

Briefing Notes

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Making mockery of the constitutional coup staged by President Sirisena on 26 October 2018: a traditional Sri Lankan dancer performing in front of a 24-days protest fast.

SRI LANKA: TRANSITIONAL JUSTICE AND EMERGING CHALLENGES



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ABBREVIATIONS

BBS	Bodu Bala Sena
CID	Criminal Investigation Department
CTA	Counter Terrorism Act
DIG ...	Deputy Inspector General of Police
GoSL ...	Government of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
IMF ...	International Monetary Fund
MP	Member of Parliament
OIC	Officer-In-Charge of Police
OISL ...	OHCHR Investigation on Sri Lanka
OMP ...	Office on Missing Persons
PGD	Prolonged Grief Disorder
PM ...	Prime Minister
PTA ...	Prevention of Terrorism Act
TJ ...	Transitional Justice
TNA ...	Tamil National Alliance
UNHRC ...	UN Human Rights Council
UNP	United National Party

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EXECUTIVE SUMMARY

In the last two months of 2018, Sri Lanka witnessed a political coup led by its President. The coup was short lived. The attempt to overthrow the democratically elected Government and bring back the authoritarian ruler, who was rejected by the people in the last Presidential election, has implications on transitional justice and reconciliation in Sri Lanka.

Despite several positive developments, the progress of the transitional justice process has been slow, inconsistent, fragmented, and delayed. The Government's genuineness of political will for transitional justice remains highly questionable. The war hero rhetoric that is being continued, mainly by President Sirisena, points to the fact that impunity for alleged war crimes as well as for attacks against human rights defenders and journalists will be prolonged.

While the investigations over killings and disappearances of human rights defenders and journalists stagnate with no real progress, tens of thousands of people remain disappeared. The Government continues to hold some of the civilian land acquired during the war and the displaced people continue their struggle to re-gain their land.

The process to amend the Constitution has come to a complete standstill and thus, finding a political solution to the ethnic issue has become an illusion. The country remains polarized along ethnic lines amidst growing Islamophobia. Sections of the political, social, and religious forces continue to take up extremist and non-negotiable positions.

Among the war affected communities, poverty is prevalent. Economic justice remains one of the least addressed issues. In general, the economy is stagnating.

2019 will be a crucial year for Sri Lankan politics: while the current Government is failing to implement the commitments under Resolution A/HRC/30/1, political forces that oppose the Transitional Justice (TJ) process are attempting to come into power – and this threat is real.

A re-energised civil society activism on the ground as well as in the social media remains a sliver line among these dark clouds. Checks and balances introduced by the 19th Amendment in the form of Independent Commissions continue to be a source of strength for rights-based activism.

Under these circumstances, the critical and continued engagement of the international community with the Government of Sri Lanka (GoSL) is of utmost importance. The continuation of a UN oversight of the implementation of the TJ process remains pivotal.



*On 24 January 2019 leading media organisations handed over a petition to the United Nations Colombo office calling for continued engagement with the GoSL to end impunity.
Photo: © Sampath Samarakoon*



1. CONTEXT

Sri Lanka was taken by surprise when a constitutional coup which was led by the country's President shoved the country into an absolute chaos in the last two months of 2019. During the 51 days of the constitutional coup Sri Lanka saw judicial independence and the re-emergence of civil society activism as well as political mobilizations in defense of democracy. Security forces maintained their distance from the coup and finally, the parliamentary democracy asserted itself. The independence of the judiciary that was established at the highest level was remarkable. Social media provided the much needed public space for dissenting voices while mainstream media became overtly partisan.

Economic justice for people affected by the war emerges as a key concern. The country is mired in the debt trap and the cost of living is rising by the day. About half of the total government spending in 2019 is allocated for debt repayment.

In August 2018, a mass grave was found in Mannar with 300 skeletons, including those of 23 children below the age of 12 years. This is the largest mass grave ever found in the country. The excavation is still ongoing. Even though victims have not yet been identified, it was already revealed that some of the victims were subjected to torture¹.

