

# Briefing Notes



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*Cyclist riding past a building damaged by the war in Jaffna on 20 July 2015.*

## SRI LANKA 2015 - AFTER THE REGIME CHANGE GOVERNANCE, ACCOUNTABILITY & RECONCILIATION

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## IN LIEU OF AN INTRODUCTION: EMERGING ISSUES

The Governments of the USA and of Sri Lanka have agreed to explore the possibility of a joint resolution to be presented at the 30th session of the Human Rights Council (HRC). This is a radical departure from the Sri Lankan Government's position at the HRC since the end of the war in 2009. If such consensus resolution materialised and the resolution is committed to UN values of post-conflict accountability and justice for the victims it will have a much more lasting impact than a contested, voted-upon resolution. However, it is important that the Human Rights Council does not deviate from the core expectations of promoting reconciliation, accountability, and human rights as presented in the past three resolutions on Sri Lanka.

The Government of Sri Lanka (GoSL) in the post-Rajapaksa period has largely taken away the confrontational dimension of its human rights discourse with the international community and with the United Nations. This was evident as early as March 2015 when the 28th session of the Human Rights Council decided to postpone the Office of Human Rights High Commissioner's Investigation on Sri Lanka (OISL) report until the 30th session. Since then much has happened.

The second and final attempt by former President Rajapaksa to capture power has been defeated in August 2015 and the reform-minded broad coalition of the United National Front for Good Governance (UNFGG), led by the United National Party (UNP), has won 105 seats in the 225-seat Parliament. A joint Government of the UNFGG and the Sri Lanka Freedom Party (SLFP) led by President Sirisena has been formed. Thus, the 8th January victory against Rajapaksa's autocracy has been cemented and the continuation of the reform process has been assured.

As the two major political parties are now in the coalition government, the Tamil National Alliance (TNA), that won the third highest seats (16) in the Parliament, has been given the opposition leadership.

Its leader, R. Sampanthan, has been appointed as the leader of the opposition, a powerful position



*Sitti Umma, a Sri Lankan mother searching for her missing son since 21 March 2009, in front of the UNHRC, March 2014*

in the parliamentary democracy. He is entitled to facilities and privileges of a cabinet minister.

Addressing the members of the diplomatic community in Colombo, the Foreign Minister, Mangala



*TNA leader R. Sampanthan - the leader of the opposition, Photo: ©The Hindu*

Samaraweera, enumerated the steps the new Government has taken in relation to reconciliation: strengthened the civilian administration in the North and the East; released land to their original owners; resettled internally displaced persons; strengthened freedom of expression; and is working with the United Nations Peacebuilding Fund and the High Commissioner for Human Rights.

On the issue of accountability, item 93 of President Sirisena's manifesto dated January 2015 includes the intention to address issues of accountability through national independent judicial mechanisms. The Foreign Minister stated that accountability *"involves the important element of consultations to ensure ownership of processes, guarantee long-term sustainability and ensure that the deep grievances of all communities and within communities are addressed. Therefore, the mechanisms that we aim to set up and the processes that we aim to set in place will have to be evolved through wide consultations"*<sup>1</sup>.

US Assistant Secretary of State for Democracy, Human Rights and Labor, Tom Malinowski, elaborated the US position at a media briefing in Colombo: *"The important thing is that there being a judicial process that is credible to the people of Sri Lanka and to the international community. For that process to be credible, I don't think it has to be a completely international process, but it does have to be independent of political leadership. It has to be led by people who are trusted by the minority communities and it should have some degree of international involvement, even if it is a domestic process organized under the laws of Sri Lanka"*<sup>2</sup>.

Meanwhile the TNA, the main political party that represents the Tamil people in the North and East, told media that they will accept a domestic investigation if it has international participation. *"We cannot get justice if it is purely a Lankan domestic mechanism. It has to be an internationalized investigation. The involvement of international experts is a must. We would also like the Office of the High*

*Commissioner of Human Rights to set up a monitoring unit here"*<sup>3</sup>, TNA stated.

At the same time, the TNA controlled Northern Provincial Council, led by Chief Minister C.V. Wigneswaran, has rejected any domestic investigation. The Chief Minister seems to be increasingly moving away from the official positions of the moderate TNA towards non-cooperation with the GoSL.

Already in July 2015, Sinhala nationalist forces have started fear-mongering campaigns saying that the proposed domestic mechanism and the collaborative resolution at the 30th session of UNHRC would sell out and betray the war victory and war heroes. The Chairman of the Sinhala Nationalist Federation of National Organisations (FNO), Dr Gunadasa Amarasekera, said that *"[the] national government of a UNP-SLFP nexus would do the dirty work in the US agenda to prosecute the country's military personnel and political leaders on trumped up charges of human rights violations and war crimes and it was the price they had to pay for liberating the country from terrorists"*<sup>4</sup>.

Today, new battle lines are being drawn in relation to accountability, reconciliation and human rights that will be further analysed in the following sections.

1 <http://www.mea.gov.lk/index.php/en/media/media-releases/6164-mfa-dipcorp-28aug>

2 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=130916](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=130916)

3 <http://srilankabrief.org/2015/08/tna-will-accept-domestic-investigation-if-it-has-international-participation-m-a-sumanthiran/>

4 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=130989](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=130989)

## 1. THE 19TH AMENDMENT: STRENGTHENING DEMOCRATIC GOVERNANCE



A protest against Rajapaksa in Colombo in July 2015: on the banner is written 'Towards Good Governance'.

**“The new Government in Sri Lanka has passed a constitutional amendment which, if implemented appropriately, brings renewed hope for democracy and the rule of law.”**

*Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights  
in his Opening Statement to the 29th Session of the HRC*

The 19th Amendment to the Constitution was one of the major changes brought about by the government headed by the newly elected President of Sri Lanka during the six months immediately following the Presidential election on 8th January 2015. Being a landmark decision in contemporary political history of Sri Lanka, the 19th Amendment to the Constitution was passed in the Parliament on 28th April 2015 with only one MP being against the amendment. This Amendment accommodated several demands of the public and is recognized as an effort to revitalize democracy as the UN High Commissioner for Human Rights also acknowledged in his Opening Statement to the 29th Session of the Human Rights Council “[*the Amendment*], if implemented appropriately, brings renewed hope for democracy and the rule of law”<sup>5</sup>. Limitations on the power of the Executive President, re-establishment of independent commissions and adoption of a human rights based approach are some of the main features of the 19th Amendment.

