

November 2015

# Sri Lanka Brief

## Update



### **Positions Taken by the Sri Lankan Political Parties in Relation to the UNHRC Sri Lanka Resolution A/HRC/30/L.29 adopted at the 30th Session of the Human Rights Council**

*General consensus among the majority of political parties seems to be in favour of for a credible domestic mechanism only. The role of the Commonwealth and foreign judges remains unclear; governing coalition has only insisted on some kind of outside involvement of the proposed mechanism. Opposition to the resolution mainly comes from pro-Rajapaksa political and civil formations.*



All Party Conference convened by the President Sirisena on Geneva Resolution, 23 October 2015

Positions taken by Sri Lankan political parties in relation to the resolution A/HRC/30/L.29 adopted at the 30<sup>th</sup> session of the Human Rights Council.

## Context:

Sri Lanka resolution A/HRC/30/L.29 adopted by the United Nations Human Rights Council at its 30th session, held in September 2015, is still making waves in the country. Political parties as well as civil society groups have taken up positions in relation to the resolution.

A public campaign opposing the resolution and its implementation has been launched by smaller opposition parties supported by former president Mahinda Rajapaksa. The first public rally against the resolution was held on 19<sup>th</sup> October, just 3 days before the parliamentary debate on the resolution. The parliamentary debate was held on 22<sup>nd</sup> and 23<sup>rd</sup> of October 2015.

None of the two coalition partners of the government; neither the United National Party (UNP) headed by the Prime Minister Wickremasinghe nor the Sri Lanka Freedom Party (SLFP) headed by the President Sirisena, have initiated any such campaign.

The President convened an All-Party Conference (APC) to discuss the resolution on 23<sup>rd</sup> October as a part of the consultation process. Only two parties which do not have a representation in the Parliament were invited, they were Field Marshall Sarath Fonseka's Democratic Party and the LSSP of Prof. Tissa Vitarana. Each party was asked to submit its proposals for a political solution within two weeks. and many smaller parties have been left out of the process.

The second round of the APC was held on 17<sup>th</sup> October 2015. Only consensus reached at the meeting was on matters such as the implementation of the recommendations by the Lessons Learnt and Reconciliation Commission (LLRC), addressing livelihood issues in the war ravaged areas and schemes for the benefits of war widows.<sup>1</sup>

Pro-democratic civil society groups too have not initiated any public action to defend the accountability and reconciliation process envisaged by the resolution.

On the contrary civil society groups who supported the regime change by actively campaigning for the joint opposition have come out strongly criticising the government for police brutality unleashed against protesting students. Appointment of nearly 100 ministers and a large cabinet, slow pace of the anti-corruption drive and Government's lethargic attitude towards issues like hundreds of political prisoners languishing in jails for years have disheartened many civil society groups. Social media that was overwhelmingly supportive of the regime change is now full of criticisms towards the government.

Seemingly developing conflict between the President's fraction (SLFP) and Prime Ministers fraction (UNP) of the ruling coalition is threatening good governance practices, both sides courting corrupt politicians as well business people. On 5<sup>th</sup> November a serious row occurred within the cabinet of ministers over one Major of the alleged fraud, Avant Garde.<sup>2</sup>

On the positive side, Independent Commissions have been appointed except the Election Commission. Anti-corruption investigations are proceeding though at a slow pace. A few investigations on disappearances and killings have reached the final phase. The Criminal Investigations Department (CID) filed charge sheets against six suspects over the murder of Parliamentarian Nadarajah Raviraj on 3<sup>rd</sup> November.

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<sup>1</sup> <http://srilankabrief.org/2015/11/apc-on-geneva-resolution-no-common-ground-on-core-issues/>

<sup>2</sup> <http://srilankabrief.org/2015/11/sri-lankas-new-regime-faces-major-split-over-arms-scandal/>

The freedom from fear that has been usurped as a result of the regime change is flourishing. For instance a number of international human rights organisations have visited Sri Lanka and they were able to exchange opinions with leaders of the government.

Freedom of expression and freedom of assembly have been re-established.