The report of the OHCHR Investigation on Sri Lanka (OISL) was presented at the 30th session of the Human Rights Council in September 2015. The report concluded that serious violations of human rights and international humanitarian law were committed by both parties to the conflict, which would amount to war crimes and crimes against humanity. In response to the report, the international community adopted the Resolution Promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/30/1) by consensus, with the Government of Sri Lanka (GoSL) agreeing to implement recommendations of the OHCHR. It was agreed to establish a Commission for Truth, Justice, Reconciliation, and Non-recurrence, an Office of Missing Persons, an Office for Reparations, and a judicial mechanism with special counsel. The GoSL requested an extension of two years to deliver the promises contained in Resolution A/HRC/30/1. Therefore, Resolution A/HRC/34/1 was adopted in 2017 to agree on the two-year extension.

The extension period comes to an end in March 2019 and the Government will be obliged to report on the progress under its commitments. Therefore, an examination of the state of the TJ mechanisms in Sri Lanka and the efforts to ensure accountability are necessary. This report examines the TJ process in the context of current and emerging socio-political developments and the way forward.

This report is based on desk research and a series of discussions conducted with various stakeholders in Sri Lanka, including survivors of the conflict. Names of the persons who expressed their views have been withheld or changed in order to protect their identity.



2. CONSTITUTIONAL COUP AND ITS POLITICAL IMPLICATIONS

On Friday 26 October 2019, President Sirisena appointed the former President Rajapakse as Prime Minister (PM). In the seven weeks that followed Sri Lanka witnessed its worst instability since the end of the civil war in 2009.

Several Members of the Parliament (MPs) crossed over to the ‘new governing coalition’ while reports surfaced that this coalition attempted to bribe MPs with hundreds of millions of rupees to crossover².

Then the President prorogued the Parliament for three weeks. Despite several claims that Rajapaksa would be able to show a majority in the Parliament, at some point it became clear that Rajapaksa cannot show this claimed majority and in another act that violated the Constitution, the President dissolved the Parliament on 9 November 2018 and 13 parties filed petitions in the Supreme Court against this move. On 14 November 2018, the Parliament was reconvened, despite the fact that two no-confidence motions were passed with the majority of the Parliament. The cabinet headed by Rajapaksa continued operations until the Court of Appeal issued an interim order restraining Rajapaksa and his cabinet of ministers from functioning in their respective offices. On 13 December 2018, the Supreme Court has decided that the President’s act of dissolving the Parliament was unconstitutional and thus reaffirmed the Court of Appeal’s decision. On 15 December 2018, Rajapaksa ‘resigned’ from office of the PM.

Economic implications of the political instability have been worrying. Two weeks after the coup, the rupee fell to a record low of rupees 173.20 per dollar. Foreign investors pulled out more than 30 billion rupees (\$169.5 million) since the crisis unfolded on 26 October 2018 and the IMF delayed discussions on the next tranche of the loan facility to Sri Lanka³. Three leading credit rating agencies downgraded Sri Lanka’s rating as a result of the political crisis⁴.



Civil and political groups continued their agitations, even after the constitutional coup ended.

During this political crisis, the revival of civil society activism was notable: following the coup, various independent civil society groups organized daily protests in the capital. Protestors rejected affiliations to political parties and stressed that they came on the street not to protect the privileges of the political class, but the democratic rights of the people.

While state media was ‘taken over’ as part of the coup, the role of mainstream private media was highly questionable. Some mainstream Sinhala news channels hailed Rajapaksa as a patriotic leader and glorified



the coup. These media also launched personalized attacks against the civil society activists that protested against the coup and that rejected the extremely biased point of view of these media channels. The absence of independent media emerged as a key issue around freedom of expression in Sri Lanka.

SOCIAL MEDIA

Social media became the public space for democratic forces that opposed the coup. New news platforms sprang to life. Live webcasting via social media compensated for the partisan TV broadcasting. While Twitter became the source of breaking news, Facebook provided the principal space for dissenting political opinions.

During and after the coup, Rajapaksa took a nationalist stance in preparation for the upcoming elections. After ‘stepping down’ from the position as Prime Minister, Rajapaksa in a press release stated that “the UNP [United National Party] which has a minority of 103 seats, has been taken hostage by the TNA [Tamil National Alliance]. [...] The TNA now holds the remote control in Parliament”⁵. Tamil people were posed as the enemy in the unsuccessful coup, appealing to the nationalist Sinhalese majority voter base.

