

# Briefing Notes

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*World Press Freedom Day 2016, Colombo: An activist holds a poster with the murdered journalist Sivaram alias Taraki demanding investigations on attacks on media and journalists of the previous regime.*

## **VOICES OF CIVIL SOCIETY: DEMOCRACY, HUMAN RIGHTS AND JUSTICE**



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## EXECUTIVE SUMMARY

The implementation of pledges made by the new Government to the people of Sri Lanka and to the international community on human rights and reconciliation has not yet proceeded as expected. Early enthusiasm on achieving much needed democratic reforms and a corruption-free governance has started to recede. The Government has not sufficiently implemented issues like demilitarisation, resettlement, release of political prisoners, and has not repealed the PTA. The most needed security sector reforms are left untouched.

At the same time, people have been able to assert their civil and political rights through the democratic space that opened up through the regime change in 2015, even if the transitional justice process still remains a serious concern. In addition, the enjoyment of economic, social and cultural rights need an economic space which has not yet been opened up.

These developments have to be located within the wider political context. The current so-called 'good governance' Government is a coalition of two major political parties which fought each other to capture state power for more than five decades. Mistrust and antagonistic feeling of each other are therefore embedded in both parties. Indeed, this coalition is a marriage of necessity rather than of conviction. Yet, one of the factors that hold both parties together is the commitment shown by President Sirisena, the leader of the SLFP, and by Prime Minister Wickremasinghe, the leader of the UNP, towards democratic reforms. This also includes the drive to find a political solution to the ethnic issue.

In this context, two other actors have played a pivotal positive role: On the one hand, civil society has been effective to hold the two political leaders accountable in regards to the promises they made and the mechanisms they have established to ensure good governance and the implementation of

human rights. On the other hand, the international community have expressed economic and political support to the Government and pushed the reform process forward.

In contrast to this, former President Rajapaksa mobilises against the Government and his efforts to weaken the Government by fostering Sinhala nationalist extremism is a major risk factor in the country. He has not allowed current President Sirisena to take the reins of SLFP and has created his own faction of the party, campaigning and mobilising against any criminal justice procedures undertaken against members of the military. Seemingly, Rajapaksa aims to play the military against the new Government and its reform process.

A second destabilising factor, that has not been sufficiently considered yet, is the possibility of an economic recession. Currently, the country is facing a debt trap. Sri Lanka's foreign debt increased during Rajapaksa's second term from US\$ 18.6 billion in 2009 to US\$ 44.8 billion in 2015. Sri Lanka's debt servicing costs, i.e. capital repayments and interest costs, amounted to US\$ 4.68 billion in 2015 which constitutes 45% of the country's export earnings of the same year. These economic considerations clearly call for economic reforms which seem to be the weakest link of the current Government and need to be addressed urgently.

As a whole, the reform process has gained an important momentum recently, probably in view of the upcoming 32nd session of the Human Rights Council in June 2016. The Government has improved its relations with the UNHRC and has opened up the country for human rights scrutiny by UN agencies. Despite the different weaknesses in the reform process, this current political momentum remains the best opportunity for Sri Lanka to move its reforms forward, to ensure democratic governance and to assert the rights for its people.

## VOICES OF CIVIL SOCIETY – SHORT BIOS

**Brito Fernando** has been a leading campaigner against disappearances since the early 90s. He was one of the leaders of 'Veediya Virodaya' (Protest on the street), one of the networks that campaigned independently against the Rajapaksa regime. He is also the President of the 'Families of the Disappeared'.

**Dr Jayampathy Wickramaratne**, a leading constitutional lawyer, is one of the key players who worked for years in creating the political space for a common opposition candidate against autocratic Rajapaksa regime. He is a Member of Parliament representing the Majority Group of Lanka Sama Samaja Party (LSSP). He is also the chairperson of the Committee to advise the Government on constitutional matters.

**Joseph Stalin** is a prominent human rights activist and the President of the Ceylon Teachers' Union, a prominent teachers' trade union in Sri Lanka. He is one of the Co-Conveners of 'Puravasi Balaya', a civil society pressure group that was set-up during the 2015 Presidential election.

**Rev Marimuttupillai Sivasakthivel alias father Sakthivel** is a leading human rights activist with decades of experiences. A Tamil clergy residing in Colombo, Sakthivel is the Convener of the National Movement for the Release of Political Prisoners in Sri Lanka.

**Nimalka Fernando** is a prominent woman human rights activist with over 30 years of experience. She is the President of IMADR and the Co-Convenor of the 'Peoples' Platform'. For nearly a decade she has regularly attended the UN HRC sessions in Geneva to engage in human rights advocacy.

**Rajith Keerthi Tennakoon** is one of the leading anti-corruption campaigner in the country today. He is a consultant to the Anti-Corruption Front. As its Executive Director he has led the Campaign for Free and Fair Elections (CaFFE) since 2008. His area of activism includes broader democratic reforms and demilitarisation.

**Ruki Fernando** is a leading human rights defender in the country and an adviser to INFORM, a human rights documentation centre. His main area of work is human rights education and advocacy. He has documented human rights violations for years and has been interacting with UNHRC Member States on regular basis.

**Saman Rathnapriya** is a leading health sector trade unionist in Sri Lanka. As a Co-Convener of 'Puravasi Balaya' (Citizen's Force) Rathnapriya has been a prominent campaigner for change. He remains an influential and vocal civil society activist in the country and leads a collective of citizens' organisations.

**Sandya Eknaligoda**, wife of disappeared journalist Prageeth Eknaligoda, has relentlessly campaigned for truth and justice of his abduction since 2010. She works with families of the disappeared in Sri Lanka.

**Shreen Abdul Saroor** is a leading Muslim woman human rights defender working with war affected Tamil and Muslim women in Mannar. She is a founder of a number of war-affected women's organisations in Sri Lanka and has been interacting with UNHRC Member States over the past years.



## 1. INTRODUCTION

This edition of the Sri Lanka Briefing Notes focuses on democracy, human rights and justice after the regime change in 2015. It gives emphasis to the reform process and highlights issues of accountability, constitutional reform, reconciliation and transitional justice.

The Government of Sri Lanka has co-sponsored the Human Rights Council Resolution 30/1 in March 2015 and in doing so agreed to address these above mentioned issues. A number of reports have been already published by national and international human rights and research organisations on the implementation – or rather the lack of progress in the implementation – of the HRC Resolution 30/1. Therefore, this edition of the SLB refrains from duplicating these efforts but rather wants to make the voices of civil society activists on these issues heard.

