - Ekala, Janasansadaya – Panadura, The Home for Torture Victims – Kandy, SETIC – Kandy, Right to Life – Negombo and the Rule of Law Centre – Colombo.*

Sri Lanka has not seen improvement in any of the above mentioned areas; in fact, 2007 saw a worsening of the situation. The country was once again ranked as a failed state, and it ranked higher up on the indices for corruption and violation of freedom of expression. It is also the world leader in the number of forced disappearances being perpetrated. Torture and extrajudicial killings are also widespread.

According to a report published on 23 August 2007 by three well-known civil society groups—the Civil Monitoring Mission, Law Society and Trust and the Free Media Movement—there were 547 cases of killings and 396 cases of forced disappearance in the period from January to June 2007. Despite the high number of victims included in the report, its authors have stated that the report is not intended to be an exhaustive list. With regard to the extrajudicial killings,

The largest proportion of people killed in the first six months of 2007 were Tamil—70.7% across the island, as compared with 9.1% Sinhalese and 5.9% Muslims. The gravity of this situation becomes even more pronounced when considered against the fact that the Tamil people make up only 16% of the total population. Men were killed in much larger numbers than

women—89.9% vs. 9.7%.

By district, Jaffna was worst affected by killings (23.2%), followed by Batticaloa and Vavuniya (21.5% and 21.3 respectively).

The data on humanitarian workers and religious leaders killed reflects the overall trends in killings, with Tamils disproportionately affected as compared with Muslim and Sinhalese. Killings of this category of persons were highest in Trincomalee, during the period 1 January 2006 to 21 August 2007. However, it is notable that religious leaders of three of the four main faiths of the island have been killed since last year—Father Jim Brown (August 2006), Selliah Parameshwaran Kurukkal (February 2007) and Ven Handungamuwe Nandarathna Thero (March 2007).

As for forced disappearances, the report notes,

As with killings, Tamils suffered disproportionately from abductions—64.6%, compared with 3% Sinhalese and 3% Muslims. Men represented nearly 98% of all missing persons. By district, Jaffna was again worst affected by disappearances (49.5%). However Colombo was next worst affected, at 17.7%, underlining the concern expressed by many local NGOs at the situation with respect to this particular violation.

Nearly 19% of persons abducted were taken from their homes. The vast majority of these were in Jaffna, however there were a few abductions from home in other parts of the country. Where times were specified, these were for persons who disappeared in Jaffna, which has been under curfew since before January 2007. Roughly 5% of all persons abducted were persons abducted from home during curfew in Jaffna—in an area allegedly under government control, this points to the possibility of government inability or unwillingness to keep all its citizens safe.

During his October 2007 visit to the country, the Special Rapporteur on torture, Manfred Novak, found that

[T]he high number of indictments for torture filed by the Attorney General's Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka. Moreover, I observe that this practice is prone to become routine in the context of counter-terrorism operations, in particular by the TID [Terrorist Investigation Department].

Over the course of my visits to police stations and prisons, I received numerous consistent and credible allegations from detainees who reported that they were ill-treated by the police during inquiries in order to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were received with respect to the army. Methods reported included beating with various weapons, beating on the soles of the feet (falaqa), blows to the ears (“telephono”),

positional abuse when handcuffed or bound, suspension in various positions, including strappado, “butchery”, “reversed butchery”, and “parrot’s perch” (or dharma chakara), burning with metal objects and cigarettes, asphyxiation with plastic bags with chilli pepper or gasoline, and various forms of genital torture. This array of torture finds its fullest manifestation at the TID detention facility in Boossa.

Intimidation of victims by police officers to refrain from making complaints against them was commonly reported, as were allegations of threats of further violence, or threatening to fabricate criminal cases of possession of narcotics or dangerous weapons. Detainees regularly reported that habeas corpus hearings before a magistrate either involved no real opportunity to complain about police torture given that they were often escorted to courts by the very same perpetrators, or that the magistrate did not inquire into whether the suspect was mistreated in custody. Medical examinations were frequently alleged to take place in the presence of the perpetrators, or directed to junior doctors with little experience in documentation of injuries. (Emphasis added.)

Novak also noted that while the total capacity of all prisons amounts to 8200, the actual prison population reaches 28,000; “In Sri Lanka the combination of severe overcrowding with antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, amounts to degrading treatment in my opinion.”