The new Government has also promised to introduce a new democratic Constitution within the

next two years.<sup>6</sup>

### EXECUTIVE PRESIDENCY

Former President Mahinda Rajapakse and his predecessor were elected on a pledge to abolish the Executive Presidency. While the latter lacked the two-thirds majority needed to reform the Constitution, President Rajapakse at his time, with the support of two-thirds of the Parliament, through the 18th Amendment, abolished the two-term limit on the Presidential office and the Independent Commissions set-up under the 17th Amendment. Hence, instead of abolishing Executive Presidency, he further strengthened it. Later, the demand to abolish the Executive Presidency intensified and the adoption of the 19th Amendment - although not fully satisfying that demand - has rectified to a large extent the democratic deficit in the Executive Presidential system.<sup>7</sup>

<sup>6</sup> <http://www.slbc.lk/index.php/en/tamil-news-update/1794-minister-of-justice-says-that-a-new-constitution-will-be-introduced-for-the-country-in-the-next-two-years.html>

<sup>7</sup> Jayantha Dhanapala on 16th June 2015 at a panel discussion with Q&A held for the diplomatic community in Sri Lanka on the 19th Amendment. Transcript available at < <http://groundviews.org/2015/06/18/the-nineteenth-amendment-centrepiece-of-good-governance/>

<sup>5</sup> <http://www.news.lk/news/political-current-affairs/item/8226-new-government-of-sl-brings-renewed-hope-for-democracy-and-the-rule-of-law-zeid>

The below lists the principal changes effected to the Executive Presidency:<sup>8</sup>

1. Reducing the term of the President's office to 5 years.<sup>9</sup>
2. Re-introducing the two-term limit on the President's office.<sup>10</sup>
3. Imposing on the President additional duties, such as: ensuring the Constitution is respected and upheld; promoting national reconciliation and integration; ensuring and facilitating the proper functioning of the Constitutional Council; and ensuring - on the advice of the Election Commissioner - the creation of conditions for the conduct of free and fair elections and referenda.<sup>11</sup>
4. Taking away the President's power to remove the Prime Minister at his discretion.<sup>12</sup>
5. Requiring the President to act on the advice of the Prime Minister when removing any Cabinet Minister, Non-Cabinet Minister or Deputy Minister from office.<sup>13</sup>
6. Subjecting the President's actions in his capacity as President to the Fundamental Rights jurisdiction of the Supreme Court.<sup>14</sup>
7. Removing the power of the President to submit any Bill other than a Constitutional Amendment that has been rejected by the Parliament to the people by referendum.<sup>15</sup>
8. Removing the power of the President to assign himself/herself to any subject or function not assigned to any other Cabinet Minister.<sup>16</sup>
9. Disqualifying a person below 35 years of age or a dual citizen from being elected to the Office of the President.<sup>17</sup>
10. Removing the power of the President to dissolve the Parliament at his/her discretion.<sup>18</sup>

8 Centre for Policy Alternatives, A Brief Guide to the Nineteenth Amendment to the Constitution, Colombo, Sri Lanka, May 2015, pp 6 -10. Also available at <<http://www.cpalanka.org/wp-content/uploads/2015/05/A-Brief-Guide-to-the-Nineteenth-Amendment.pdf>

9 Clause 03 of the 19th Amendment amending Article 30(2) of the Constitution

10 Clause 04 of the 19th Amendment amending article 31(2) of the Constitution

11 Clause 05 of the 19th Amendment amending Article 33(1) of the Constitution

12 Clause 09 of the 19th Amendment amending Article 46(2) of the Constitution

13 Clause 09 of the 19th Amendment amending Articles 43(2), 44(1), 45(1) and 46(3)(a) of the Constitution

14 Clause 07 of the 19th Amendment amending Article 35 of the Constitution

15 Clause 19 of the 19th Amendment repealing what was previously Article 85(2) of the Constitution

16 Clause 09 of the 19th Amendment repealing what was previously Article 44(2) of the Constitution

17 Clause 21 of the 19th Amendment amending Article 92(a) of the Constitution

18 The Parliament can only be dissolved if two thirds of the Parliament passes a resolution requesting dissolution or after the expiry of four and a half years since the

Even though the 19th Amendment imposes limitations on the executive power, the President still remains the Head of State, Head of the Executive, Head of the Cabinet and Commander in Chief. However, the introduced limitations encourage the **responsible use of these powers**.<sup>19</sup> The duties imposed on the President by the Amendment provide a base to question the exercise of executive power and encourage accountability. The lack of public confidence in the independence of judiciary can be addressed through this Amendment. Nevertheless, it can be considered as doubtful whether the provision that prevents the President from dissolving the Parliament until it has completed four and a half years of the five years term will essentially have a positive impact.<sup>20</sup>

## INDEPENDENT COMMISSIONS AND CONSTITUTIONAL COUNCIL

In addition, the Amendment re-establishes Independent Commissions, including the Election Commission, the Public Service Commission, the National Police Commission, the Audit Service Commission, the Human Rights Commission, the Commission to Investigate Allegations of Bribery and Corruption, the Finance Commission, the Delimitation Commission and the National Procurement Commission. These Commissions insulate the government from politicization.

Furthermore, the Amendment establishes the Constitutional Council to approve persons for important public offices and to recommend persons for appointment to the office of the Chairman and as members of the above Commissions. Through this Council, the powers of the President have been limited which is crucial in order to maintain the independence of public bodies in key areas of the administration. More importantly, the Council has also provided guidelines for recommending members of Independent Commissions, for example, to take into account the pluralistic character of Sri Lankan society, including its gender diversity. These are vital for lasting reconciliation as well as gender justice.

first meeting of the Parliament. Clause 17 of the 19th Amendment amending Article 70(1) of the Constitution  
19 <http://srilankabrief.org/2015/06/the-19th-amendment-and-the-future-of-sri-lanka-prof-savitri-goonesekere/>  
20 <http://srilankabrief.org/2015/06/the-19th-amendment-and-the-future-of-sri-lanka-prof-savitri-goonesekere/>



Prime Minister Wickremasinghe signs a Memorandum of Understanding on good governance with Ven. Maduluwawe Sobitha Thera who represented over 100 civil society organisations during the Parliamentary election campaign.

The 19th Amendment also mandates the Parliament to take measures to implement international conventions by formulating laws regarding the Commission to Investigate Allegations on Bribery and Corruption.<sup>21</sup> This provision highlights the importance of international law in the process of establishing good governance and the judiciary can use this provision to harmonize domestic and international law.

The establishment of a National Procurement Commission and an Audit Commission helps to prevent corruption restoring public confidence in handling public finances and in ensuring a rule-based investment climate.

In the initial draft of the 19th Amendment, the Constitutional Council was to consist of the following persons: the Speaker of the Parliament; the Prime Minister; the leader of the Opposition; and seven other persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party. Yet, in the adopted 19th Amendment, the Council foresees seven members of Parliament and three members from civil society.<sup>22</sup> Having seven members out of ten from political parties in the Constitutional Council significantly increases political influence, defeats the purpose of its establishment and calls into question the independence of the Council and is thus unhealthy. Justice Minister Wijedasa Rajapakse has stated that the Constitutional Council will be

activated by 22nd September 2015<sup>23</sup> and indeed, has met for the first time on 9th September 2015 but without the civil society representatives.<sup>24</sup>

## FUNDAMENTAL RIGHTS AND THE RIGHT TO INFORMATION

Even though, the 19th Amendment subjects the President in his Presidential capacity to the Fundamental Rights jurisdiction of the Supreme Court, the Supreme Court still lacks the power to hold private bodies accountable for violations of Fundamental Rights.