For this purpose, open-ended face-to-face interviews were conducted in April 2016 with more than twelve leading civil society activists, many of them are given a voice in this edition of the SLB. The interviews were conducted in an informal setting, recorded and transcribed and the interviewees could freely express their political opinion on the issues they felt most strongly about. The views of the interviewees are based on their own experiences gained in their struggle to protect and promote peoples' rights. All civil society activists quoted in this edition have been part of the struggle against the Rajapaksa regime and have contributed in varying degrees to successfully bringing the current coalition Government into power.

Many of the interviewed activists clearly expect the current Government to ensure democracy, human rights, reconciliation, accountability, and justice. They also commonly expressed their desire that corrupt politicians need to be brought to the book and investigations into human rights violations have to be seriously conducted. Depending on the area of work, the civil society activists demand justice for families of the disappeared, the release of political prisoners, the repeal of the Prevention of Terrorism Act, the resettlement of IDPs to their original land, the demilitarisation of the North and East, and constitutional reforms. In addition, they all want the Government to be participatory in their approach, consulting with civil society regularly and involving them in policy-making and the reform process.

SLB was only able to interview a limited number of persons, therefore, the civil society activists are not representative of the whole population but rather speak for themselves. Efforts had been made to reach out to Northern Tamil activists as well as to Government representatives to also share their views and opinions but unfortunately, little response was obtained. Nevertheless, SLB hopes that the selected quotes can be considered as a good reflection of current opinions and indeed cover also some of the issues which are particularly important for Tamils in the North and East.

The characteristics of this edition of SLB is its down-to-earth approach. The civil society activists are pragmatic, yet flexible, but do not compromise their principles and idealism. They want the Government to implement what it has promised, step-by-step, along a clearly charted roadmap.

Listen to them, the voices of civil society!

## 2. HUMAN RIGHTS AND DEMOCRACY

The Presidential and General Elections 2015 were both fought on a strong democratic and rights-based platform. This sealed the defeat of the Rajapaksa regime which was characterised by the suppression of peoples' rights using executive presidential powers to the extreme. Since the 1990s, the abolishment of the executive presidency was a major democratic demand and became in fact the uniting factor of the opposition leading the Presidential elections 2015. Even though the 19th amendment succeeded to curtail the executive presidency and to introduce checks and balances the electoral reforms have been postponed. Freedom of expression and the right to peaceful assembly and association has been restored to a considerable extent, yet, creating a culture of tolerance and respect for dissent remains still a challenge.

### **BRITO FERNANDO: DEMOCRATIC SPACE ESTABLISHED**

*“After the regime change, people begun to feel that they can now speak freely about their grievances. For example, relatives of the disappeared in the Eastern province of Sri Lanka, who did not dare to voice their grievances previously, came out to the streets demanding truth, justice and their land. There is a widespread feeling that a democratic space in which freedom to express, to associate and to protest has been established.”*

### **JOSEPH STALIN: CONSULTATIONS WITH CIVIL SOCIETY LACKING**

*“The democratic reforms that the Government has introduced are half baked. The 19th Amendment was changed to suit the demands of pro-Rajapaksa MPs and civil society participation was reduced from seven to three. The Executive Presidency has not yet been abolished in full. [...] The Government says that they consult the civil society in policy planning. This was one of the pledges the Government made during the elections. In the last 16 months, we - as a teachers' trade union – met the political authorities only twice. Even on the proposed educational reforms none of the teachers' trade unions has been informed or consulted. Unfortunately, this Government does not consider civil society as a partner.”*

### **NIMALKA FERNANDO: AGREEMENT ON THE NEED FOR A POLITICAL SOLUTION**

*“The main political issue is to find a viable political solution. Without a solution of the ethnic issue, Sri Lanka cannot go forward [and ...] I think, the President and the Prime Minister are both on the same page in this regard. Recently, they made clear public speeches on the necessity of a political solution.”*

### **RAJITH KEERTHI TENNAKON: DEATH IS NOT LOOMING OVER OUR HEADS**

*“‘Death’ is not looming over our heads because of the regime change: Under Rajapaksa for instance, I was not able to come to my office freely [but now] legal or illegal suppression of civil society is no more. This means that a democratic space opened up as a result of the 8th January elections and [...] some other positive developments have also resulted from there, such as the Right to Information Act, Audit Bill, and Procumbent Bill. But there are issues that have not received enough attention, for instance the issue of repealing the Prevention of Terrorism Act (PTA). The Government says that a draft Act to replace the PTA is ready but where is the draft? No one has seen it. As far as I understand, the Government's draft is worse than the present PTA.”*

### **RUKI FERNANDO: SPACE TO VOICE DISSENT**

*“The government has done some positive things: one of the most important things is that civil society has now more space to voice different opinions and to be critical of the government in power without fearing too much for their lives. This is true mainly in the Southern part of the country and to some extent in the North. So what we have is a mixed bag of positive forward steps but lots of concerns and doubts still to be answered, especially during the last six months some serious concerns have come up.”*

### SAMAN RATHNAPRIYA: LEAP FORWARD BUT NOT IN THE NORTH



*Saman Rathnapriya: Many achievements but the North lags behind.*

*“The 19th Amendment was one of the achievements though what was passed in the Parliament is a watered down version. Through the Amendment we have been able to establish a Constitu-*

*tional Council, Independent Commissions and to remove the power of the President to dissolve the Parliament after one year. Impunity enjoyed by the Executive President too has been removed and he is now answerable to the courts. The Right to Information Act (RTI) is now finalised and it will be taken up by the Parliament soon. The National Audit Bill also is ready and now Parliament has to take it up. There may be shortcomings, but we think that these changes are definite a leap forward. But in the North where Tamils live people do not enjoy democratic rights like in the South.”*

Even though a democratic space has been created as a result of the regime change, democratic reforms are not implemented fully due to the resistance from the Rajapaksa followers. Therefore, the progress of the reform process is slower than originally expected and consultations with civil society in a transparent and structured manner are largely missing. Yet, the current political opportunity to reform should not be missed.