The constitutional coup of 2018 sealed the political turnaround of President Sirisena towards nationalism and populism and marked the end of the corporation between the President and the Prime Minister. For example, although Sri Lanka had repeatedly assured the UNHRC that the suspension of the death penalty would continue, Sirisena has now promised to resume judicial executions as a populist measure.

A STRONG LEADER

Another concern is the growing popularity towards an authoritarian form of leadership. A recent study shows that although a clear majority of Sri Lankans favor democracy (84.2%), 58.7% of Sri Lankans believe that the country should be governed by ‘a strong leader’ who can make decisions without having to ‘worry’ about the parliament and elections⁶.

Thus, the end of the coup does not mean that Sri Lanka has achieved political stability. To the contrary, many of the factors that destabilized Sri Lankan politics in recent years - some of which directly contributed to the recent crisis - remain unresolved. The constantly growing personal animosity and ideological disagreements between President Sirisena and PM Wickremesinghe were central to the coup. As implied by the President’s repeated pledges to ‘protect the war heroes’, the President does not personally stand by the Government’s commitments to ensure transitional justice. In the coming elections, President Sirisena will continue along nationalist lines and attempt to use the ‘war hero’ rhetoric to his advantage and PM Wickremesinghe will downplay the significance of TJ process.

At the time of writing this SLB, the ruling UNP does not have a simple majority in the Parliament. They rely on the 16 MPs of TNA to constitute the majority in Parliament. 2019 is an important election year in Sri Lanka with both provincial council and presidential elections to be held and further polarization of Sri Lankan politics on ethnic and religious grounds to be expected. This situation may not allow any Sinhalese majority party to genuinely take the TJ process forward.



3. TRANSITIONAL JUSTICE

3.1. EVENTS IN 2018

In Resolution A/HRC/30/1 the GOSL made commitments to establish four mechanisms: The Commission for Truth, Justice, Reconciliation, and Non-Recurrence; the Office on Missing Persons (OMP); the Office for Reparations; and a judicial mechanism with a special counsel.

OMP INTERIM REPORT

The Office on Missing Persons (OMP) started to operate in March 2018 following the appointments made by the President. In August 2018, after meeting the families of the disappeared, the OMP issued an interim report⁷, pointing out that some individuals suspected of having committed enforced disappearances have been permitted to remain in positions of power, especially within the armed forces and the police, and as such are able to influence the progress of investigations. The report also noted, among others:

- that there have been instances where members of the armed forces who were willing to provide information on disappearances were subjected to harassment;
- that there is an overwhelming demand and need for investigation and prosecution of enforced disappearances; and
- that the current socio-economic situation of many families of the disappeared is dire and urgent and immediate relief is needed.

In addition, the OMP also noted the continuing incidents of harassment and violence experienced by families of the missing and the disappeared and stressed that such acts of intimidation or reprisal aimed at complainants, witnesses, relatives of the disappeared person, their defense counsel, or persons conducting the investigations, are a serious threat to justice and undermine public confidence in the State. Some families of the disappeared have rejected the OMP on the grounds that it is not independent, and its mandate is insufficient. They demand a direct international involvement in the process. It remains for the OMP to earn the trust of the victims by showing tangible results, especially as none of its interim recommendations have been implemented so far.

Sri Lanka also enacted the International Convention for the Protection of All Persons from Enforced Disappearance Act No. 5 of 2018 as domestic legislation in order to give effect to Sri Lanka's obligations under the International Convention for the Protection of All Persons from Enforced Disappearance to which Sri Lanka became a signatory in 2015. The Act effectively criminalizes secret arrest and detention and gives High Courts in the country the jurisdiction to try cases under alleged crimes of enforced disappearance⁸.



OMP still has to earn the trust of the families of the disappeared.

THE SNAIL'S PACE

While the Office on Missing Persons has begun operations, legislation relating to the Office for Reparations⁹ was only approved in October 2018. Most recently, the call for applications for the appointment of members of the Office for Reparations was advertised on 3 January 2019¹⁰. The Office for Reparations Act No. 34 of 2018 provides for the establishment of the Office with the power to formulate and implement policies on reparation. However, Clause 11(1)(g) of the Act states that policies and guidelines formulated by the Office will only be adopted upon approval by the Cabinet of Ministers. Clause 22(4) further provides that any such policies and guidelines authorizing the disbursement of funds require Parliament's approval. These clauses create a total dependency on the Cabinet vis-à-vis policy formulation, and they add an unnecessary layer of Parliamentary approval to disburse funds for an Office intended to be independent, nonpartisan, and autonomous.