To recognise the right to information as a fundamental right is another significant feature of the 19th Amendment.<sup>25</sup> The right to information gives a citizen the right to access information held by public bodies; it enhances transparency and decreases arbitrary decision-making through enabling the public to monitor the use of public resources. However, the culture of secrecy has characterized Sri Lanka's decision-making process; and civil society and media have campaigned for a law on the right to information for a long time. The constitutional recognition of this right, coupled with a Right to Information Act, can improve accountability and transparency in political decision-making and can end corruption that led to unsustainable development patterns in Sri Lanka.<sup>26</sup>

<sup>21</sup> Clause 51 of the Constitution inserting Article 156 (A) in to the Constitution

<sup>22</sup> Constitutional Council in Brief at <http://www.ft.lk/article/423517/The-Constitutional-Council-in-brief>

<sup>23</sup> <http://www.omlanka.net/news/2848-constitutional-council-will-see-the-light-of-day-wijedasa-assures.html>

<sup>24</sup> <http://www.dailymirror.lk/86609/speaker-calls-for-nominees#sthash.AUvSGLmB.dpuf>

<sup>25</sup> Clause 03 of the 19th Amendment introducing Article 14A of the Constitution

<sup>26</sup> <http://groundviews.org/2015/06/18/19th-amendment-is-a-key-step-forward-in-sri-lankas-path-towards-sustainable-human-development/>

## OTHER CHANGES RELATED TO THE 19TH AMENDMENT

Among the other changes introduced by the 19th Amendment are the following: the limitation of the size of the cabinet; the reduction of the term of the office of the Parliament from six to five years; removal of the power of the President to dissolve Parliament at his/her discretion; and rectification of the unsatisfactory phenomenon of passing hasty legislation through urgent bills. The latter limits the ability of the public to challenge a bill based on inconsistency with the Constitution and severely undermines democracy, especially in the context of Sri Lanka where post-enactment judicial review is unavailable. The 18th Amendment to the Constitution enacted by the Rajapaksa regime was a blatant abuse of this legislative process. Clause 30 of the 19th Amendment now repeals the constitutional provision that permitted the legislature to pass legislation as Urgent Bills. Additionally, the Amendment increased the period of time a bill is to be made public from 7 to 14 days before it can be placed on the Order Paper of the Parliament.

**“The 19th Amendment is a milestone in that process of creating a democratic space and an atmosphere of candour and confidence which is necessary for truth seeking, justice and repairing wounds that led to the conflict.”**

*Dr Jayantha Dhanapala at a panel discussion on the 19th Amendment, Colombo, June 2015.*

Overall, the 19th Amendment addresses several key issues that previously gave reasons for concern in the governance of Sri Lanka, among others, ensuring accountable governance structures

and an independent administration, as well as protecting the rights of people. A participatory and consultative constitutional reform can heal some wounds that led to the conflict and can mark a fresh beginning for Sri Lanka, allowing for reconciliation to happen.

## INDEPENDENCE OF THE JUDICIARY

The independence of judiciary is a hallmark of a constitutional democratic system and its absence, or even the perception of its absence, is harmful to the rule of law. During the last few years, the independence of judiciary came under threat of the former authoritarian regime and public confidence in the judiciary was severely affected.

The 19th Amendment to the Constitution introduced safeguards to the process of appointing senior judges.<sup>27</sup> It makes provisions for the Constitutional Council to approve the nominations of the President to key judicial offices, such as the Office of the Chief Justice, judges of the Supreme Court and the Court of Appeal, members of the Judicial Service Commission and the Attorney-General.

The impeachment of the former Chief Justice Bandaranayaka was highly controversial and was seen as a serious attack on the independence of judiciary. After 8th January 2015, these attacks were remedied. The appointment of Mohan Peiris as Chief Justice was declared as void at inception and Bandaranayaka resumed office as Chief Justice. She retired a day later and Sripavan, who many believe deserve the Office<sup>28</sup>, was appointed as new Chief Justice.<sup>29</sup>

As a whole, the 19th Amendment has failed to introduce internationally accepted standards and procedures to remove Supreme Court judges.

## RECOMMENDATIONS

1. Ensure that political party interests do not dominate the Constitutional Council and make civil society participation stronger;
2. Address the remaining issues of ensuring the judiciary to become truly independent;
3. Ensure that minority communities and political parties will not be adversely affected by the proposed electoral reforms;
4. Take into consideration the recommendations made by the international observers in establishing an independent election commission;
5. Ensure the constitutional making process to be inclusive and consultative.

<sup>27</sup> <http://www.thesundayleader.lk/2015/07/19/towards-an-independent-and-accountable-judiciary-in-sri-lanka/>

<sup>28</sup> <http://www.ft.lk/2015/02/02/wigibacks-k-sripavan-as-the-cj/>

<sup>29</sup> <http://www.bbc.com/news/world-asia-31068699>

## 2. ACCOUNTABILITY: THE NEW APPROACH



*Nanthikkadal lagoon where some of the last battles were fought and thousands of Tamil people were reportedly perished*

After 8th January 2015, the GoSL has taken several steps to ensure accountability in regard to human rights violations during the last stages of war as well as during the post-war Rajapakse regime, among others: improvements to domestic human rights mechanism; a follow-up on the recommendations concerning disappearances; preparations to set-up a domestic Commission of Inquiry to probe into allegations of human rights violations committed during the final stages of the war; and fresh investigations into extrajudicial killings and disappearances. Yet, by no means, these measures can be considered sufficient to address the alleged serious human rights violations that happened during the final phase of the war. The following section describes progress made and identifies gaps in regard to ensuring accountability in Sri Lanka.

### EXISTING DOMESTIC MECHANISMS TO ENSURE ACCOUNTABILITY

The Supreme Court of Sri Lanka and the Human Rights Commission of Sri Lanka (HRC-SL) are the main permanent domestic mechanisms to ensure accountability and grant redress with relation to violations of human rights in Sri Lanka.

The Supreme Court of Sri Lanka, having jurisdiction over violations of Fundamental Rights, acts as the primary guardian of human rights and therefore plays a vital role in ensuring accountability. As described in the previous section, the new Government has taken important steps to make the judiciary independent.

Concerning the second domestic mechanism, the

Human Rights Commission of Sri Lanka, no significant structural or procedural changes have been affected. New members to the HRC-SL will be appointed once the Constitutional Council is in place.

### COOPERATION WITH THE UNITED NATIONS

The new government pledged to cooperate with the international community and the United Nations (UN) with regard to accountability and human rights issues:

In February 2015, the Ministry of Foreign Affairs has extended a formal written invitation to UN High Commissioner for Human Rights, Prince Zeid Ra'ad Zeid Al-Hussein, to visit the Country.<sup>30</sup>

In March 2015, the UN Under Secretary General for Political Affairs, Jeffrey Feltman, said that the United Nations would support a “credible domestic process” that meets international standards for war crimes investigation by the Sri Lankan government.<sup>31</sup>

In view of the “changing context in Sri Lanka, and the possibility that important new information may emerge [...]”<sup>32</sup> the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, recommended in February 2015 the deferral of the presentation of the OHCHR report on Sri Lanka to

<sup>30</sup> <http://newsfirst.lk/english/2015/02/foreign-affairs-ministry-extends-formal-invitation-unhr-commissioner/76771>

<sup>31</sup> <http://www.dawn.com/news/1167126>

<sup>32</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15574>



*Sri Lankan and international human rights activists join the Amnesty International campaign calling for truth and justice for war victims in Sri Lanka*

the 30th session of the Human Rights Council in September 2015.

The Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, Pablo de Greiff, visited Sri Lanka from 30th March to 3rd April 2015. In his concluding remarks, Mr de Greiff noted “*Sri Lanka’s historic overuse of commissions of inquiry led to a confidence gap; the long process to achieve reconciliation; and the need for a state-policy centered on human rights*”, and “*the need to take immediate action on missing persons, harassment, violence, detention, land issues, and psycho-social support*”.<sup>33</sup>

The UN Working Group on Enforced or Involuntary Disappearances had confirmed its visit to Sri Lanka from 3rd to 12th August 2015 after the new government agreed to its long-standing request for a visit. This visit was postponed due to the General Elections that took place on 17th August 2015.

## ACTION AND NON-ACTION ON THE LLRC RECOMMENDATIONS

In 2011, the Lessons Learnt and Reconciliation Commission (LLRC) published its report, including 189 recommendations. The National Plan of Action, developed by the GoSL in 2012 and revised in September 2014, was to take these recommendations forward and included nearly 65% of all recommendations. By January 2015, the implementation of 55 recommendations was ‘completed’ while the implementation of further 109 recommendations was ‘on-going’. No progress report was given on the outstanding 25 recommendations.

Some reports, however, stated that several recommendations reported as ‘completed’ have not been implemented, calling into question the credibility of the Government’s progress report.<sup>34</sup> A study of available information has confirmed that the overall status of the implementation of LLRC recommendations is in fact poor and only 19 recommendations, i.e. 10% of the LLRC recommendations, have been fully implemented.<sup>35</sup> Even though President Maithripala Sirisena and his Coalition Government pledged to implement these recommendations in full, no significant actions were undertaken in the first half of 2015.

Within the new GoSL, no designated minister is currently empowered to implement the recommendations delaying the implementation process and the present Minister of Justice, whose portfolio may also include the implementation of the LLRC recommendations, has not issued yet any policy statements on the LLRC recommendations.

**“At this critical juncture, the country cannot afford to simply reproduce an approach that is characterized by the proliferation of largely unrelated and inconsequential ‘ad hoc’ initiatives. Serious consideration needs to be given to establishing transitional justice mechanisms that contribute to building lasting institutions and capacities, and which allow for effective implementation.”**

*Pablo de Greiff in his concluding remarks at the occasion of his visit to Sri Lanka in April 2015*

<sup>33</sup> <https://www.gov.uk/government/publications/sri-lanka-in-year-update-july-2015/sri-lanka-in-year-update-july-2015>

<sup>34</sup> <http://www.ft.lk/2015/03/17/the-llrc-what-lessons-have-we-learnt-about-reconciliation/>

<sup>35</sup> <http://www.ft.lk/2015/03/17/the-llrc-what-lessons-have-we-learnt-about-reconciliation/>

## THE PRESIDENTIAL COMMISSION TO INVESTIGATE INTO COMPLAINTS OF MISSING PERSONS (PCICMP)



*Justice delayed, justice denied: A relative of a disappeared person participates in an election campaign in Colombo, July 2015.*

On 15th August 2013, President Rajapakse appointed a Presidential Commission as per LLRC recommendations to investigate, in a transparent and independent manner, complaints concerning missing persons who are resident in the Northern and Eastern Provinces of Sri Lanka and who were either abducted or disappeared during the period of 10th June 1990 and 19th May 2009.<sup>36</sup> Under President Sirisena the PCIPMP continues to function. Since its establishment, the Commission had received 18,099 complaints from civilians and further 5,000 complaints from relatives of missing security forces personnel. The Commission has heard oral evidence of nearly 1,440 complainants during public sittings held in the Northern and Eastern provinces.<sup>37</sup> In February 2015, the mandate of the Presidential Commission on Missing Persons was extended by six months.

In April 2015, the Commission handed over its interim report to President Sirisena and the final report is expected in September 2015, in time for the 30th Session of the HRC, fulfilling a pledge given by Foreign Minister Mangala Samaraweera to UN Human Rights High Commissioner Zeid Ra'ad Al Hussein.<sup>38</sup> This final report will likely deal with the expanded mandate of the Commission concerning International Human Rights Law and

International Humanitarian Law violations.<sup>39</sup> The final report has not been submitted yet.

According to the interim report, the Commission found that allegations of forced disappearances, abductions and arbitrary arrests have been made against the LTTE, security forces, armed groups and unknown groups. “Based on the inquiries conducted thus far, accountability and responsibility by these parties vary from district to district, and in the Northern Province, 60% of the allegations were leveled against the LTTE, 30% against the security forces, 5% against armed groups and 5% against unknown groups”,<sup>40</sup> the Commissioners noted in their report.

The Commissioners also highlighted that “grave incidents” requiring in-depth investigations have been reported at public sittings through oral submissions. Additionally, they mentioned that they had sought to act swiftly - where possible - to issue death certificates and compensation to families through the relevant local authorities and they recommended a comprehensive program for counselling and psycho-social assistance for families in the North and East.<sup>41</sup> The Commission also noted with regret that the Ministry of Justice and Defence had failed to comply with requests by the Presidential Commission on Disappearances to release a list of detainees in State custody, displacement camps or rehabilitation centers.<sup>42</sup> The Commission continues to hold hearings in the North and East, even though a sizable amount of Tamil victims boycott some of these sessions and call for progress on the OHCHR investigation first.<sup>43</sup>

A number of concerns can be raised in regards to the PCIMCP:<sup>44</sup> Although the interim report was handed over to the President in April 2015, the document is yet to be made public. Lack of transparency obscures the progress of work on the Commission. While the Commission has a mandate to offer sittings either in public or private, the secrecy of the latter and the non-availability of the option of a private sitting for all the victims,

<sup>36</sup><http://www.pcicmp.lk/memberships.html>

<sup>37</sup><http://www.pcicmp.lk>

<sup>38</sup><http://srilankabrief.org/2015/06/two-additional-commissioners-for-commission-investigating-cases-of-missing-persons/>

<sup>39</sup><http://srilankabrief.org/2015/06/cpa-levels-charges-against-presidential-commission-on-missing-persons/>

<sup>40</sup> [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201504/2015042860\\_allegations\\_werelevelled\\_against\\_ltte\\_missing\\_persons\\_commission.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201504/2015042860_allegations_werelevelled_against_ltte_missing_persons_commission.htm)

<sup>41</sup> <http://www.ft.lk/2015/04/25/defence-and-justice-ministries-fail-to-support-disappearances-commission/>

<sup>42</sup> <http://www.ft.lk/2015/04/25/defence-and-justice-ministries-fail-to-support-disappearances-commission/>

<sup>43</sup> <https://www.gov.uk/government/publications/sri-lanka-in-year-update-july-2015/sri-lanka-in-year-update-july-2015>

<sup>44</sup> <http://srilankabrief.org/2015/06/cpa-levels-charges-against-presidential-commission-on-missing-persons/>

families and witnesses who have come before the Commission is an area of concern. Lack of publicly available information on the scope and progress of investigations and on the thousands complaints which are yet to be addressed are another distressing factor. Interesting to note is that in February 2015 the Tamil National Alliance (TNA) rejected the PCIMP as a “deceptive mechanism”.<sup>45</sup>