## 3. MILITARISATION AND SURVEILLANCE

The military involvement in civilian affairs was one of the major issues faced by people in the war affected areas, especially as the military took over police functions and occupied land belonging to the Tamil people. In fact, under the previous regime, the military had established their own hotels, tourism programmes, shops and kiosks and even engaged in running pre-school activities, as well as school sports events. In addition to this, the military and police maintained an extensive and covert network of surveillance on political and human rights activists in Tamil dominated areas in the North and the East. Consequently, surveillance became a tool for control and intimidation and the heavy military presence a daily reality. In this context, demilitarisation has become a major human rights issue which the new Government needs to address urgently.

### BRITO FERNANDO: SURVEILLANCE EXISTS, INSTILLING FEAR

*“The surveillance of human rights activists by the Government intelligence agencies is still continuing to some extent. Uninvited visits and telephone calls by the intelligence officers to inquire about the involvement in our campaigns for justice still take place. It seems that the intelligence agencies*



*Brito Fernando: Surveillance intimidates human rights activists.*

*want to send the message that these disappearance activists are still under observation. This situation has instilled a certain fear in the minds of the people. [...]*

*I myself have experienced military intimidation under the new Government. Once when I was having a discussion about organising a campaign, the village officer came with some military men to question us. They did not have any reason or right to*

come into our discussion place. In Negombo, our staff is also under surveillance. Police intelligence officers call us and visit our office to inquire about what we are going to do regarding disappeared people. In March 2016, one leading activist mother involved in our campaign had a discussion at her home about what to wear for a campaign meeting. They wanted to wear sarees of the same colour. The next day the military came to her house and asked her ‘What was the meeting you had yesterday about?’“

**JOSEPH STALIN:  
THE EXAMPLE OF THE PALALI TEACHERS’ TRAINING COLLEGE**

“The Palali teachers’ training college which is located near Jaffna is one of the oldest teachers’ training colleges in the country. It used to train teachers on 13 subjects. It has been under military control since the mid-80s. The Government has failed to release the college and the land belonging to the college, and at present, the training college is non-functional. The military still involves itself in civilian life in the North of the country at the former war zone. The land occupied by the military has not been released yet and the issue of political prisoners has not been properly addressed.”

**RUKI FERNANDO:  
THE MILITARY VERY MUCH MEDDLE IN THE CIVILIAN LIFE**

“Unfortunately, there are still intimidations and surveillance going on. We had reports of intelligence officers visiting NGO offices uninvited and even requesting personal information of staff members. Such incidents are much more alarming in the North and East and happen on a very regular basis. For example, in the week leading up to the end of war commemorations in mid-May, a government accredited foreign journalist was obstructed by the military from filming in public places. Of course, the intensity of these intimidations appear to be much less than during the Rajapaksa years but it is still very disturbing that even after 16 months of this government such intimidations continue to happen. [...]

The commitment to remove the military out of civilian activities has not been implemented at all. The military continues to engage in running preschools, farms, restaurants, hotels, civilian airlines to Jaffna, boat services etc. All these activities can be phased out gradually. 15 months would have been more than enough to start such a process if there was a political will. The Government has not come up with any plan for such a phasing-out process.”

**SHREEN ABDUL SAROOR:  
ALL SURVEILLANCE STRUCTURES REMAINS INTACT**



Shreen Saroor: No descaling of the surveillance structures. Photo: youtube.

“I have not seen any descaling of the surveillance structures: CID, TID, Military CID, Police CID and special investigating units used to be attached to the Presidential Secretariat and some other government ministries. I do not know whether the Government is looking at these structures systematically and has reassigned the officers [linked to these structures] to other tasks. These officers were so powerful under the Rajapaksa regime and they know almost all information of the activists, including their personal information and history. They [these officers] have been living in that space for long, it may be difficult for them to get out. For people like us who are upper class and elite based in Colombo, security surveillance is very much less. I can even confront the security and intelligence officers now. Previously, I was scared to go to my office as I became a security threat to my staff because of the surveillance upon me. My staff is still scared though. Now the three wheelers that were parked in front of our office to eavesdrop have vanished. But when we organise workshops or protests, intelligence officers come and inquire about who is organising, why we are organising, who is participating etc. Activists are followed constantly in the North. The police should be the only institution that keeps and is responsible for law and order in the North, just like in any other area of the country.”

The above quotes show that surveillance and intimidation of activists have reduced but still take place on a regular basis. Surveillance structures remain intact and the failure of the government to effectively address demilitarisation is hampering the reconciliation process.





## 4. DISAPPEARANCES

Sri Lanka has a long history of involuntary and enforced disappearances. It goes back to 1971 when the Sinhalese youth insurgency against the government was suppressed. During the second uprising led by the Sinhalese JVP youth, tens of thousands enforced disappearances took place. In the mid-80s, a wave of Tamil youth was made to disappear in the Eastern province as a response to the Tamil militancy. The Sri Lankan state employed abductions and disappearances as a weapon of its war armoury. There is also strong evidence that LTTE leaders and LTTE members, who either were arrested by or surrendered to the Sri Lankan security forces in the last days of war, have disappeared while in government custody. Since 1995 successive governments have appointed a number of commissions to look into the issue and to recommend remedial actions. Although all these commissions have put forward important recommendations, none of them – except the one on reparations - has been implemented. Finding truth and obtaining justice for the disappeared is therefore an outstanding issue since long and first steps have been taken by the current Government through the establishment of the Office of the Missing Persons. Yet, much remains to be done and further concrete actions are necessary.