The opposition-led by former President Rajapaksa opposed the Reparations Bill in the Parliament and voted against it. The Act was nevertheless passed with a narrow margin. The establishment of the OMP has also come under attack of the Sinhala nationalist forces with the tacit support of the Rajapaksa-led opposition. Legislation relating to the Commission for Truth, Justice, Reconciliation, and Non-Recurrence has been said to be approved by the Cabinet. However, no Bill has been made public. In the August 2018 draft report to the Human Rights Committee's consideration of reports by State Parties under Article 40 of ICCPR, the GoSL notes that a Working Group comprising of senior academics, government officials, and transitional justice experts has been appointed to draft legislation on a truth-seeking mechanism and that the legal framework of the proposed truth-seeking commission is being discussed¹¹.

Progress on a judicial mechanism that is to involve foreign judges is at a standstill and key members of the Government backtrack the Resolution's affirmation concerning the importance of participation in a Sri Lankan judicial mechanism with a special counsel¹². Meanwhile, the draft report to the UN Human Rights Committee states that consideration of models and options has commenced with regard to a judicial mechanism¹³.

3.2. LAND



In Kepapulavu, Tamil people's continuous campaign for their land is becoming a landmark in their struggle for demilitarization of their land. Photo: © @Rukitweets

Over the years, many Sri Lankans, particularly in the North and the East, were displaced due to the war and the government forces occupied territory to set up military camps or bases for operations and demarcated



certain areas as High Security Zones. By the end of the war the military was in control of vast swaths of land. President Sirisena came to power on a platform of reform with the promise to release this land. While the government has released land in a number of sites across the North and East, in other sites the process has been delayed. In at least one location, the Sirisena Government has actually moved backwards, allowing the military to acquire land in a conflict-affected area¹⁴. At the same time, military occupation of land is among the primary contributors to continued displacement.

There is no publicly available comprehensive mapping of land occupation by the armed forces and police, particularly in the North and East. However, a report by Human Rights Watch in October 2018 presented a detailed account of military land occupation in Sri Lanka¹⁵:

In some instances, the local civilian administration agrees that there are no reasonable grounds for the continued land occupation, but it has been unable to enforce reform because of the obstruction by the military. In other instances, officials state that the land cannot be released as the civilians who lived in the land lack legal titles or proof of ownership (due to loss of documents). This points to the larger issue that Sri Lankan authorities have failed to consider and address the consequences of the conflict on the affected people.

In several cases, even after residents were informed that their property had been released, they have found security forces unwilling to leave, or still occupying a portion of the area, leaving some families displaced. There are also instances where different state agencies have exchanged control over properties without releasing land back to the civilian owners. Some of the acquired land is used by the military for commercial venture, such as running of shops, hotels, and agricultural purposes, rather than national security purposes.

3.3. COUNTER TERRORISM ACT

There are improvements in the draft Counter Terrorism Act (CTA) in comparison to the existing Prevention of Terrorism Act (PTA). However, the draft Act falls far short of preventing possible abuse of power by the police or security forces and of safeguarding the necessary rights of detainees.

In contrast to a previously circulated proposal, the latest draft no longer criminalizes “words either spoken or intended to be read that threaten the unity of Sri Lanka” as an offense that would violate freedom of expression recognized in article 19 of the ICCPR.

However, the draft CTA still includes several overbroad definitions of terrorism offenses, such as “intimidating a population” and criminalizes as terrorism the act of “wrongfully or unlawfully compelling the GoSL, or any other government, or an international organization, to do or to abstain from doing any act”. The CTA further criminalizes dissemination of material with the intent to incite terrorism, “notwithstanding that such conduct does not expressly advocate such offence”. This language creates the potential for an overbroad interpretation of incitement, which should be criminalized under the CTA only when it is a direct call to terrorist action.

The draft CTA improves protections during arrest and police custody. Most significant is that the police must present a detained suspect to a magistrate within 48 hours of arrest and inform a family member within 24 hours of the suspect’s arrest. In case a detention order of 14 days is served, the Human Rights Commission of Sri Lanka should be notified within maximum 72 hours.