The government has announced that the Parliament will be converted in to a constitutional assembly in order to draft a new constitution. Minister of Justice has stated that they hope to have a new constitution in two years' time.<sup>3</sup>

A few major corruption allegations have rocked the government which are threatening to erode the credibility of the government.

Although there are no regular social polls conducted by credible institutions to gauge the popularity of the government, the general feeling is that popularity of the government as well as its two leaders has decreased among all communities.

Pro Rajapaksa political formations have become more vocal and have taken up in the parliament the issue of attacks by Police against peaceful protestors. Former president Rajapaksa is still trying to be in the political limelight and hasn't shown any desire for the political retirement.

President Sirisena has submitted a cabinet paper to abolish the executive presidency and it has been approved by the cabinet. President Sirisena will serve his full term as the executive president and there will be no executive presidency thereafter.

President Sirisena has pledged to lead the SLFP to victory in the upcoming local government elections, which are scheduled to be held in March 2016. The main contest will be between the SLFP and UNP while pro-Rajapaksa groups too are planning to contest separately.

The report is researched and compiled by Sunanda Deshapriya.

Sri Lanka's tragic curse is that its political leaders have historically been shrewd, communalistic and opportunistic on the one hand or inept, helpless and ineffectual on the other. Unfortunately this ruinous dynamic still continues, defeating and indeed mocking the democratic gains achieved this year. [...].

Whether swift action will be taken to arrest increasing public anger in this respect still remains to be seen. In the alternative, dangerously uncertain times loom ahead for this country and its people

— Kishali Pinto Jayawardena, 08th November 2015.

<http://www.sundaytimes.lk/151108/columns/the-curse-of-sri-lankas-political-leadership-170948.html>

<sup>3</sup> <http://www.ceylontoday.lk/51-103188-news-detail-new-constitution-within-two-years-justice-minister-promises.html>

Positions taken by Sri Lanka political parties in relation to the Sri Lanka resolution A/HRC/30/L.29 adopted by 30<sup>th</sup> session of the Human Rights Council

Expressed positions of the political parties towards the Sri Lanka resolution A/HRC/30/L.29 are given below.

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**Sri Lanka Freedom Party (SLFP)\***

**President Maithripala Sirisena: Resolution will be implemented.**

President, SLFP

At the All-Party Conference convened by him, the President said that “United Nations Human Rights Council adopted a resolution on Sri Lanka and it cannot be rejected and the investigation must be taken. The government is firm on taking whatever action it deems appropriate to meet the Geneva proposals within the framework of the Sri Lankan constitution”. Further he had said that “[..] I shall hold a series of further all-party representatives meetings to gather your opinion regarding the proposals and how Sri Lanka should go about them as a sovereign democratic nation that respect human rights, truth and justice.”<sup>4</sup>

\* *SLFP is the leading party of United Peoples Freedom Alliance (UPFA). UPFA has 95 members in the Parliament.*

**Minister Nimal Siripala de Silva: No retrospective laws; investigation within the constitution.**

Senior vice president, Sri Lanka Freedom Party

We have come to a clear decision on how to implement the resolution. SLFP will not approve any investigation that goes against the Constitution. In such case we will oppose it [...]

Our governing structure is strong. There is no possibility to punish an offense that has not taken place in the past. We have many legal defences like this. We do not have to have unnecessary fear [...] We have to work within the international system. It does not mean we have to kneel down at the international sphere always. But we need to work according to some international agreements and organisations; we cannot work outside them.

[...] Then there is a demand to investigate into war crimes. We are also asked to enact laws regarding crimes against humanity, which are not in our criminal law at present. But they will only relate to future. In our country there is no possibility to enact retrospective laws. We can make laws to deal with the future not with the past.<sup>5</sup>

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**United National Party (UNP)\***

**Prime Minister Ranil Wickremasinghe: Mechanism is domestic; no persons from outside**

Leader, UNP

UNP headed by the Prime Minister defended the resolution and insisted the need for a truth seeking credible mechanism and justified international involvement in such a process during the parliamentary debate.