### SANDYA EKNALIGODA: FIGHTING AN UNHOLY ALLIANCE



*Sandya Eknaligoda speaking to the press in front of the Homagama Magistrate Court after attending the court case on 29 March 2016.*

*“By the time the OISL report was made public, the investigation of the abduction of my husband Pra-*

*geeth Eknaligoda has already started and some of the suspects had been identified. The Criminal Investigation Department (CID) of the Police is carrying out the investigation successfully. The Attorney General department too is playing a pivotal role in carrying out the court case. But it is very problematic that the Sri Lankan Army is not cooperating with the investigation. It has not provided the information requested by the investigators through the courts for months. Part of the information requested were given very recently, still some vital information on the vehicles used are missing. [...]*  
*At times, I am afraid that the case may not go forward properly because of the interferences by former President Rajapaksa and the likes. I strongly believe that it was the former regime which is responsible for the abduction and the disappearance of Prageeth. Now Rajapaksa is openly defending the suspects politically saying they are war heroes. Extreme Sinhala Buddhist nationalists are trying to interfere with the judicial process, too. I suspect that a number of military personnel also come to the courts regularly when the case is taken up in civilian clothes. Other than that, I am satisfied in the way the investigation proceeds. I trust that the judiciary will provide justice to Prageeth. [...]*

*An unholy alliance of Rajapaksas, extremist Sinhala Buddhist monks and some sections of the military are trying to influence the judicial process. Their*

*common slogan is ‘protecting the war heroes’. These forces are now carrying out a campaign to paint Prageeth as a ‘Tiger’ or in other words as a terrorist. They have even put up posters branding me, too, as a ‘Tiger’ and a traitor. [...]*

*When I look at the threats and intimidations I as a Sinhala Buddhist had to face just because I want to bring justice to my husband*

*Prageeth, how much more difficulties Tamil mothers will have to face. The ‘war hero’ argument has a wider appeal among the Sinhalese community but it has to be countered politically. This will be the biggest challenge for all of us in order to find truth and provide justice to the war victims.”*

### BRITO FERNANDO: NO 'MISSING PERSONS' CERTIFICATES'

"The Government is not issuing 'missing persons' certificates' instead of death certificates. Under the former regime, the military went from house to house asking to accept the death certificates for the disappeared persons. They [the military] offered LKR 100'000 – 200'000 as a compensation if they [the families of the disappeared] accepted the death certificates. Now under this Government, the same practice is being continued using the circular issued during the Rajapaksa regime but the compensation has come down to LKR 50'000. This is not what people asked for."

### NIMALKA FERNANDO: JUSTICE AGENDA IMPORTANT

"Out of the four pillars of transitional justice [i.e. mechanisms concerning truth seeking, criminal justice, reparations, and missing persons], only the Office of the Missing Persons may be set up by the time of the 32nd session of the UNHRC in June 2016. The Government is consulting with the International Committee of the Red Cross (ICRC) on how to set up this mechanism. It [the Government] has also prepared a reparation package. But we cannot stop with reparations. We need to find truth and justice."

### RUKI FERNANDO: VERY FEW CASES HAVE BEEN RESOLVED

"Another burning and emotive issue is the question of disappearances: [...] According to the Missing Persons Commission appointed by President Rajapaksa and continued under President Sirisena up to 19'000 civilians have complained about disappearances in the North and East since the 1990s. But only very few cases have actually been resolved."

As the above shows, the Government did take steps in the right direction and most recently, it has decided to issue legally accepted certificates of absence instead of death certificates. This helps the families of the disappeared to claim, among others, inheritance and property. In addition, the Government has produced a draft to set up the Office of Missing Persons without sufficient consultations with the victims' families and other local stakeholders. Despite these efforts and in the face of Rajapaksa's opposition, finding justice for the disappeared continues to be an uphill battle.

In October 2015 the UNHRC adopted Resolution 30/1 entitled 'Promoting reconciliation, accountability and human rights in Sri Lanka', co-sponsored by the Sri Lankan government. These are the government's commitments on

## SECURITY & DEMILITARISATION



- 1 End **military involvement** in civilian affairs
- 2 Return **military-occupied land** to owners
- 3 Restore **livelihoods & normality** to civilian life
- 4 **Training & incentives** for the promotion & protection of human rights
- 5 **Security sector reforms** e.g. processes to prevent recruitment & retention of personnel implicated in human rights & IHL violations



## 5. POLITICAL DETAINEES

The term ‘political prisoner’ is contested because there is no legal definition. Tamil detainees are considered suspected LTTE members and therefore, the Government of Sri Lanka does not recognise them as political prisoners with little interest to release them on political grounds. Over 12’000 former LTTE cadres who were arrested or surrendered to the military were released after mandatory rehabilitation by the previous government but 160 cases are still outstanding. Although the current Government has promised a number of times to speed up their court cases or to release those without court charges, nothing much has happened as of yet.

### REV. MARIMUTHUPILLAI SIVASAKTHIVEL: ABANDONED BY EVERYONE



*Fr Saktivel: Only political decisions could help.*

*“This Government does not recognise that there are political prisoners and the previous Government held the same opinion. The Government does not recognise these Tamil detainees as political prisoners because if they would, then this issue would have to be dealt with politically. [...]*

*There are currently [in April 2016] over 160 Tamil political prisoners [i.e. LTTE suspects] being held in Sri Lankan jails: Some were arrested during the nearly 30-year communal war against the separatist Liberation Tigers of Tamil Eelam (LTTE), others were taken into custody after the military defeat of the LTTE in May 2009. When this Government came into power, there were around 220 of them, out of which 60 were released. All these suspects have been detained under the draconian Prevention of Terrorism Act (PTA). The Government had promised to repeal the*

*PTA over a year ago but now the Government says that there is a new draft law to replace the PTA. But what we hear is that even if the PTA is repealed, these suspects will not be released unconditionally. [...]*

*The Tamil National Alliance (TNA) seems to be taking this as an issue of just 160 people because they think that there are more serious and larger issues to be tackled. Of course, 160 political prisoners are a small number when we compare them to the tens of thousands of war widows. Still we need to campaign for their release, even if Tamil society does not show real concern to get them released.*

*In addition, even for Tamil people, these prisoners are invisible. They are coming from different areas and are dispersed in different prisons. For instance, there are four detainees kept in the infamous Boossa camp in Galle district. There are no other PTA detainees in this camp and this section is maintained just for four Tamil detainees. One suspect is detained in Matara prison, 100 km away from Colombo although there is no reason to keep him there as his case is heard in Colombo and his family has also requested his transfer to Colombo. But the Government has not heeded to this plea, even if it can be done easily.*

*The Government apparently is more concerned with the possible political attacks from the Rajapaksa camp than the plight of these detainees. The Rajapaksa camp is accusing the Government of releasing LTTE cadres and thus jeopardising the national security. President Sirisena counters this by arguing that the previous Government had released LTTE cadres without any court proceedings and that his Government will not act in such a way. But a Tamil detainee, who had been charged with attempted murder of the present President Sirisena when he was a minister, was released on a Presidential pardon. If one person can be released in such a way why not release other detainees with similar charges, too? [...]*

*Another problem is that the Government still does not have a refined list of Tamil detainees. We have asked the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, D.M. Swaminatha, to provide us with a list of detainees but so far we have not received the requested information. [...] Even the Human Rights Commission of Sri Lanka asked us to provide them with a list of detainees and other necessary details, such as how long they have been in custody. So even the HRC SL has not been able find the information. [...]*

*The Government has also established a number of special courts to hear the cases of Tamil politi-*

cal prisoners but we have not seen any results as of yet. [...]