With the withdrawal of the government from the ceasefire agreement on 16 January 2008 as well as the withdrawal of the European monitors (Sri Lanka Monitoring Mission), there are serious concerns that an all-out conflict between the government’s armed forces and the LTTE will occur. Once again, it is the ordinary civilians who will suffer the most.

B. Domestic justice mechanisms

The grave human rights and rule of law situation prevailing within Sri Lanka are testament to the fact that there is little rule of law functioning in the country. What this means is that those mechanisms meant to uphold the law and to protect citizens’ rights are malfunctioning. In April 2006, after Sri Lanka’s Human Rights Commission had ceased to function due to a constitutional snag, the AHRC wrote an open letter to the UN Secretary General, stating that the country’s complete lack of domestic human rights monitoring mechanisms was more than sufficient cause for international monitors. Since then, the Human Rights Commission has been downgraded by an international body due to its non compliance with the relevant standards.

The country’s criminal justice system, including the police and prosecution mechanisms, has been unable to bring perpetrators to justice. In fact, the AHRC has documented many cases where the police and prosecution agencies have themselves violated citizens’ rights. The judiciary is also seen to have compromised its independence and integrity. For these reasons, a group of Sri Lankan and other civil society groups submitted a written statement

at the 2007 Human Rights Council session requesting the consideration of an Office of the UN High Commissioner for Human Rights (OHCHR) field office in Sri Lanka. The statement noted the escalation of human rights abuses throughout the country, as well as the lack of domestic institutions and political will to deal with them.

State irresponsibility and lack of investigation

The state, as the sovereign, has an obligation to investigate into all crimes irrespective as to whether these are committed by organized criminal gangs, terrorists or state agencies themselves. Consensus within Sri Lanka notes however, that the capacity of the police investigation system has been gravely diminished due to political interference over several years and that its investigative capacity has become extremely limited.

The United Nations High Commissioner for Human Rights reiterated her call for human rights monitoring in her statement to the Human Rights Council on 10 December 2007.

During my visit, I paid special attention to the issue of abductions and disappearances, which have been reported in alarming numbers over the past two years. While the Government pointed to several initiatives it had taken to address these issues, there has yet to be an adequate investigation or credible public accounting for the vast majority of these cases. I am also concerned about safeguards for those detained under the emergency regulations, including during recent mass arrests in Colombo.

Regrettably, the various national institutions and mechanisms that could be expected to safeguard human rights have failed to deliver adequate protection. In particular, the Human Rights Commission of Sri Lanka, which had previously enjoyed a proud reputation internationally, has had its independence compromised by the irregular appointment of its Commissioners and the credibility of its work has suffered. Further, despite high expectations, the special Commission of inquiry appointed by the President more than one year ago to investigate high profile killings and disappearances has yet to complete any of its cases. The Eminent Persons invited to observe the Commission have expressed concerns about its compliance with international standards. (Emphasis added.)

There exists in Sri Lanka today a political and legal culture, the basis of which is a firm undertaking to *not* investigate or prosecute disappearances and other gross abuses of human rights. To this end, Sri Lanka's criminal justice system is allowed to operate only outside the boundaries of the implicit agreement of impunity between the political regime and the law enforcement agencies. Whereas previously Sri Lanka's investigating officers were able to successfully investigate crimes—investigations into former Prime Minister's Bandaranaike's assassination and into the 1962 attempted coup to overthrow the government are clear examples—today, perverse and unprofessional trends have taken over the system. Investigations into cases involving state agencies are now considered an act of great disloyalty. It is therefore not the capacity of the institutions that is faulty, but their credibility.

A close study into the reasons for the country's political authorities to create such boundaries for criminal investigation suggests that it is to keep the military happy. Serious investigations into disappearances and other gross human rights abuses, particularly those in which the military could be involved, are perceived by political authorities as a possible cause for an enormous rift between them and the military. There are fears that without military support, Sri Lanka's political system cannot survive, particularly due to the country's internal war on terrorism. As a result, state law enforcement agencies are allowed to function largely as they wish, with implicit guarantees of impunity, while the justice system is left crippled.

What does a crippled criminal investigation system mean for ordinary citizens? According to Sri Lanka's criminal procedure code, there are detailed procedures to be followed in the recording and investigation of complaints, as well as the prosecution of criminal cases. Individuals affected by gross human rights abuses will therefore go to their local police authorities to register their grievances. In cases of forced disappearances and other human rights abuses, victims and their families will quickly learn of the hidden agenda to not investigate or prosecute crimes committed by state officials.