## PROPOSED DOMESTIC COMMISSION OF INQUIRY



*Alleged mobile prison cells used by the LTTE are among the exhibits at Puthukkdiyiruppu War Museum, maintained by the Sri Lanka Army.*

During his Presidential election campaign Maithripala Sirisena promised to establish a credible domestic mechanism to deal with alleged serious human rights violations and once elected he confirmed that “his government will not hesitate to punish the offenders of human rights violations said to have taken place during the war after the conduct of a credible domestic inquiry through a judicial process into the allegations”.<sup>46</sup>

**“The US now supports a local investigation that the new Sri Lanka Government of President Maithripala Sirisena has promised.”**

*Nisha Biswal, Assistant Secretary of State for South and Central Asian Affairs, USA*

Source: <http://srilankabrief.org/2015/06/jaffna-press-club-calls-on-the-president-to-investigate-journalist-murders-and-missing-persons/>

In May 2015, President Sirisena once again restated that a domestic Commission to probe into allegations of human rights violations committed during the final stages of the war will be set up by June 2015 and the local laws will deal with those accused of human rights abuses.<sup>47</sup>

<sup>45</sup><http://www.hirunews.lk/78310/tna-reject-presidential-commission-on-missing-persons>

<sup>46</sup>[http://www.colombopage.com/archive\\_15A/Feb13\\_1423845415CH.php](http://www.colombopage.com/archive_15A/Feb13_1423845415CH.php)

<sup>47</sup><http://srilankabrief.org/2015/05/sri-lanka-domestic-mechanism-in-june-new-parliament-by-september-president/>

In June 2015, then Deputy Foreign Minister Ajith Perera stated that the Government had already begun drafting the legal framework of the Commission and that the establishment of the Commission will be finalized in July 2015. Meanwhile, responding to a statement made by Human Rights Watch (HRW), Justice Minister Wijeyadasa Rajapakshe assured that the domestic inquiry would be a credible mechanism acceptable for the international as well as the local community.<sup>48</sup>

In August 2015, along similar lines, the newly elected Prime Minister, Ranil Wickremesinghe, told The Hindu that his government will not support any international investigation but “would like to put forward a domestic mechanism which would be within the four corners of our Constitution but would also be acceptable to all the communities in Sri Lanka plus the international community”.<sup>49</sup>

Following these developments, the United States announced in Colombo that it would like and hope to sponsor a resolution at the 30th session of the UNHRC with the support of the GoSL as follow up to the OSIL report.

The Commission or any kind of domestic mechanism, however, has not yet been set up. On 9th September Foreign Minister Mangala Samaraweera told a civil society group that the consultations on a domestic mechanism will start in October 2015 only.

## POLITICAL PRISONERS

Tamil political parties and civil society groups have been campaigning for the release of the remaining Tamil political prisoners over the years. In May 2015, US Secretary of State, John Kerry, during his visit to Colombo, urged the government as well to release the remaining political prisoners.<sup>50</sup> Later that month at a media briefing, President Sirisena categorically denied that there are political prisoners in Sri Lanka.<sup>51</sup>

In June 2015, responding to the call of the Tamil National Alliance (TNA) to release political prisoners, Minister Wijeyadasa Rajapakshe affirmed

<sup>48</sup> <http://www.ft.lk/article/434993/Domestic-mechanism-to-probe-right-violations-to-be-finalised-in-July>

<sup>49</sup> <http://www.thehindu.com/news/international/n-ram-speaks-to-sri-lankan-prime-minister-ranil-wickremesinghe-on-tamils-and-13th-amendment/article7572191.ece>

<sup>50</sup> <http://www.aljazeera.com/news/2015/05/kerry-urges-sri-lanka-cooperation-war-crimes-probe-150503053039292.html>

<sup>51</sup> <https://www.ceylontoday.lk/51-93368-news-detail-no-political-prisoners-president-sirisena.html>

that thousands of LTTE cadres as well as those who had been apprehended during the conflict and immediate after the conclusion of the Vanni offensive had either been rehabilitated and set free or released through courts. He further specified that after the Presidential elections the government had compiled a list of those who were in custody at the time when the new administration took over and that “54 persons who had been convicted on terrorism charges were serving prison terms; indictments were being prepared against 85 persons; cases were pending against 134 persons; 8 given bail and 45 convicts (were) released through courts after rehabilitation”.<sup>52</sup> The Minister further stated that there was no basis for accusations concerning the operation of secret detention camps.<sup>53</sup> The revelation that there are currently only 273 political detainees raised concerns among the families of the disappeared who believe that these numbers are much higher.

The new Government also had initiated investigations that uncovered at least three secret detention camps operated by the security forces. One of them called ‘Pittu Bambuwa’ had been at the Navy HQ in Colombo, the second one called ‘gun site’ was located in the navy camp in Trincomalee<sup>54</sup> and the third was at the Giritale Army camp.<sup>55</sup> Evidence has emerged that all three detention centers were illegal and detainees were subjected to torture and death.

## PROGRESS OF INVESTIGATIONS

Soon after coming into power, the new Government announced the reopening of investigations into several high-profile murders, including those of a number of Parliamentarians, of journalist Lasantha Wickremetunga, as well as the disappearance of journalist Prageeth Eknaligoda.

By 24th August 2015, the police had arrested four army personnel, one retired Army Sergeant Major and two former LTTE cadres who worked in the military intelligence unit for alleged involvement in the abduction and murder of journalist Prageeth Eknaligoda. So far, it was revealed that following the abduction Eknaligoda<sup>56</sup> had been handed over to an army camp in the North Cen-

tral Province<sup>57</sup> and further investigations are still proceeding.

Meanwhile, concerns have been expressed over the lack of investigation into the deaths and disappearances of journalists in the North-East, especially in Jaffna. Within the initial stages of inquiries, the killings and abductions of Tamil journalists have been left in a “state of pending”<sup>58</sup>.

**“Not a single inquiry has specifically been undertaken into the unlawful killings and abductions of Tamil journalists during the period of war”**

*Excerpt from a statement of the Jaffna Press Club*

Eight years have passed since the Tamil journalist Subramaniam Ramachandran was arrested by the Sri Lankan army in Vadamaradchi, Jaffna<sup>59</sup> and until today he remains missing. Dozens of cases of missing and assassinated Tamil journalists and thousands of cases of missing Tamil students and youth have not gained proper attention<sup>60</sup> and no progress on these investigations has been reported.