Another issue is that the Government says that these detainees refuse to be rehabilitated. But as far as I know all of them have expressed their willingness to be rehabilitated in writing. The problem, however, is that most of them are charged for several offences as separate cases and these different cases have to be cleared before they can be sent for rehabilitation. [...]

*Given all these problems, it is only a political decision by the Government that can solve the issue of political detainees. We need the international community to take this up.”*

The cases of the 160 Tamil political prisoners have to be addressed in order to build trust and allow for reconciliation. Therefore, the Government should pay special attention to these political prisoners and should set a deadline to either charge them in courts or release them.

## THE CASE OF BALENDRA JEYAKUMARI



*Balendra Jeyakumari: No end to legal harrassments. Photo: © Vikalpa.*

The case of well-known Human Rights Defender Balendra Jeyakumari as a political prisoner is a clear example of the inefficient and inhuman way the legal and intelligence apparatus works: This Government has released her after one year in detention, but she then was re-arrested and detained for six days again. So now, even two years after her arrest and detention, she still does not know what the charges against her are. She is bared from travelling abroad. She is marginalised in her own village as villagers are scared to go near her house. She is separated from her daughter who is studying in Jaffna. The normalcy of her life cannot be restored as long as fear and intimidation exists.

Ruki Fernando, interviewed by SLB, April 2016.

## 6. RISK FACTOR: RAJAPAKSA



The 2016 May Day rally led by Rajapaksa in Colombo was attended by tens of thousands of supporters, source: Mahinda Rajapaksa facebook page.

Although former President Rajapaksa has been defeated twice by the popular votes in 2015, he is still testing various ways and means to capture back political power. He continues to be politically active on many different fronts: his main political platform remains extreme Sinhala nationalism and is based on a 'war victory' rhetoric. He commands the support of almost half of the elected members to the Parliament of the political party which President Sirisena leads. In addition, a number of ex-military leaders and extreme Buddhist monks have openly aligned with the former President. The support Rajapaksa enjoys within the military is unknown but is believed to be sizable. He continues to oppose any legal action on war related crimes against military personnel and engages in nationalist anti-Government propaganda on a regular basis. Therefore, he is a major destabilising factor in the country.

### BRITO FERNANDO: A BALANCING ACT NEEDED

"There is a campaign by former President Rajapaksa to block any investigation on human rights violations that took place during the last phase of the war. His slogan is 'do not touch the war heroes'. Given the political situation in which the former President, backed by some bureaucrats and the military personnel, is trying to unsettle democratic achievements, it may be not possible to speed up

the process to investigate human rights violations. The Government may need to do a balancing act here."

### JOSEPH STALIN: THE GOVERNMENT IS PREOCCUPIED BY RAJAPAKSA PHOBIA



Joseph Stalin: Preoccupation of Rajapaksa phobia.

"Some of the civil activists say that if we criticise the Government too hard, it may help the extreme nationalist forces led by Rajapaksa. The Government, too, may say that there is a threat to the Government by the extremist Sinhala nationalists led by the former President Rajapaksa. It seems that the

*Government is preoccupied by Rajapaksa phobia. They are more concerned about tackling the Sinhala nationalist Rajapaksa threat than implementing the democratic reform agenda.”*

**NIMALKA FERNANDO:  
RAJAPAKSA PROPAGANDA IS GETTING STRONGER**

*“It seems that the Government is more concerned with building trust with Rajapaksa led nationalist forces, rather than with the victims. Definitely Rajapaksa and his clan is harming the reconciliation process. Given that Rajapaksa and his group is actively propagating against reconciliation, people, especially Tamil youth, are not ready to trust this Government either. The Rajapaksa’s anti-reconciliation propaganda is getting stronger and they are mongering fear among Sinhalese. The Government is not countering this danger effectively.”*

**SHREEN ABDUL SAROOR:  
IS THE THREAT REAL?**

*“It seems that the Government leaders think that the military will rise against them if they punish them for war crimes. Rajapaksa is backing the military by defending them all as ‘war heroes’. The international community wants this Government to succeed so they do not want Rajapaksa back in power.”*

Rajapaksa and the political formations he leads pose a threat to the overall reform process. Opinions differ on how to tackle this threat ranging from balancing this threat to head-on clash. President Sirisena himself accepted that the Government does not have a comprehensive communications plan to counter Rajapaksa’s propaganda. Even though President Sirisena has made it clear that he will not accommodate Rajapaksa and his clan in his government, a number of ministers openly campaign for the return of the Rajapaksas to the government and to the party leadership.

## 7. CONSTITUTIONAL REFORM

The ‘Report on Public Representations on Constitutional Reform’ by the Public Representations Committee on Constitutional Reform (May 2016, see

<http://bit.ly/1UC1kCb>) outlines the main four issues that need to be addressed in the constitutional reform:

1. democratisation of the State, by establishing the Rule of Law, broadening Fundamental Human Rights through a comprehensive Bill of Rights and strengthening independent commissions;
2. democratisation of the polity by strengthening institutions for people’s active participation in governance and political life by devolving power to the provincial and local government level and by incorporating citizens’ political activity at the village or town level into the State structure;
3. national reconciliation as an urgent task. There were divergent views as to how it could be achieved. Among these, one view was that constitutional reform should focus on meaningful devolution of power as a means of resolving the longstanding political issue of the minorities; and
4. the establishment of a public service that is closer to the people, fair, non-political, independent, professional and dedicated to serve the people.