However, in contrast to the PTA, which limits arrest powers to the police, in the draft CTA members of the armed forces or the coast guards may also make arrests. Outside of an armed conflict situation, armed forces personnel typically do not have law enforcement training and the permission to carry out arrests facilitates arbitrary arrests and mistreatment in custody, undermining counterterrorism efforts¹⁶.

The draft CTA contains provisions to protect against custodial torture and coerced confessions. Confessions must be made to a magistrate in order to be admissible as evidence.



3.4. DEMANDS OF THE PEOPLE

In the areas that were affected by the war, socio-economic concerns trump the demand for transitional justice. As a recent central bank report pointed out in the war-affected areas poverty is widespread and is further exacerbated by an indebtedness crisis¹⁷. The war-affected North Central Province was severely affected by a drought in 2018, causing dire economic conditions for the people whose main livelihood is agriculture. While the environmental and economic concerns continue to increase every year, there is no long-term plan to uplift the economies of the war-affected Northern and Eastern Provinces.

NEED FOR ECONOMIC JUSTICE



A vendor in the market of Jaffna: Economic justice is one of the main cravings of the war affected people.

The consequences of the war have left people vulnerable and with little resources. This makes economic development an urgent need. For instance, the village of Muttrikkandal in Mannar District in the Northern Province has 95 families with a population of 369 people. The village has lost nine people to the war, two persons have become disabled, and there are nine widows. Economic upliftment is the main demand and desire of these villagers.

Disappointment in the Government is widespread and its inability to deliver on their 2015 promises has translated into suspicion in the TJ mechanisms. In July 2018, Tamil families of the disappeared boycotted the OMP hearing in Jaffna. The protesting families stated that they have no faith in the Commission, which they believe will be like many other commissions before, in which they have also testified without any outcomes.



DIVIDED OPINIONS

While the great majority of the people affected by war¹⁸ view reparations as part of transitional justice in a positive light, they feel differently about seeking truth: “What is gone is gone. There is no point probing into old wounds”, noted Manel (61) from Anuradhapura. “If we find that there were war crimes, who are we going to punish? There is no LTTE anymore. They are dead. Those who survived are rehabilitated. Are we going to punish our [Sinhalese] soldiers who fought in the war to protect us? It was a war. They did what they had to do”. The feeling that there is no use of seeking truth was common. “We have lost so much. There is no use in pointing fingers. We do not want to talk about the war anymore. It’s over now. What we need is some support to live” said Rajeswari from Kilinochchi.

However, families of the disappeared have a different opinion: “My mother’s brothers went missing during the war. After the end of the war my father went to all the camps looking for my uncles. They were young when they were taken by the army. My grandmother had gone to many camps looking for them. Still my mother is in pain and wants to find out what happened to them”, says Ganesha (18) from Vavuniya. Out of the 16 respondents interviewed prior to this report, six respondents had an immediate member of their family gone missing. All six respondents noted that they want to know what happened to their loved ones and one of them believed that the missing husband must be still alive.

THE PSYCHOLOGICAL IMPACT OF DISAPPEARANCES



A Tamil mother praying at a Hindu kovil.

A recent study on the psychological impact of disappearances on the families of the missing in Sri Lanka noted that when considering the belief about the missing person being dead or not; compared with family members that have found the remains, those who were ambivalent about the status had almost a 14 times higher chance of having Prolonged Grief Disorder (PGD). If they were strong believers that the person was still alive, the odds of PGD are about 13 times higher. It was also found that mothers and wives of the disappeared persons suffered the most from the psychological impact of the disappearances¹⁹.

While in general the respondents accepted “reconciliation” in a positive light, among certain Sinhalese groups from predominantly Sinhalese areas, “transitional justice” was understood as a threat: “On the television, transitional justice is portrayed as something that oppresses security forces. This seems to be an attempt to send our security forces to the guillotines and President Rajapaksa to the electric chair. People believe that international forces will compel the Government to punish security forces for war crimes.”