The pronouncement of the Sri Lankan government that it has adequate local mechanisms to deal with investigations into human rights violations therefore reflects a mentality similar to the phantom limb syndrome; the idea that an amputated or missing limb is still attached to the body and is moving appropriately with other body parts. One may ask where these investigation mechanisms are, and the answer would not be different to one that might come from an amputee who feels his missing limb still exists.

The amputation of the investigation mechanism for human rights abuses has taken place over a long period of time with the operation of emergency regulations, anti terrorism laws and the deliberate dismantling of the basic institutions of public administration including the institutions of the administration of justice. The large scale killings that took place in 1971 and 1986 to the 1990 period in the south and the continuous repression in the north and east from 1978 to the present day required that no credible investigations could be allowed into allegations of human rights abuses as it would cause unrest in the military and this would affect the stability of the ruling political regimes. The limitations imposed on investigations naturally infected the prosecution system under the Attorney General's Department, which was often required to cooperate in the cover up of the perpetrators and guarantee them impunity. The independence of the judiciary was crushed by the pressures from the presidential system as well as through legal limitations imposed by various constitutional amendments and emergency laws.

... Today the system does not have the capacity to even investigate ordinary crimes let alone those crimes done with the connivance of political authorities for military purposes. The ugly situation that prevails is manifested through the constant killing of arrested persons in police custody, allegedly when they try to throw grenades at police officers while they are taken to find concealed objects. The falsification of information in order to justify crimes committed by state agencies, which would appear to any reasonable person as pathetically ridiculous, is offered in the name of the sovereign state of Sri Lanka by the state agents and its propaganda units.

The phantom limb on criminal investigations in Sri Lanka is manifest daily in many of the statements that come out under various propaganda units such as the Peace Secretariat, the Geneva Consulate, the office of the Minister of Disaster Management and Human Rights, the Secretariat of Defense and even in the name of the President himself. The claim of the existence of a competent and credible criminal investigation capacity is offered both as a cover up for the incapacity and unwillingness to investigate human rights abuses, as well as to counteract any calls for assistance to the Sri Lankan government by the international community by way of human rights monitoring through the United Nations. The phantom limb mentality prevents the finding of real solutions to the real problems that make Sri Lanka one of the most lawless places in the world [AHRC, 'The role and need of an OHCHR field presence in Sri Lanka', <http://campaigns.ahrchk.net/monitorings/ran.php>].

Sovereignty

It is quite clear therefore, that there are no effective local mechanisms under which human rights can be protected in Sri Lanka. All statements made by the government and others to the contrary are mere statements, with no substance to them. And yet, the government insists on using the excuse of these phantom investigation mechanisms to discourage discussion on international human rights monitoring. When local mechanisms are inadequate, citizens have the right to turn to international mechanisms, and these are obliged to stand by them and prevent further abuse. The Sri Lankan government should not be allowed to hide behind notions of state sovereignty after placing its citizens under grave circumstances with no redress. In fact, local and international human rights groups are resented by Sri Lanka's propagandists precisely because their exposure of systemic human rights abuses makes their job of falsification all the more difficult.

Sovereignty today is no longer restricted to the notion of absolute control over certain territory. With the state increasingly seen as a representative of the people, state sovereignty is the sovereignty of its people, not of its leaders. The modern definition of sovereignty therefore imposes the responsibility of protecting human rights upon states. In the words of Stanley Hoffman, "The State that claims sovereignty deserves respect only as long as it protects the basic rights of its subjects. It is from their rights that it derives its own. When it violates them, what Walzer called 'the presumption of fit' between the Government and the governed vanishes, and the State's claim to full sovereignty falls with it" (*The politics and ethics of military intervention, Survival*, 37:4, 1995-96, p.35).

When the state fails to govern in a manner that protects human rights, moreover in cases when it deliberately engages in policies leading to gross human rights violations, the international community can—and should—intervene and exercise an extraterritorial duty to protect people at risk.