## DR JAYAMPATHI WICKREMARATHNA, MP: AN OPPORTUNITY THAT MAY NEVER COME AGAIN



*Dr Jayampathi Wickremarathana is a leading constitutional lawyer in the country.*

*“One of the main problems that we have had is that we were under a very authoritarian regime. There was no democracy at all neither for the people in the North nor in the South. So democracy and the rule of law became basic questions in the last election. The key governing principle of the Rajapaksa regime was authoritarianism and this is what people rejected. Now we have the opportunity to build a new constitutional structure that must be based on democracy and the rule of law. Nothing unconstitutional is to be allowed.*

*I am for the parliamentary form of government with safeguards, even if going back to a parliamentary form of government will not solve the issue alone and ensuring democratic governance under a parliamentary form of government is not enough. We have to ensure the supremacy of the Constitution. People must have the right to challenge the unconstitutional laws, even years after they are passed. [...] Firstly, we need to have the bill of rights, a strong judiciary, and independent institutions. In short, the Constitution should provide adequate institutions and provisions so that we could use them for democratic governance. Currently, we have limited political rights. Even the right to life is not guaranteed by the Constitution. We need to have broader civil and political rights enshrined in the Constitution and we need to go into third generation rights as well.*

*Some sections want only an amendment to the Constitution but the President has been very clear in a number of recent speeches on the need for a new constitution and finding a solution to the ethnic question. The current Constitution is based on the Executive Presidency but it has been cracked now. So what we need is a new Constitution.*

*Currently, we have a situation where the two main*

*parties - the Sri Lanka Freedom Party (SLFP) and the United National Party (UNP) - are in the Government. The Tamil National Alliance (TNA), the main party of the Tamil people, is supporting the constitutional process. We have the Muslim parties and the hill-country Tamil parties also supporting the process. This is an opportunity that should not be missed because this opportunity may not come again. [...]*

*Secondly, I think an agreement on the electoral reform is very important. The major parties, of course, like to have an advantage in the electoral reform [through a first-pass-the-post system]. Smaller parties do not have any objection [to this reform], provided that they get adequate/just representation. People want the District Preferential System out. People would like to have their own MPs. So we need to have a healthy mixture of the two systems [i.e. the proportional system and first-pass-the-post system].*

*Thirdly, devolution is another important issue. Many Sinhala people say that they want a unitary country. By ‘unitary’ they mean an indivisible country. The extreme Sinhala minority wants a unitary government in the constitutional sense, i.e. a system that allows to take back what is devolved without the consent of the concerned minority community. The Tamil people, however, would like to have a system that does not allow to take back what has been devolved without the consent of the concerned communities. So we need to come up with a constitutional amendment which ensures that. Maybe this could be done through a second chamber that is largely representative of the Provinces. A second chamber is actually good for various reasons: First, hasty legislation could be reviewed and sent back to be reconsidered. Second, a second chamber can have a say in making national standards and policy on devolved subjects. Third, it could be a process to bring the Provinces back to the centre. Currently, we have a single Parliament making national policy without any reference to the Provinces. This would also strengthen the centre without weakening the periphery.”*

**The Report on Public Representations on Constitutional Reform (May 2016) emphasises the need for action in regards to the constitutional reform when stating that “the time is opportune for democratisation of the State and national reconciliation” and “it should be done immediately and if it fails at this moment, the country will not get such an opportunity again.”**

## 8. RECONCILIATION AND BUILDING TRUST

Ethnically, Sri Lanka is a deeply divided country. Different levels of mistrust prevail among the three major communities, i.e. Sinhalese, Muslims and Tamils resulting from three decades of war and the rise of extreme Sinhala nationalism. Other than war-related issues, many other issues, such as land, education, language and religious rights for minority communities, remain unresolved. Majoritarian politics dominant in Sri Lanka since independence has established discriminatory practices against minority communities and other political and social groups. The Government has set reconciliation as one of its major goals and both the President and the Prime Minister have made public commitments towards this goal.

### BRITO FERNANDO: GOVERNMENT DRAGGING ITS FEET

*“There are things the Government can do to begin with: for instance, finding truth may not be controversial. We suggest the Government takes at least action on non-threatening issues as a start. People need to see results. Take for instance, the land issue: the military is occupying the lands of the people. The Government is more powerful than the military and it should be able to take a decision and to release these lands. This is just one of the ways that the Government can show its commitment and sincerity to the Tamil people. Even the easiest measures that the Government can take are being postponed and the Government is dragging its feet on the whole reconciliation process. [...] The Government has so far failed to win the confidence and trust of the people in terms of the reconciliation process.”*

### NIMALKA FERNANDO: ISSUE OF ACCOUNTABILITY HAS DISAPPEARED



*Nimalka Fernando: The Government has to be kept on its toes.*

*“During the last three months [January to March 2016], the issue of accountability has disappeared.*

*This is a critical juncture. The civil society can give ideas to the Government but if the Government is not implementing the ideas of the civil society regarding reconciliation, what do we do then? By June this year, the Government should come up with more mechanisms. The Government has to be kept on its toes.”*

### RAJITH KEERTHI TENNAKOON: NOT SATISFACTORY, ONLY GLITTER



*Rajith Keerthi: Need to go beyond roundtables. Photo: facebook.*

*“Reconciliation is a major issue: for reconciliation to happen, we need to address property issues, this means provide property, give proper compensation for damages etc. None of these steps are going forward in a satisfactory way. We are still at point ‘zero’ or just above it when it comes to reconciliation. Of course, there is a lot of marketing for reconciliation in the country – but this is only talk. So far, Tamil people’s grievances have not been addressed. What is happening today is an exhibition of Transitional Justice – but it only glitters.”*

### RUKI FERNANDO: NO ROADMAP FOR RETURNING LAND

*“By now several tracks of land held by the military has been released after this Government came into power. But to my knowledge, no compensation has been paid for the buildings they destroyed, for renting the land they occupied and for the income they had derived from cultivation, fishing etc. There is also no clear timetable as to what will happen to the rest of the land that is still occupied. There is no roadmap for releasing the land to their original owners. It may not be possible to release all occupied land in a short period of time but there have to be at least convincing statements with clear*





*timelines by the Government that people will be given their land back.”*

**SHREEN ABDUL SAROOR:  
FINDING TRUTH AND JUSTICE HAVE BEEN POST-  
PONED**

*“If we are to move forward on a meaningful reconciliation, there should be transparent systems to deal with political prisoners, rehabilitation and so on. If there is amnesty for the military, there should be amnesty for the LTTE cadres as well. For me, Sri Lanka’s accountability and justice process will go on for another ten years. What is now happening is mere planning for reparations. ONUR [The Office for National Unity and Reconciliation] headed by Kumaratunga is in charge of this process. Finding truth and justice have been postponed. The reason they give for this delay is the possibility of Rajapak-*

*sa coming back to power. [...] It is very important that President Sirisena, Prime Minister Wickremasinghe and former President Kumaratunga speak one language on reconciliation.”*

The Government has not been able to show its commitment towards genuine reconciliation in practice so far. It could begin fulfilling basic demands and addressing basic insecurities of minority communities. At the same time, accountability for war-related crimes are a must to facilitate reconciliation. In the short term, the issues of political detainees and the resettlement of Tamil internally displaced populations to their land need to be addressed. In the mid- and long-term, countering extremism politically and ideologically will be important elements in the reconciliation process. Indeed, reconciliation and building trust will be a long and arduous task.