PM Wickremasinghe said that:

“The judicial power of the people will be implemented only through the institutions that we establish, and we will not go against them. Forward your proposals and subsequently we will direct a bill to the parliament and the Supreme Court and that will be the final opportunity because we do not want to give this. Even if we want to and we have no need to do so, we will act according to the determination of the Supreme Court.”<sup>6</sup>

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<sup>4</sup> <http://athavaneng.com/?p=228816#sthash.GR7JFpTj.dpuf>

<sup>5</sup> <http://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf> page 39

<sup>6</sup> <http://newsfirst.lk/english/2015/10/ohchr-udalagama-and-paranagama-commission-reports-debated-in-parliament/115430>

Both president and I have told that this will be implemented according to the Constitution. We will create a domestic mechanism to correct the wrongs that have taken place during the time of the conflict and go forward. We will seek truth through it. We will not take [persons] from outside.<sup>7</sup>

The main argument of the UNP including its leader PM Wickremasinghe was that this resolution is a result of the joint communique signed between the then President Rajapaksa and the Secretary General of the United Nations Ban Ki-Moon on 25<sup>th</sup> May 2009 and the non-implementation of the recommendations of the LLRC by the previous government. Several UNP MPs quoted the relevant passage of the joint communique in their speeches:

*"Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances."*

\* UNP is the leading party in the United National Front for Good Governance (UNFG). UNFG has 106 members in the Parliament.

### **Foreign Minister Mangala Samaraweera: Four pillared strategy for implementation**

United National Party

The parliamentary debate on the resolution was winded up by FM Samaraweera who stood by the resolution and provided some contours of proposed four pillared strategy for promoting accountability and reconciliation in Sri Lanka.

"Therefore, both to prevent violence, abuse and impunity from ever occurring again, and to ensure that the suffering of those who have lost loved ones is recognized, that crime is punished and that any injustice is remedied, the government has resolved to adopt a four-pillared strategy. The four pillars are truth, justice, reparations and non-recurrence."<sup>8</sup>

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**Tamil National Alliance\***

### **Leader of the Opposition R. Sampanthan: Implement fully, honestly and effectively**

Leader TNA / ITAK

I think the Debate [ on the resolution] that has been taking place in this House, both yesterday and today, has reflected that a vast majority of the Members of this House have now themselves come to realize that this cannot be a story that will never end, that this matter has got to be brought to a close.

The way to start could be by honestly and fully implementing the Resolution adopted by the UN Human Rights Council. Having co-sponsored the Resolution and the Resolution having been adopted on the basis of consensus amongst all members of the UN Human Rights Council, it would be in Sri Lanka's interest to ensure that the Resolution is fully, honestly and effectively implemented.<sup>9</sup>

\* TNA is a coalition of Tamil political parties in which Illankai Tamil Arasu Kachch (ITAK) is the leading party. TNA has 16 Members in the parliament.

### **A. Sumanthiranm MP: Government too own the resolution**

Tamil National Alliance / ITAK

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<sup>7</sup> <http://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf> pg. 14

<sup>8</sup> <http://srilankabrief.org/2015/10/sri-lanka-a-four-pillared-strategy-of-truth-justice-reparations-and-non-recurrence/> (from Hansard)

<sup>9</sup> <http://srilankabrief.org/2015/11/to-promote-reconciliation-and-accountability-we-need-to-take-all-our-people-on-this-journey-r-sampanthan/> (from Hansard)

*Positions taken by Sri Lanka political parties in relation to the Sri Lanka resolution A/HRC/30/L.29 adopted by 30<sup>th</sup> session of the Human Rights Council*

We are happy today that Members of the United National Party and the Sri Lanka Freedom Party, the two biggest Parties in this country, have agreed that this Resolution must be implemented. [...] When you co-sponsor a resolution, it is more than agreeing to that resolution. It is taking ownership for the resolution.