C. Benefits of an OHCHR field presence

While the mandate of an international human rights field presence will differ depending on the agreement made in relation to specific countries, its visibility usually helps to deter abuses. Through quiet diplomacy and public advocacy, an international field presence can identify immediate action that all parties should take in response to human rights violations. Any presence would encourage the space for local state and non-governmental human rights actors to operate effectively and support those individuals and organizations to do more to protect human rights. In this way, it can also promote the necessary long term reforms and increase the capacity of national institutions. As Louise Arbour stated during her recent visit to Sri Lanka,

In a highly polarized context, where human rights information is easily manipulated for propaganda gains, there is a critical need for an independent actor to gather information and publicly report on the human rights situation. For this reason, I have suggested that the Government would benefit from the support of a presence of OHCHR in the country, with a full mandate incorporating technical assistance and public reporting. Since my visit, my Office has engaged in discussions with the Sri Lankan authorities on possible models involving an OHCHR presence working alongside national structures. We have reached no agreement on a formula by which independent, public reporting by OHCHR could be ensured. OHCHR will continue to assist the authorities in strengthening the national human rights system, but this will fall short of meeting the critical protection gap.

The fact that a peace agreement between the Sri Lankan government and the LTTE is not likely to materialize in the immediate future creates a greater need for such independent monitoring. A field presence could serve to de-escalate the conflict and create space for political initiatives.

In its ‘Discussion paper on a human rights field presence in Sri Lanka’ (October 2007), the International Commission of Jurists (ICJ) noted the following points:

Mandate, size and location of an OHCHR field presence

For an international human rights field presence to be credible, it would need to have a range of capacity-building and monitoring functions. It would need to be able to verify allegations of human rights violations by all parties to the conflict and be present throughout the country. It would need to have access to all LTTE-controlled areas, to government and state authorities, and other parties involved in the conflict. The MoU [Memorandum of Understanding] would need to allow the presence to interview anyone freely and in private and to receive information from all sources. It should also be mandated to provide capacity-building and technical assistance to

national institutions, with a view to supporting longer term reform. Any presence would need to be able to interact freely with civil society, including local human rights organizations. The field presence would need to have the right to issue public statements and reports and would report to the High Commissioner for Human Rights.

The MoU would also need to include a commitment from the authorities to take responsible and remedial action necessary to comply with Sri Lanka's human rights obligations, including investigating and prosecuting those responsible for violations.

Decisions about the size and composition of the field presence and where in the country staff would be stationed, would be based on the needs of the situation in the country and OHCHR's mandate. Both national and international staff should include a sufficient number of female employees in non-administrative functions. It is not clear yet how many staff that would be required in Sri Lanka.

In Guatemala, a headquarters was established in Guatemala City and eight regional and five sub-regional offices were opened. By the end of 1995 there were around 300 staff, 211 of them internationals from 36 countries. The mandate of MINUGUA was set out in the Comprehensive Agreement on Human Rights which provided a dual mandate: "to verify compliance with a series of commitments on human rights and to strengthen national human rights institutions". (1)

In Nepal, five regional offices were set up. Approximately 50 international staff were recruited. In addition, a similar number of national staff (including national human rights officers, translators, administrative and logistical staff) were engaged.

In Rwanda, a broad agreement was signed between the High Commissioner for Human Rights and the Prime Minister of Rwanda in September 1994. It mandated OHCHR to carry out investigations into violations of human rights; to monitor the ongoing human rights situation and through their presence to help prevent possible human rights violations from occurring; to implement programmes of technical cooperation; to cooperate with other international agencies in charge of reestablishing

confidence; to report to the High Commissioner. In August 1995 the High Commissioner, during a visit to Rwanda, reached an agreement with the Government that “as many as 147 human rights field officers would be deployed, so as to cover each of the communities of the country”.(2)

The office in Cambodia, established in October 1993. Today the priorities of the Office include documenting and responding to reports of serious violations of human rights, enabling non-governmental and civil society advocacy organizations to work in a safe environment, contributing to efforts to establish accountable public institutions and a professional judiciary with recognized integrity, as well as to the lawful management of land and natural resources for the benefit of Cambodia’s people. Most of OHCHR Cambodia staff are based in the main office in Phnom Penh, with a small presence in a regional office in Battambang. (3)

OHCHR’s office in Colombia was established in 1996 through an agreement signed by the Government of Colombia and the United Nations. The Office observes the human rights situation in the country and adherence to international humanitarian law; advises State and Government authorities and institutions on how to ensure compatibility with international instruments; advises representatives of civil society; provides technical cooperation and assistance to State and Government authorities and institutions and to representatives of civil society in strengthening the national capacity to protect human rights; and promotes and disseminates human rights and international humanitarian law. Work is conducted from the office in Bogotá and from subregional offices in Bucaramanga, Cali and Medellín. (4)

(1) Franco, L. and Kotler, J., Combining institution building and human rights verification in Guatemala: The challenge of Buying in without selling out, in Henkin, Alice H. (ed.), *Honoring Human Rights: From peace to justice: Recommendations to the international community*, The Aspen Institute, Washington DC, 1998.