## 9. TRANSITIONAL JUSTICE

The Government of Sri Lanka has promised at the 30th session of the UNHRC that it will establish four transitional justice mechanisms in order to address the unresolved human rights issues related to the last phase of the war. These four mechanisms concern truth-seeking, prosecutions, reparations, and institutional reform. Currently, six government institutions or agencies are working on reconciliation without proper coordination. So far, the Government has been able to establish one mechanism, the Office of Missing Persons, and has appointed a Consultation Task Force on Reconciliation with 11 members from among the civil society. But no public consultations have been yet held on any of these mechanisms, even though the draft for setting up the Office of Missing Persons has been circulated by the Government. Government leaders’ also make contradictory statements on the composition of the proposed justice mechanism. Therefore, overall progress in this area is limited.

**BRITO FERNANDO:  
A MERRY-GO-ROUND FOR COLOMBO  
CIVIL SOCIETY**

*“Although the Government has made promises to Geneva, i.e. to the UNHRC regarding accountability, nothing much has happened on the ground. It is true that in Colombo various discussions on transitional justice are going on. Every day we hear transitional justice being discussed with foreign dignitaries. I think the civil society in Colombo has*

*become obsessed with transitional justice nowadays. Nothing is wrong in having discussions but the problem is that the messages remain in those air-conditioned rooms; it does not reach the masses.”*

**JOSEPH STALIN:  
MECHANISMS WITHOUT PROPER MANDATE**

*“Overall, we do not see any substantial initiative aimed at providing solutions to the problems faced by Tamil people. It is true that the Government leaders visit the North and East and hold public gatherings but this does not make a difference from the previous regime. This Government has appointed a Consultation Task Force on Reconciliation Mechanisms. We do not approve the participation of civil society in this committee because a proper mandate and a plan of action is missing.”*

**NIMALKA FERNANDO:  
TOO MANY MECHANISMS WITHOUT COORDINA-  
TION**

*“The Government of Sri Lanka (GoSL) has to build mechanisms to give effect to the four pillars of transitional justice. To set up these mechanisms, the Government has created a number of institutions: the Office for National Unity and Reconciliation (ONUR) comes under the President and is headed by former President Kumaratunga; a Secretariat for Coordinating Reconciliation Mechanisms*

(SCRM) has been established under the Prime Minister's Office; a Prime Minister's Action Committee, called 'PMAC', and the Foreign Minister has set up the Consultation Task Force for Reconciliation. In addition, there are also two ministries: the Ministry of National Co-existence and Official Languages comes under Minister Mano Ganesan and the Ministry for National Integration comes under Minister A.H.M. Fauzie. [...]

There are more than sixty representatives from civil society in the Consultation Task Force but they have not met yet once all together. Although we have civil society led mechanisms like the Consultation Task Force, its only responsibility is to prepare a report. But we do not know whether the Government will accept this report or not. [...]

The person who is in charge of the SCRM is from the business community. He may be a good CEO but he does not have any human rights background. Where else do you have a CEO running a Reconciliation Secretariat? I think the Government appointed such a person to appease the politicians, military and the bureaucracy."

**RUKI FERNANDO:  
NO TRANSPARENCY AND LACK OF  
CONSULTATION**



*Ruki Fernando: Transparency is what will give confidence to the affected people.*

"The Government has come up with a draft to establish an Office of Missing Persons. But there are absolutely no details on what kind of office this will be. Until it was made public we did not know anything about it but for example ICRC did know. They told us the mandate and the structure of the missing person's office is good. This is ironic. Drafting of the three other mechanisms, i.e. on the judiciary, reparations and truth seeking mechanisms, seems

to be happening in secrecy, too. It is strange that the Government does not want to share at least some elements of these processes with the public. [...] The Government claims that a taskforce with civil society participation has been established to solicit people's opinion on these mechanisms. But if the process is going on in secrecy, the taskforce can be seen as an eye wash. Transparency is what will give confidence to the affected people."

**SAMAN RATHNAPRIYA:  
REPEATING PROMISES IS NOT ENOUGH**

"We need to accept that making and repeating promises on addressing the issues of accountability and reconciliation is not enough. We need to implement the UNHRC resolution 30/1 step by step. It is true there is a slowdown of implementation. Some issues like releasing land has been partially addressed and issues like the de-militarisation of the North and security sector reforms still need to be addressed. [...]

The Government has not been successful in communicating to the people the importance of implementing UNHRC resolution 30/1. The Government even has failed to garner the support of the people for the progressive democratic reforms that were implemented. Because of this, forces opposed to reforms have been able to popularise their opinions. This is a major drawback."

**SHREEN ABDUL SAROOR:  
WHERE IS THE HYBRIDITY?**

"There is no hybridity at all in any of the mechanisms that have been established by the Government. If there is some UN personnel in the consultation taskforce, we can go to our communities and tell them that there is some hybridity. [...] For us, accountability is the number one issue. Many women I work with talk about accountability and justice time and time again. They want to see some sort of punishment. [...]

With regard to truth and reconciliation: this is highly problematic because the Government is talking about larger truth and the truth seeking mechanism will be connected to religious leaders. We do not have clergy like Desmond Tutu in this country. [...]

There is no coordination between the different transitional justice bodies functioning under the Government. For example, ONUR - which comes under the President and is headed by former President Kumaratunga - consulted leading psychiatrists on how to foster a healing process and how to deliver difficult messages to the war affected people.



*But in the meanwhile, the Prime Minister – when speaking in Jaffna on Thai Pongal Day (Tamil New Year) - stated that most of the disappeared persons must be dead. Reconciliation needs healing and the Prime Minister's statement goes against the healing process. In fact, at ONUR we were actually discussing about how best to deliver that message. So this is an example of non-coordination among the different transitional justice bodies.”*

Transparency and public consultation are lacking in the transitional justice process led by the GoSL.