The Resolution that you sponsored, we accept with its limitations – still, we accept it – but we want to see it fully implemented. It is not an easy task, we understand. It is not easy for you; it is not easy for us. But, we have made a start and we are willing to go with you in that journey.<sup>10</sup>

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### **Eelam People's Revolutionary Liberation Front (EPRLF)\***

#### **Suresh Premachandran (former MP): Domestic mechanism even with Commonwealth and international judiciary will not deliver justice**

Leader EPRLF

I am of the view that a local mechanism, even with the participation of the Commonwealth and international judiciary, will not do justice to the victims and the affected families because we have the bitter experience of all such past exercises. The Tamils have been deceived over and again. We do not know what role the members of the international judiciary will play and what type of mechanism will be established.<sup>11</sup>

\* EPRLF is a constituent party of the TNA. It has no members in the Parliament.

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### **People's Liberation Organization of Tamil Eelam (PLOTE)\***

#### **Dharmalingam Siddharthan , MP TNA: We are still demanding for an international inquiry**

Leader, PLOTE

In the past too, there was a commission to investigate the missing persons and all that, but the point is that nothing worked properly. However this one has a certain amount of international commitment as well. But still the mechanism is going to be totally internal and therefore it will be difficult to guarantee the safety of the witnesses. Moreover this internal investigations lack the confidence of the people. Also there is much to be done like making the judiciary independent. When the judiciary is independent then any investigation can work. However we are still demanding for an international inquiry.<sup>12</sup>

\* PLOTE, a constituent party of the TNA, has one member in the Parliament.

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### **Peoples Liberation Front (JVP)\***

#### **Tilvin Silva: Conduct a credible inquiry and take legal actions**

General Secretary, (JVP)

The government attempts to show off as if the Resolution has given us a great relief. But, there is no such relief provided to Sri Lanka. Apart from the UN Resolution, the US has presented a proposal. There are proposals such as getting the assistance of the judges of the Commonwealth and experts of the other foreign countries for the local mechanism. We believe that we do not want the international community to interfere in our judiciary. Such interferences will be harmful to the country. What the Sri Lanka should do now is to protect the human rights within the country and conduct a credible inquiry into the incidents occurred in the past and take legal actions. In order to have a credible mechanism in the country, they need to have proper strategies on one hand – on the other

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<sup>10</sup> <http://srilankabrief.org/2015/10/extremist-voices-on-both-sides-can-be-marginalized-fully-if-we-come-together-to-implement-the-geneva-resolution-sumanthiran/> (from Hansard)

<sup>11</sup> <http://www.sundayobserver.lk/2015/10/25/fea06.asp>

<sup>12</sup> <http://www.thesundayleader.lk/2015/10/04/i-have-faith-in-the-current-regime-dharmalingam-siddharthan/>

hand, there need to be an independent judiciary and Attorney General's Department should act efficiently etc. If these internal institutions do not act properly, then the international community can once again reject the internal mechanism.<sup>13</sup>

\* *JVP is a nationalistic Marxist party. It has 6 members in the Parliament and its leader is the chief opposition whip of the Parliament.*

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## **Sri Lanka Muslim Congress (SLMC)\***

### **Minister of Rauf Hakeem: Resolution is balanced, will introduce reconciliation genuinely**

Leader, SLMC

This is a very balanced document which seeks very genuinely to introduce reconciliation in this country. When you address the document in its totality it is quite apparent that what the international community wants is for the truth to surface and then through the surfacing of the truth, the people will be able to finally reconcile their differences and redeem their lost dignity and that is ultimately what is sought from this entire exercise.<sup>14</sup>

\* *SLMC, a constituent party of the UNFG, is the Leading Muslim party in Sri Lanka. It has 08 members in the Parliament.*

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## **Former President of Sri Lanka**

### **Mahinda Rajapaksa (MP, UPFA): Resolution will not protect war heroes**

Operative paragraph 6 of the resolution affirms the importance of the participation of foreign judges, prosecutors, lawyers and investigators in the Sri Lankan judicial mechanism to be set up to investigate alleged human rights abuses during the war. Operative paragraph 8 encourages the Sri Lankan government to remove individuals in the armed forces suspected of human rights violations through an administrative vetting process even if there is insufficient evidence to charge them in a court of law. Operative paragraph 4 welcomes the government's willingness to allow the various judicial and other mechanisms it intends to establish to deal with the past, to obtain financial assistance from overseas, which means that these supposedly Sri Lankan mechanisms will be paid for and maintained by foreign powers.