On 17th September 2008, several persons were abducted from Dehiwala, including five students. When the case against abductions were taken up at Colombo Chief Magistrate Court in June 2015, it was revealed that a former navy commander was aware of the abductions and in fact the students were held in a place referred to as Pittu Bambuwa at the Navy Headquarters until they were removed to Trincomalee Camp and detained in prison cells with extremely poor living conditions.<sup>61</sup> This investigation is still ongoing and vital evidence has been unearthed.<sup>62</sup>

In the murder case of Nadarajah Raviraj some progress has been reported. The former TNA Parliamentarian, Nadarajah Raviraj, was shot dead in Colombo in 2006 and finally nine years after the incident, the case came before the Colombo Magistrate on 19th March 2015.<sup>63</sup> Three persons were

52 [http://island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=126154](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=126154)

53 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=126154](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=126154)

54 <http://www.dailymirror.lk/82249/have-they-been-killed-or-hidden>

55 <http://lankaenews.com/news/712/en>

56 [http://www.colombopage.com/archive\\_15B/Aug24\\_1440428049CH.php](http://www.colombopage.com/archive_15B/Aug24_1440428049CH.php)

57 <http://srilankabrief.org/2015/08/eknaligodas-disappearance-two-top-army-officers-to-be-grilled/>

58 <http://srilankabrief.org/2015/06/jaffna-press-club-calls-on-the-president-to-investigate-journalist-murders-and-missing-persons/>

59 <http://srilankabrief.org/2015/04/missing-tamil-journalist-octogenarian-parents-urge-international-investigation/>

60 <http://srilankabrief.org/2015/04/missing-tamil-journalist-octogenarian-parents-urge-international-investigation/>

61 <http://srilankabrief.org/2015/06/navy-commander-karannagoda-aware-of-navy-abductions/>

62 *ibid*

63 <http://www.lankasrinews.com/view.php?222No8Zd2o4WnHmc4e26VSdlecaeAhA7addoIXSAJ2bcd4hWkoe4b8Hpl33o24O7Zoc3>

arrested related to this murder: one is a member of the Sri Lankan Navy and the two other suspects were former Sri Lanka Navy personnel.<sup>64</sup>

A fresh probe was launched to investigate the death of national Rugby player Wasim Thajudeen who died in May 2012 and accusations were made that the Government did not carry out a proper investigation. At the time, the police claimed that Thajudeen's death was caused by an accident but new evidence revealed that he was tortured and killed.<sup>65</sup> His body was exhumed in August 2015 and further investigations are now being carried out.

## INVESTIGATIONS OF SOME OTHER INCIDENTS

Three other incidents occurring during the Rajapakse regime can be highlighted that are considered to disregard the rule of law in the country: The Welikada prison riots killing 27 persons; the police assault of Free Trade Zone (FTZ) workers resulting in the death of one worker; and the police brutality against protesters in Weliweriya who demanded clean water. The former High Commissioner for Human Rights, Navi Pillay, asked for investigations into these three incidents in her report to the HRC in September 2013.

On 9th June 2015, the report of the Committee of Inquiry, appointed to investigate the Welikada prison riots occurring in November 2012, was handed over to the Prime Minister. Although the recommendations of the Committee were made public, the full report remains unavailable to the public.<sup>66</sup> 27 inmates died as a result of this incident and 40 persons, including members of the security forces, were injured during the riots.<sup>67</sup>

In this report, the Committee recommended that a special team of investigators, under the direct command of the Inspector General of Police (IGP), should initiate criminal investigations into the incident with special focus on alleged violations corresponding to torture and disobeying the direction of law by public officials. The report also mentioned that the search conducted by the Police Special Task Force (STF), who later precipitated the incident, was highly uncalled for and unwarranted, and termed the incident as a "gross

*violation of widely accepted norms and procedures with regard to prisoners*". The Committee also recommended the payment of compensation to the families of the deceased persons and those who were injured in the incident.<sup>68</sup>

Even though the report, which was compiled by former High Court Judge Mahanama Tillekeratne and looked into the killing of FTZ worker Roshen Chanaka, was handed over to former President Mahinda Rajapaksa in August 2011, it has not been made public as of yet. Roshen Chanaka was killed on 31st May 2011 during the protest of FTZ workers against the proposed private sector pension plan which they alleged would result in the plundering of the Employees' Provident Fund (EPF) funds. At the time, over 250 workers were injured through the assault of the police personnel.<sup>69</sup> 11 fundamental rights applications were filed at the Supreme Court against this indiscriminate shooting at the protesters by the police and the process of investigation is still ongoing.

On 1st August 2013, the military opened fire at around 4,000 protesters who were demonstrating peacefully against the water pollution with chemical emissions from a nearby factory, killing three persons and injuring nearly 40 people.<sup>70</sup> An internal army inquiry found out that the Army had exceeded its mandate in handling these protests<sup>71</sup> but no action was taken to investigate the incident further. The HRC-SL conducted an inquiry as well and its report had been submitted to the former President Rajapaksa in May 2014. The report confirmed that the Army is responsible of killing three civilians and injuring 37 others. Although the HRC-SL has recommended that disciplinary action be taken against the commanding officers, chief officers and officers of the Army who participated in dispersing the protesters,<sup>72</sup> no action has been taken on this either.

All above mentioned investigative reports have not been made public - even under the new Government and notwithstanding the requests from prominent trade unionists, civil society organisations, and concerned individuals.

64 <http://newsfirst.lk/english/2015/03/breaking-three-arrests-made-in-nadaraja-raviraj-killing/86711>

65 <https://www.colombotelegraph.com/index.php/thajudeen-was-tortured-and-killed-grave-site-under-24-hour-police-protection/>

66 <http://srilankabrief.org/2015/07/make-two-commission-reports-public-friday-forum/>

67 <http://srilankabrief.org/2015/06/recommendations-of-welikada-prison-riot-probe-committee-released-full-text/>

68 <http://srilankabrief.org/2015/06/recommendations-of-welikada-prison-riot-probe-committee-released-full-text/>

69 [http://www.colombopage.com/archive\\_15A/Febo8\\_1423377954KA.php](http://www.colombopage.com/archive_15A/Febo8_1423377954KA.php)

70 <http://www.cbc.ca/news/world/1-dead-15-wounded-in-sri-lanka-protest-over-clean-water-1.1350301>

71 <http://www.thesundayleader.lk/2013/08/04/hrc-probe-on-weliweriya/>

72 <https://www.ceylontoday.lk/51-99901-news-detail-army-responsible-for-civilian-killings-rathupaswala-report-out.html>

## OTHER UNPUBLISHED REPORTS

The report of the two-member Commission of Inquiry to probe the murder of Batticaloa district Parliamentarian Joseph Pararajasingham, who was killed on 25 December 2005, also remains unpublicised. The Commission, which was appointed on 24th April 2006, concluded its sessions already back in March 2007 and submitted the report to President Rajapaksa.<sup>73</sup>

The Presidential Commission on the Disappeared, the so-called Mahanama Thilakarathna Commission, was appointed on 15th September 2006: its mandate was extended on 11th July 2007 in order to examine the circumstances that led to incidents of abductions, disappearances, unidentified dead bodies and unexplained killings that were

reported throughout Sri Lanka since 13th September 2006. It had submitted two interim reports on 12th December 2006 and on 23rd March 2007 before submitting the final report. All these reports remain unpublished.<sup>74</sup>

The Commission of Inquiry, the so-called Udagama Commission, was appointed to investigate serious violations of human rights that were alleged to have arisen in Sri Lanka between 1st August 2005 and 16th October 2006. The report of this Commission inquired into seven cases and was handed over to the then President Rajapaksa in July 2009. This report also remains unpublished.<sup>75</sup>

## RECOMMENDATIONS

1. Make public all unpublished commission reports on human rights violations since 2005 and follow-up on their recommendations;
2. Hold consultations with relevant local and international partners on proposed domestic mechanism to arrive at a common understanding before establishing it; ensure an appropriate role for the UN in the proposed domestic mechanism;
3. Make the HRC-SL an independent and powerful institution with credible and competent Commissioners and provide it with human and material resources to conduct investigations in a transparent manner and without further delay.