4. RECONCILIATION

It became evident through the interviews that the Government, in partnership with civil society organizations, has conducted a large number of awareness programs on transitional justice. The general impression was that though there was hatred for the Sinhalese resp. Tamil people during the war, such hatred is no more. Exposure to the suffering of the “other” community as well as the absence of the war itself has contributed to this change in sentiment. However, there is a growing disappointment at the lack of effective efforts to ensure reconciliation. A recent survey found that a majority of Sri Lankans (53.3%) are dissatisfied with the current Government’s progress on addressing reconciliation in post-war Sri Lanka²⁰.

In the absence of truth-seeking media, there is an emerging sentiment among the Sinhalese community that the present Government “favors” the Tamil community, furthering the polarization between Sinhalese and Tamil people: “All we see on the TV is how this Government is carrying out various development projects in the North: building roads, building houses. They have not done anything for us. You tell us, are the Tamil areas more developed than our villages?” asked an interviewee from Anuradhapura.

GROWING ISLAMOPHOBIA

The growing islamophobia coupled with violent attacks directed at Muslims is another cause for concern. In March 2018, the GoSL imposed a nationwide state of emergency following a mob attack against the minority Muslim population in Kandy in the Central Province. The unrest began over a traffic accident which caused the death of a Sinhalese man and angry mobs made up of hundreds of Sinhalese attacked Muslim businesses and houses and at least one mosque. At least one person was killed; hundreds of security personnel were deployed to Kandy; and a curfew was declared.



Muslims constitute 9% of the Sri Lankan population and live across the country.

Just a few days prior to this communal violence in Kandy, at least five people were wounded; several shops and a mosque were damaged in a clash between majority Sinhalese Buddhists and minority Muslims in Ampara in the Eastern Province. The communal violence in Ampara transpired after a group of people attacked a Muslim shop owner for incorporating “infertility pills” into food.

The idea that the Muslim community is attempting to control Sinhalese population using various means, such as smearing “infertility-causing agents” on bicycle seats, incorporating “infertility-causing substance” into women’s undergarments, or adding “infertility pills” into food, is a common myth. Despite a statement by a group of doctors that this is impossible, the majority of Sinhalese people in rural areas appear to take these myths for facts. These ideas are being systematically spread through social media and messaging apps. In the absence of a public service media and reliable sources of information, these myths are becoming deeply rooted in the minds of people, posing a danger to reconciliation.



5. ACCOUNTABILITY

5.1. CONTINUED ‘WAR HERO’ RHETORIC

The International Truth and Justice Project filed a lawsuit against General Jagath Jayasuriya in Latin America, where he lived as a diplomat. This lawsuit was based on allegations of war crimes, including overseeing attacks on hospitals, and killing and enforcing disappearances of thousands of people in the final phase of war. President Sirisena, speaking at a public event, stressed that he [the President] would not allow General Jayasuriya or any other “war hero” to be hauled before an International Criminal Court or war tribunal as long as he remained the President of Sri Lanka. The President has maintained this stance throughout 2018 and has spoken on protecting the “war heroes” on numerous occasions.

In January 2019, Major General Shavendra Silva was appointed Chief of Staff of the Sri Lanka Army. He has been named in the 2015 Report of the OHCHR Investigation on Sri Lanka²¹ for his part in commanding the 58th Division, which was the unit responsible for repeated and deliberate attacks on civilian targets, including a hospital in 2009, resulting in tens of thousands of civilian deaths within a few months. Units under Silva’s direct command are also alleged to have been involved in summary executions, including of women and children, hundreds of cases of enforced disappearances, as well as torture and sexual violence²².

5.2. CONTINUED IMPUNITY FOR ATTACKS ON JOURNALISTS AND HUMAN RIGHTS DEFENDERS



A journalist at the black January protest on 24 January 2019: Sri Lankan media organisations demand the UN to keep up the pressure on the GoSL. Photo: © Quintus Colombage

While Resolution A/HRC/30/1 encouraged the Government to investigate and prosecute perpetrators of attacks against journalists and human rights defenders, cases such as the murder of Lasantha Wickramatunga and the disappearance of Prageeth Eknaligoda have seen no substantial progress. 8 January 2019 marked the ten years since the murder of Wickramatunga.

One former OIC and a senior DIG were arrested for concealing evidence and providing false evidence in the investigation and another military intelligence officer was arrested for abduction of a witness in this investigation²³. A decade after the murder the investigation has not yet secured any conviction.