The first duty of the Sri Lankan government is to see to it that the interests of our war heroes are looked after. Operative paragraphs 6 & 8 of the resolution run directly contrary to that sacred duty. I regret to note that there is an attempt to whitewash the unfavourable resolution in Geneva by claiming that this was the best that could be achieved and that things could have been far worse with the near certainty of economic sanctions if my government had been still in power.<sup>15</sup>

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## **Democratic Left Front (DLF)\***

### **Vasudeva Nanayakkara: We need to defeat the resolution**

Leader, DLF

The resolution is violation of our people's sovereignty and a funeral resolution against Sri Lanka adopted in Geneva. This is treason. We need to defeat it.<sup>16</sup>

There is nothing wrong with seeking advices and opinions from foreign countries. But this came in the form of an order. [...] Although they state that this is a domestic mechanism, this is entirely an international scheme. Actually,

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<sup>13</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=133342](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=133342)

<sup>14</sup> <http://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf> (pg. 60)

<sup>15</sup> <http://mahindarajapaksa.lk/en/media-centre/news/government-s-duty-to-stand-by-our-war-heroes.html>

<sup>16</sup> <http://www.parliament.lk/uploads/documents/hansard/1446201996064936.pdf> (pg. 47)

we could have implemented an inside mechanism in Sri Lanka. As I see, Sri Lanka is going to become a dominion of Western imperialism. This is like betraying our freedom. This shouldn't have happened.<sup>17</sup>

\* *DLF, a pro-Rajapaksa group, and a constituent party of the UPFA, has one member in the Parliament.*

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### **Communist party of Sri Lanka\***

#### **D. E. W. Gunasekera: Demand an exclusive domestic mechanism**

General Secretary, CPSL

The commissions and commissions made by the previous government and in particular its failures to implement the recommendations of LLRC Report created conditions for external forces to interfere in to the internal affairs of Sri Lanka. [...] The Communist Party of Sri Lanka examined the resolution both in letter and spirit. It reiterates its position to demand a domestic inquiry into the allegations and an exclusive domestic mechanism for the purpose. However cannot subscribe or contribute to the need for all foreign element in this respect, Sri Lanka's sovereignty not be compromised in any manner.<sup>18</sup>

\* CPSL is a reformist party. It has one member in the Parliament and is a constituent party of the UPFA.

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### **Mahajana Eksath Peramuna (MEP)\***

#### **Dinesh Gunawardena, MP: Resolution as well as the report violates the sovereignty of Sri Lanka**

Leader, MEP

The UN Human Rights Commissioner's report, charging Sri Lanka on various grounds as a follow up to the US and Western resolutions moved in the Council earlier, reflected once again that the recommendations therein were based on incorrect 'facts and grounds'. This Resolution as well as the report violate the sovereignty, the independence and the Constitution of Sri Lanka. The initial wording in the resolution was 'Hybrid'. The wording has been changed to foreign judges, experts and prosecutors. The UN Human Rights Office functions to pursue the progress. This is a clear violation of our Constitution. We have not been pursuing our stand as a country. This shift, also as a leader of the Non Aligned Movement, has embarrassed us. Taking this negative position will affect other free and sovereign nations.<sup>19</sup>

\* *MEP, a pro-Rajapaksa outfit, is a constituent party of the UPFA. It has one member in the Parliament.*<sup>20</sup>

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### **National Freedom Front (NFF) \***

#### **Wimal W, eerawansa, MP, UPFA): Describing proposed inquiry as 'domestic' is a big lie**

Leader NFF

"Even though the word 'hybrid' has been removed in the adopted resolution, the mechanism proposed remains the same. Participation of foreign experts including investigators and judges has clearly been mentioned in the resolution. It is better to describe it as a foreign judiciary than to say a domestic mechanism. Foreign experts are expected to arrive in the country to question the heads of the security forces and to punish those who were responsible for giving orders during the armed conflict".<sup>21</sup>

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<sup>17</sup> <http://www.thesundayleader.lk/2015/10/04/we-must-not-trade-out-national-sovereignty-vasudeva-nanayakkara/>