<sup>73</sup> <https://www.ceylontoday.lk/51-99901-news-detail-army-responsible-for-civilian-killings-rathupaswala-report-out.html>

<sup>74</sup> <https://www.ceylontoday.lk/51-99901-news-detail-army-responsible-for-civilian-killings-rathupaswala-report-out.html>

<sup>75</sup> Ibid

### 3. TOWARDS RECONCILIATION: CRUCIAL CHALLENGES AHEAD



Entrance to the Nallur Kandaswamy Kovil, one of the most significant Hindu temples in Jaffna, Sri Lanka

In his election manifesto, President Maithripala Sirisena pledged to “consolidate the right of all communities to develop and secure their culture, language and religion while recognizing the Sri Lankan identity”.<sup>76</sup> The Tamil National Alliance in a statement prior to the Presidential election emphasized the need for reconciliation as a reason for supporting the common Candidate Sirisena.<sup>77</sup> Genuine reconciliation, which engages people and rebuilds greater national unity, is one of the priorities of the new Government.<sup>78</sup> Along these lines, President Sirisena promised that that a new Ministry will be set up to promote reconciliation, mutual understanding and communal harmony and he reconfirmed that the government was fully committed to resolve the problems and address the concerns of the Tamils in the North.<sup>79</sup> The following section explores the progress of reconciliation in Sri Lanka during the period from January to September 2015.

#### DEALING WITH THE PAST

The need for genuine reconciliation has been highlighted at many occasions. Marking Sri Lanka’s 67th anniversary of independence, on 4th February 2015, President Sirisena addressed the

76 <http://www.asianmirror.lk/news/item/5782-full-text-of-maithripala-sirisena-s-election-manifesto>

77 [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=116866](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=116866)

78 <http://www.ft.lk/2015/03/27/ranil-lists-immediate-priorities-for-sri-lanka/>

79 <http://www.dailymirror.lk/84495/sampur-lands-returns-to-owners#sthash.WnNsv8ga.dpuf>

Nation and promised reconciliation.<sup>80</sup> Immediately after this address and in line with one of the LLRC key recommendations, a special peace pledge was delivered to the Nation in all three languages; respect was paid to all citizens of the country, of all ethnicities and religions, who lost their lives in the war and were victims of violence since Independence.<sup>81</sup> During the previous regime, Independence Day celebrations were excessively glamorized by the armed forces and failed to celebrate the diversity of the country. Therefore, this year’s celebrations marked a significant difference indicating the shift of mindset within the government.

This shift of mindset can be also seen through the new Government’s effort to change 19th May, the day marking the end of the war and previously celebrated as ‘War Heroes’ Day’, to a ‘Remembrance Day’.<sup>82</sup> Former President Mahinda Rajapaksa, however, countered this effort by maintaining his own public celebrations of a ‘War Heroes’ Day’ on 18th May.<sup>83</sup> Finally, the Government commemorated 19th May as the ‘Armed Forces Day’.

**“With the ending of the war on 18th and 19th May 2009, we witnessed a period of peace. We have to ask ourselves with intelligence, experience, knowledge and wisdom whether we have fulfilled the tasks, we should have performed during the post-conflict period. I think we did not fulfil that responsibility [...] and there was no importance given to the process of reconciliation among communities.”**

*President Maithripala Sirisena*

*at the occasion of the 67th Independence Day*

Source: <http://www.news.lk/features/item/7772-work-with-determination-to-make-this-truly-a-land-of-peace-president>

80 <http://www.dailymail.co.uk/wires/afp/article-2939125/Sri-Lankas-new-president-vows-reconciliation.html>

81 <http://www.news.lk/news/politics/item/6046-sri-lanka-marks-independence-day-with-a-special-declaration-of-peace>

82 <http://www.news.lk/news/sri-lanka/item/7656-sri-lanka-to-mark-may-19-as-remembrance-day-no-longer-victory-day>

83 <http://www.newindianexpress.com/world/Rajapaksa%E2%80%99s-%E2%80%9CWar-Heroes%E2%80%99-Day%E2%80%9D-to-Counter-Sirisena%E2%80%99s-%E2%80%9CRemembrance-Day%E2%80%9D/2015/05/17/article2819351.ece>



*A soldier posing in front of a war memorial in Pudukkudiirippu: the past is vividly portrayed in the former Northern war zone by huge war victory memorials.*

Another example of this shift and of the attempt to move towards reconciliation was the lift of the unofficial ban on singing the National Anthem in Tamil. Even though in practice, the Sinhala and Tamil versions of the National Anthem were sung without restrictions in the past, President Rajapakse placed an unofficial ban on the anthem in Tamil in 2010.<sup>84</sup>



“At the Presidential election, held on 8th January 2015, nothing was promised to Tamils living in the North and East of Sri Lanka. It is true that there have been some improvements since then. We, too, had the courage to organise demonstrations for justice.

In April 2015, talks were held in Singapore between various Sri Lankan groups, including government politicians, Tamil political parties and diaspora groups, to promote reconciliation and strengthen democracy.<sup>85</sup> This meeting was organized by the Government of Switzerland and a South African-based organisation.

Marking 100 days of the new Presidency, the President stressed the necessity to promote brotherhood, friendship and coexistence among all communities and to ensure the rights of all people. In addition, he also announced that a Presidential Task Force and a Presidential Office for Reconciliation have been set up.<sup>86</sup>

After the Parliamentary elections on 17th August 2015, the Secretariat for National Unity has been set up with the former President Chandrika Kumarathunge as its head. A Ministry of National Dialogue has been established under former human rights activist and Tamil Member of Parliament Mono Ganeshan.

But when I look back now, I see that the gains were rather small. Some land was released to the owners but more land remains with the military. Jayakumari was released but with a number of conditions. Previously, we were not able to even visit Mulleweikal, where thousands died at the final days of the war. This year, we were able to hold a memorial service in a church there but the intelligence officers were everywhere, even within the church premises. So it is a sort of conditional freedom. Our main demand is an acceptable political solution. Without a political solution, true reconciliation will not take place. We hope that the international community will stand by the Tamil people of Sri Lanka. One way to build trust among our people is to accept and allow a credible and independent international investigation.”

*Fr. Jeyabalan Croos, Jaffna, in an interview July 2015.*

<sup>84</sup> <http://www.firstpost.com/world/sri-lankan-national-anthem-sung-tamil-comes-attack-2166385.html>

<sup>85</sup> <http://www.tamilguardian.com/article.asp?articleid=14307>

<sup>86</sup> [http://www.priu.gov.lk/execpres/speeches/2015/the\\_statement\\_by\\_president\\_maitripala\\_sirisena\\_on\\_april\\_23.htm](http://www.priu.gov.lk/execpres/speeches/2015/the_statement_by_president_maitripala_sirisena_on_april_23.htm)

## DEMILITARIZATION

Demilitarization of the North has since long been recognized as an essential prerequisite for reconciliation: On the one hand, there has been a strong demand from Tamil political parties to remove or to reduce the military camps from the North and East.<sup>87</sup> On the other hand, the new Government has categorically stated that it will not remove any military camps in the country, especially from the North and East.<sup>88</sup> The actual number of military personnel stationed in the North and East of the country varies depending on the sources and interpretations but it is clear that unproportionally large military contingents are stationed in these two Provinces. Neither the military nor the Government has released any official figures concerning the military deployments in the North and East. The reduction of number of military personnel stationed in the North will remain one of the contentious issues on the way to achieve genuine reconciliation.