During the last two decades, the largest number of journalist murders was reported from the Northern Province. So far, not a single attack on Tamil journalists and media has been investigated.



ATTEMPTS TO PARDON MONK GNANASARA

In June 2018, Galagoda Aththe Gnanasara Thero was jailed for six years after being convicted on four counts of contempt of court. The monk who was the Secretary General of the Bodu Bala Sena (BBS), a Sinhalese Buddhist nationalist group that incited violent attacks against Muslims in preceding years, disagreed with the proceedings of the Court and shouted at the presiding judge and lawyers as the accused military men were refused bail in the case on disappearance of journalist Ekneligoda. He also threatened the wife of the missing journalist, Sandya Ekneligoda²⁴. Finally, on 8 February 2019 the six-month rigorous imprisonment imposed on the priest for threatening Sandya Ekneligoda was suspended for five years by the Colombo High Court. While Gnanasara Thero is still serving the six-year term for contempt of court political parties, other leading Buddhist monks and nationalist organizations are mounting a campaign to obtain a Presidential pardon for the priest. Such a pardon, if obtained, will have serious adverse impacts on the Ekneligoda disappearance case and other cases of political significance, particularly those involving the military. It will also reaffirm impunity in Sri Lanka and discourage victims and witnesses from pursuing justice²⁵.

At the same time, police sources have stated that the Army has not been fully supportive in the ongoing investigation in which the main suspects are military intelligence officers. It was added that the investigation has stalled as Army assistance is required to take the case forward.

During the short-lived constitutional coup, there was a further attempt to obstruct these investigations: On 18 November 2018, Inspector of Police, Nishantha Silva, who is in-charge of the CID's Organized Crime Division and who is currently heading several cases involving attacks against journalists perpetrated during the Rajapaksa regime, including the murder of Lasantha Wickremetunga and the assaults on Keith Noyahr and Upali Tennakoon, was served notice of transfer. If not for timely interventions, these institutional changes would have gone unnoticed resulting in perpetual impunity. The transfer was cancelled two days later, on 20 November 2018²⁶.

MEDIA ORGANISATIONS WRITE TO THE UN

In January 2019 a collective of media organizations in Sri Lanka, including the Sri Lanka Working Journalists Association and the Free Media Movement, expressed disappointment at the lack of accountability for crimes committed against journalists in a letter addressed to the Resident Coordinator of the United Nations in Sri Lanka. The collective recalled that meaningful progress of investigations into journalist killings remains elusive and demanded that the UN should persist in pressuring the GoSL to take action to ensure accountability. The impunity enjoyed by the perpetrators of these crimes, among others, serves as a testament to the lack of willingness by the Sri Lankan authorities to hold those responsible for serious human rights violations accountable for their actions.



6. CONCLUSIONS

Sri Lanka has failed implementing the commitments it made to the people of Sri Lanka and the international community and affirming its genuine political will to deliver upon those commitments. The only TJ mechanism established since the UNHRC adopted Resolution A/HRC/30/1 in September 2015 is the Office on Missing Persons (OMP) and even this is not yet fully operational. The OMP is yet to gain confidence of the Sri Lankan people and show tangible results. While the progress of the TJ mechanisms remains slow, the opposition political forces have positioned themselves against the TJ process.

Impunity over crimes against humanity committed during the war and the crimes perpetrated against human rights defenders, journalists, and media institutions prevail. Hate speech and public smear campaigns against civil society organisations and activists are on the rise.

With the constitutional reform process at a complete standstill, no sustainable and just political solution to the ethnic issue is in sight. The country remains polarized along ethnic lines and nationalism is gaining force. Communities affected by the war live in dire economic circumstances and economic justice is already delayed.

2019 is a politically, economically, and socially volatile year for Sri Lanka. It is an election year which will make or break Sri Lanka's transitional justice process. If the government changes the TJ process will suffer severely.