<sup>18</sup> <http://srilankabrief.org/2015/10/sri-lanka-communist-party-for-an-exclusive-domestic-mechanism/>

<sup>19</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=132771](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=132771)

<sup>20</sup> <http://www.sundayobserver.lk/2015/10/11/pol05.asp>

<sup>21</sup> <http://www.tamilguardian.com/article.asp?articleid=16144>



*\*NFF is a constituent party of the UPFA, a pro-Rajapaksa extreme Sinhala nationalist party and it has 02 members in the Parliament.*

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**Jathika Hela Urumaya (JHU) \***

**Nishantha Sri Warnasinghe : UN resolution not a threat to Sri Lanka**

Media Spokesperson, JHU

UN resolution on Sri Lanka supported by America does not threaten the sovereignty of the country. Even though the UN report suggests a hybrid court or a court of similar nature to look into the issues raised internationally, they need to pass that through the Parliament. They cannot implement anything in the resolution without getting the consent of Parliament. If any system which overpowers the Sri Lankan judiciary is proposed to Parliament, we will not support it.<sup>22</sup>

*\* JHU is a Sinhala Nationalist Party and a coalition partner of the UNFG. It has 03 members in the Parliament.*

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**Democratic Party (DP)\***

**Field Marshal Saratha Fonseka: I support the need for investigation**

Leader, DP, Former presidential candidate (2010) and Army Commander

This is why Field Marshal Sarath Fonseka has supported the need for investigations. Being a military man he did not mince his words, plainly saying, "[w]e have to clear our name. If there are allegations against military operations, I am ready to face anybody and present the right picture. There is no problem." In addition, he has expressed his support for foreign assistance in the process.<sup>23</sup>

*\* DP has no members in the Parliament, but Fonseka is still a news maker and has a voice in Sri Lankan politics.*

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**Pivithuru Hela Urumaya \***

**Udaya Gammanpila, MP, UPFA: Resolution should be opposed**

Leader, PHU

The new administration shouldn't have succumbed to Western pressure as Sri Lanka could have always had the Chinese and Russian backing at the Security Council to thwart Western intervention or punitive economic sanctions. [It] strongly countered UN assertion that the local judiciary lacked the capacity to investigate war crimes. The on-going project to link the accountability issues with proposed devolution of powers to the regions should be opposed.<sup>24</sup>

*\* PHU, a pro-Rajapaksa group and a constituent party of the UPFA, has one member in the Parliament.*

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**Majority Group of Lanka Sama Samaja Party (LSSP) and Alternative Group of the Communist Party of Sri Lanka (CPSL)\***

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<sup>22</sup> <http://www.thesundayleader.lk/2015/10/04/un-resolution-not-a-threat-to-lanka-jhu/>

<sup>23</sup> Foreign Minister Mangala Samaraweera in his speech at the parliament on 23<sup>rd</sup> Oct 2015

<sup>24</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=132709](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=132709)

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Lal Wijenayake  
General Secretary of the Majority Group, LSSP  
D.W. Subasinghe  
President of the Alternative Group, CPSL

There are serious allegations of human rights violations, the truth of which should have been determined after a credible domestic investigation under our laws by our regular courts and/or special commissions [...]

They further said that:

"It is significant that the Resolution shows the commitment of the United Nations Human Rights Council to the sovereignty, independence, unity and territorial integrity of Sri Lanka. This is specifically mentioned and it is also evident that our commitment is to work within the framework of our Constitution and its judicial mechanism. The process of seeking truth, justice, reparation and non-recurrence will be of help in the process of reconciliation. Therefore, it is our view that the resolution has to be worked out in such a way that our sovereignty and independence is not compromised and we see ample space to do it within the process of seeking, truth, justice, reparation and non-recurrence"<sup>25</sup>

\* *Both the groups comprise of leading members of the respective parties and they played an important role in defeating the Rajapaksa regime and has one member in the Parliament.*

*Ends.*

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<sup>25</sup> <http://ceylontoday.lk/51-108317-news-detail-old-left-slams-attempts-to-sabotage-reconciliation.html>