The discussions on transitional justice are rather elite-centred and limited to small circles and coordination is lacking within as well as among the six agencies working towards reconciliation. It seems that there are two tracks of the transitional justice process: one is open and involves civil society, and the other is closed and works at higher levels. The general impression is that the open civil society process has been so far a façade only. This situation has eroded the trust in the Government's ability to deliver transitional justice.

## 10. RECOMMENDATIONS

The following section is a compilation of recommendations which were expressed by the interviewed civil society activists. They are structured towards the three levels, reflecting the need for

action by civil society, by the Government, and the international community. Political will and cooperation will be key to success.

### TO THE CIVIL SOCIETY:

1. Civil society groups that worked for the regime change should get together and link up with country-wide local level civil groups;
2. Civil society groups need to form issues-based alliances and find sympathetic political leaders and groups within and outside the Government;
3. Civil society groups should believe in their strength to influence the policies of the Government;
4. Civil society groups need to launch a country-wide awareness raising campaign in regards to human and democratic rights, especially focussing on the need for a sustainable political solution, for justice to the war-affected population, and for accountability related to the human rights violations that took place during the war;
5. Civil society groups should resist being co-opted by the Government and should maintain their independence;
6. Civil society groups should grasp the opportunity and space for reform which was created by the regime change and demand along these lines;
7. Civil society advocacy needs to be based on facts, figures and convincing arguments; it should be results-based and forward looking; and
8. Civil society groups should drive an anti-corruption campaign and demand the realisation of economic, social and cultural rights alongside the civil and political rights.

### TO THE GOVERNMENT:

1. The Government should publish a roadmap with specific timelines for the implementation of UN HRC Resolution 30/1;
2. The Government should establish the rule of law and implement security sector reforms as stated in the UN HRC Resolution 30/1;
3. The Government should create a special judiciary mechanism to hear corruption cases;
4. The Government should be fully transparent in regards to the transitional justice process;
5. The Government should end impunity and implement the promises to investigate attacks on media and journalists that happened during the previous regime;
6. The Government should take immediate steps to stop surveillance and intimidation of human rights activists, especially in the North and East of the country;
7. The Government should take immediate steps to stop the military involvements in civilian life in the North and East;

8. The Government should release the Tamil political detainees and repeal the Prevention of Terrorism Act;
9. The Government should publicise its plans in regards to returning the occupied land to the Tamil people and to provide the internally displaced population with an opportunity to restart normal life; and
10. The Government should make arrangements for structured, regular and transparent consultations with civil society.

#### TO THE INTERNATIONAL COMMUNITY:

1. The international community should continue its advocacy and exercise its pressure to ensure the implementation UN HRC Resolution 30/1 and the restoration of democracy in the country;
2. The international community should monitor and constantly remind the Government of its role in democratisation and reconciliation;
3. The international community should make sure that a political investment plan not only focusses on the realisation of civil and political rights but also on economic, social and cultural rights, especially as economic empowerment of war-affected people is crucial to achieve reconciliation;
4. The international community should implement the UN Human Rights High Commissioner's recommendations, especially to Member States to initiate a process of universal jurisdiction and vetting;
5. The international community should extend principled and consistent support towards the ongoing reform and development processes but should also allow domestic actors play a pivotal role and internal processes to go forward;
6. The international community should stand with the war victims and give their grievances a voice;
7. The international community should coordinate with civil society groups on the above mentioned actions.

## OVERALL STATUS OF IMPLEMENTATION



Resolution 30/1 contains 36 commitments on human rights, accountability and reconciliation

11.1%	25%	61.1%	2.8%
<b>4</b>	<b>9</b>	<b>22</b>	<b>1</b>
COMPLETED	PARTIAL PROGRESS	POOR PROGRESS	NO PROGRESS





## LIST OF ABBREVIATIONS

CaFFE	Campaign for Free and Fair Elections
CEO	Chief Executive Officer
CID	Criminal Investigation Department
GOSL	Government of Sri Lanka
HRC SL	Human Rights Commission of Sri Lanka
ICRC	International Committee of the Red Cross
IMADR	International Movement Against All Forms of Discrimination and Racism
LKR	Sri Lankan Rupees
LSSP	Lanka Sama Samaja Party
LTTE	Liberation Tigers of Tamil Eelam
MPs	Members of Parliament
NGO	Non-Governmental Organisation
NMJS	National Movement for a Just Society
OHCHR	Office of the United Nations High Commissioner for Human Rights
OISL	OHCHR Investigation in Sri Lanka
ONUR	Office for National Unity and Reconciliation
PMAC	Prime Minister's Action Committee
PTA	Prevention of Terrorism Act
RTI	Right to Information Act
SCRM	Secretariat for Coordinating Reconciliation Mechanisms
SLB	Sri Lanka Briefing Notes
SLFP	Sri Lanka Freedom Party
TID	Terrorism Investigation Division
TNA	Tamil National Alliance
UNHRC	United National Human Rights Council
UNP	United National Party



*Maduluwawe Sobitha Thero (1942 – 2015): the monk who broke the ice!*

“For someone who never belonged to any political party in Sri Lanka, Maduluwawe Sobitha thero (1942 – 2015) led an extraordinarily political life. He never hesitated or minced his words when he sensed that elected leaders were overstepping their mandate. For over four decades, Sobitha used his powerful oratorical and organisational skills to mobilise people into peaceful political resistance.

At certain times, this monk was more formidable than the divided and endlessly bickering opposition political parties of Sri Lanka. That certainly was the case in 2014, when he mounted a daring challenge to the increasingly despotic and nepotistic regime of President Mahinda Rajapaksa. It was Sobitha’s recently-formed National Movement for a Just Society (NMJS) that slowly but surely succeeded in unifying the divided opposition and other dispirited groups like trade unionists, artistes and professionals to call for a regime change.

It was the apolitical Sobitha who acted as Sri Lanka’s de facto Opposition Leader to pull us back from that brink. And it was an unorthodox Sobitha – mere head of a suburban temple — who stood taller and larger than any of the Maha Nayakas [chief prelates] in defending democracy and freedoms.”

*September 2015*

*Nalaka Gunawardane, writer and social critic @NalakaG*