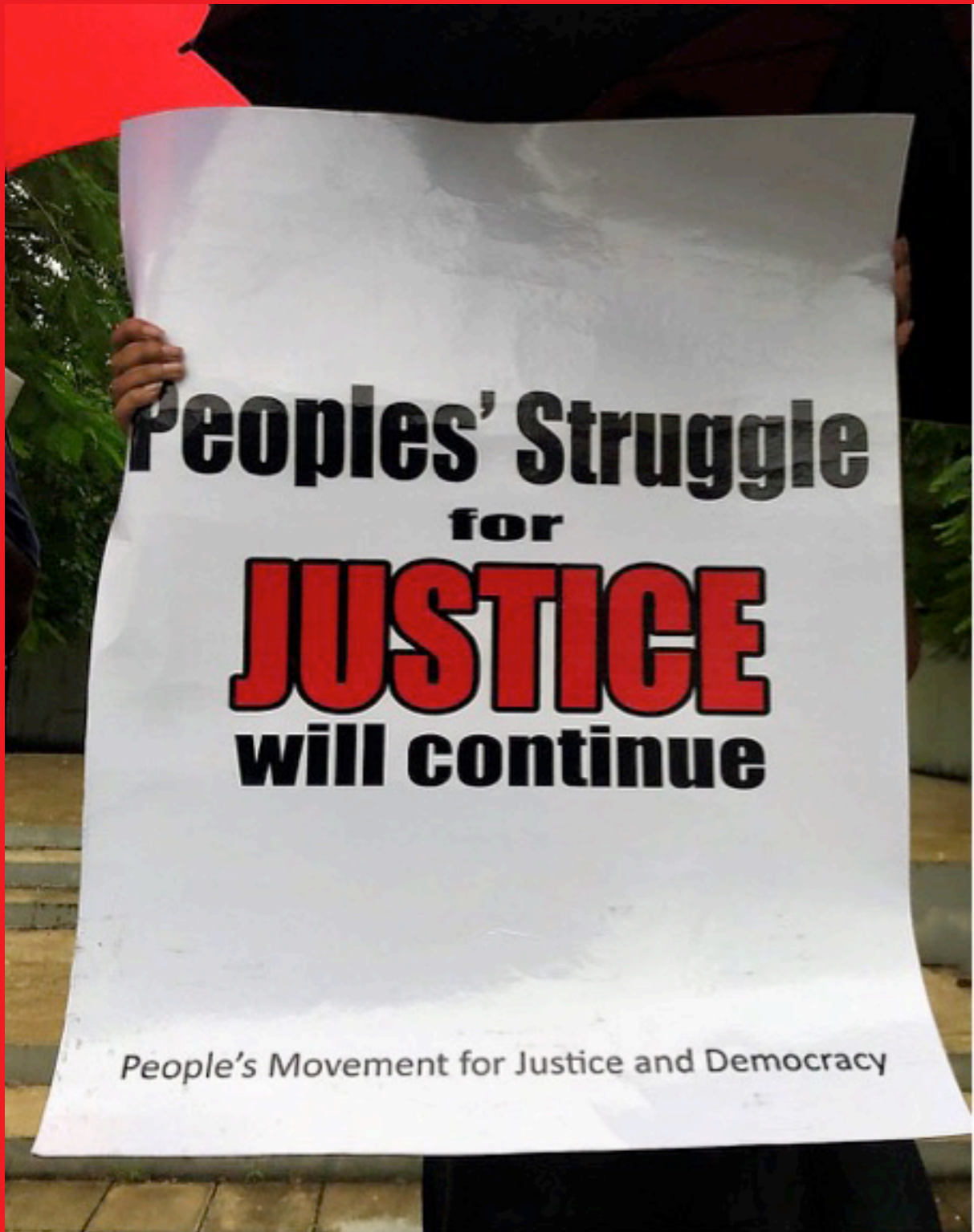
7. RECOMMENDATIONS

- Sri Lankan civil society needs to find a common ground to make the Government accountable in relation to human rights, reconciliation, and accountability.
- The GoSL should be required to provide a clear time line for the implementation of the commitments in relation to promoting human rights, reconciliation, and accountability.
- The GoSL and the international community need to pay attention to economic, social, and cultural rights of the war affected people.
- The critical and constructive engagement of the international community with the GoSL needs to be strengthened.
- The UN oversight of the TJ process and other commitments of the GoSL need to be streamlined, finding effective avenues and mechanisms. The UNHRC should extend the mandate it was given by Resolutions A/HRC/30/1 and A/HRC/34/1 through a new resolution with clear deliverables and timelines.



ENDNOTES

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Protests by independent civil groups against the constitutional coup stood for rule of law, justice and democracy. Photo: © Vikalpa