(2) Martin, I., After Genocide: The UN Human Rights Field Operation in Rwanda, in Henkin, Alice H. (ed.), *Honoring Human*

Rights: From peace to justice: Recommendations to the international community, The Aspen Institute, Washington DC, 1998.

(3) <http://www.ohchr.org/english/countries/kh/summary.htm>

(4) <http://www.ohchr.org/english/countries/co/summary.htm>

D. Other OHCHR field presences

According to the ICJ, a recent study of field presences in various countries showed that they contributed positively to the human rights situation in each country.

Current and future human rights violations

A recent study of nine field presences found that every mission examined had some incremental positive impact on civilian safety and that “although causality is nearly impossible to ever prove in these settings, this evidence suggests that an international presence moderates or diminishes abusive behaviour”. (1) As a field presence demonstrates its credibility and authority and increasingly understands the subtleties of the political situation it can play an increasingly significant protection role.

In Nepal, an OHCHR Office was set up in mid-2005. In early 2006, a unilateral ceasefire which had been declared by the CPN (Maoist) came to an end. Despite the end of the unilateral ceasefire targeted killings decreased in the subsequent period partly due to the work of OHCHR-Nepal. In addition, a widespread pattern of enforced disappearances by the security forces came to a halt after OHCHR established its office in Nepal. The CPN (Maoist) released a number of people taken hostage. The OHCHR presence also supported the creation of space for public debate, not only in Kathmandu, but also through its visible presence in the districts. While none of these improvements can be said to be the singular outcome of the OHCHR presence, OHCHR played a significant role in these successes. More widely, OHCHR is said to have contributed to creating a climate that allowed the conflict to move to a political solution. As of November 2006, a Comprehensive Peace Agreement is in place and the country will hold elections to a Constituent Assembly, a key step in an ongoing peace process.

In Sierra Leone the presence of the human rights team within the UN peacekeeping operation was critical to the peace building process. The human rights team had high level access to the government, the rebel leadership and the peace negotiations. This contributed to the involvement of the human rights community in the peace talks as observers, enabling them to have an impact

on the inclusion of human rights in the peace agreement. There were also some improvements in the ongoing human rights situation in the country in the areas of: recruitment of child combatants, fair trial standards and conditions of detention, situation of individual's abducted by the rebels and the rebels granting limited humanitarian access, and some temporary reductions in amputation and mutilation. (2)

In El Salvador, ONUSAL began a process of active verification involving a systematic process of gathering evidence of human rights violations and intervening in cases of severe violations. Through this work they were able to significantly contribute to decreasing specific violations, such as arbitrary detention. ONUSAL was established before a ceasefire was achieved. The mission made a significant contribution to the success of the peace process by improving the country's internal situation. (3)

B.G Ramcharan, the former Acting High Commissioner for Human Rights, has documented the preventive role of human rights field operations in Bosnia, Cambodia and Colombia, and has concluded that the preventive role of these operations is undeniable. (4)

(1) See L. Mahony, *Proactive Presence: Field strategies for civilian protection*, Report by the Centre for Humanitarian Dialogue, Geneva, 2006.

(2) *Ibid.*

(3) Garcia-Sayan, D., The experience of ONUSAL in El Salvador, in Henkin, Alice H. (ed.), *Honoring Human Rights: From peace to justice: Recommendations to the international community*, The Aspen Institute, Washington DC, 1998.

(4) See B.G. Ramcharan, The Protection methods of human rights field offices, in Ramcharan (ed.), *Human rights protection in the field*, chapter 9.

Questions For Discussion

1. Discuss any international human rights monitors that you are aware of. What are the advantages and disadvantages of such monitoring missions?
2. What are the strengths and weaknesses of the proposed OHCHR mandate for Sri Lanka as mentioned above? How could its mandate and effectiveness be improved?
3. Discuss possible campaigns for human rights monitoring, keeping in mind both state and non state actors.