One step into the right direction of the new Government was the replacement of the ex-military Governor of the North by a civilian Governor.<sup>89</sup> Although the military has not yet been withdrawn and it remains engaged and present in day-to-day life of Tamils in the North and East, the role of the military in civil administration has reduced and the military and intelligence forces seem to exercise less surveillance and intimidation on the

population in the North and East.<sup>90</sup> Military-held land was also released which can be considered as another step towards demilitarization.

On 28th August 2015, the last remaining military check post on the A9 highway was removed. The Omanthai checkpoint remained an iconic boundary between the North and South of the country and since the end of the war, security forces maintained the Omanthai checkpoint to register people and vehicle movements.<sup>91</sup>

Out of a total of 6,382 acres of land grabbed by the army in Valikamam North, about 1,033 acres were released to the original owners.<sup>92</sup> However, concerns have been expressed over the manner in which land was released: the former Land Commissioner of the Eastern Province expressed that the land in the Northern Province was not released according to proper procedures, i.e. by issuing a fresh Gazette notification under Provison 39 (1) to the Land Acquisition Act, revoking the previous seizures of the Rajapakse regime.<sup>93</sup> According to some reports, 44,548 acres of land is still under military occupation in the North and East. Following the release of land in Valikamam North, the Ministry of Resettlement, Reconstruction and Hindu Religious Affairs held discussions with relevant sections of the concerned population for the release of further 9,000 acres in Jaffna and another 9,000 acres in Mullaitivu.<sup>94</sup>



“There is no visible military presence in Jaffna today. A feeling of freedom prevails. Freedom of expression and association has improved. But underneath, people’s desire for political freedom remains unanswered. Militarisation is still there but with reduced visibility and the military presence does not have an impact on peoples’ day-to-day life. Militarisation is mostly felt by the people living in or in close proximity of the High Security Zones.”

*Saminathan Wimal,  
writer and lecturer, University of Jaffna,  
in an interview July 2015.*

87 <http://www.tamilguardian.com/article.asp?articleid=13605>

88 <http://colombogazette.com/2015/06/23/no-decision-to-remove-army-camps-in-north/>

89 <http://www.thehindu.com/news/international/south-asia/sri-lanka-fires-military-governor-in-northern-province/article6792261.ece>

90 <http://www.thesundayleader.lk/2015/07/12/reconciliation-to-play-a-key-role-at-polls/>

91 <http://www.news.lk/news/sri-lanka/item/9464-omanthai-security-checkpoint-removed>

92 <https://www.colombotelegraph.com/index.php/we-must-not-allow-the-january-8th-democratic-gains-to-be-rolled-back/>

93 <http://srilankabrief.org/2015/05/fresh-gazette-notifications-needed-for-resettlement-retired-land-commissioner-east/>

94 <http://srilankabrief.org/2015/05/sri-lanka-18000-acres-for-resettlement-in-north/>

A total of 816 acres of land in Sampur was taken over by the army during the war and vested in the Board of Investment (BOI) by a gazette notification issued by the then President Mahinda Rajapakse and was later handed over to a company called Sri Lanka Gateway Industries on a 99 years lease.<sup>95</sup> This land was now released by signing the relevant Gazette notification,<sup>96</sup> the BOI agreement was revoked and over 7,000 IDPs have been allowed to return.

The Sri Lankan navy has also agreed to relocate a camp covering 237 acres that was in the same proximity.<sup>97</sup>

## RESETTLEMENT

According to the Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, as of 30th June 2015, 75,901 families (275,639 persons) in the Eastern Province and 157,051 families (521,081 persons) in the Northern Province have been resettled.<sup>98</sup> 14,828 families (50,268 persons) are yet to be resettled. Some of these families are living with friends or relatives, but most of them are housed in 32 welfare centres in Jaffna and 3 centres in Trincomalee.<sup>99</sup>

A report of the Internal Displacement Monitoring Centre (IDMC) was released in July 2015 estimating the number of IDPs at 73,700, a figure that is much higher than the government statistics.<sup>100</sup>

To facilitate resettlement, the UNHCR has agreed to provide temporary shelter in form of a semi-permanent structure of the value of US \$ 1000 and the Government is to provide a resettlement allowance of SLR 25,000 and another SLR 13,000 for clearing land, food and other contingencies. The Government has allocated a total amount of SLR 180 millions for this purpose.<sup>101</sup>

However, temporary shelters, water, transport, health and educational services have so far not been arranged. Many still live in make-shift tents and huts and others merely visit their land during day. Some of the re-settlers have been required to register with the military, in addition to the usual registration process by the civil authorities, such as the Grame Niladhari. The military has demanded copies of all family documents and photographs for this purpose. Rent for the years of occupation or compensation for loss of livelihood have not been paid to anybody affected.<sup>102</sup>

In addition, the issue of the displaced Northern Muslims, who were evicted in 1990, have not been sufficiently addressed as of yet.<sup>103</sup> The resettlement of the Northern Muslims has been dragging for years, not only because of the unwillingness of the State but also because of the complexity of the issue.

Meanwhile, records indicate that currently 105,000 Sri Lankan Tamil refugees are living in different camps and welfare centres throughout Tamil Nadu, India. The Minister of Resettlement, Reconstruction and Hindu Religious Affairs stated that they are welcome to return to Sri Lanka and that all returning families are entitled to rehabilitation and relief assistance.<sup>104</sup>

## HATE SPEECH AND COMMUNAL VIOLENCE

**“The election of 8th January 2015 created a palpable sense of security for the Muslims, especially in flashpoint areas which had seen violence in the past months and had become the focus of Sinhala Buddhist extremist groups.”**

*The Muslim Secretariat, Sri Lanka*

Another challenge on the way to achieve meaningful reconciliation is anti-Muslim violence. In June 2014, two individuals died, many were injured and thousands were displaced in the town of Aluthgama. This was considered as one of the worst outbreaks of sectarian violence in years. Bodu Bala Sena (BBS), the Buddhist extremist group who led these attacks and who had been spreading anti-Muslim hatred for a long period, enjoyed immunity after this incident. After the

95 <https://www.colombotelegraph.com/index.php/we-must-not-allow-the-january-8th-democratic-gains-to-be-rolled-back/>

96 <http://srilankabrief.org/2015/06/resettlement-of-idps-sampur-issue-resolved/>

97 <https://www.colombotelegraph.com/index.php/we-must-not-allow-the-january-8th-democratic-gains-to-be-rolled-back/>

98 <http://resettlementmin.gov.lk/site/index.php/en/statistics.html>

99 <http://srilankabrief.org/2015/06/resettlement-of-idps-sampur-issue-resolved/>

100 <http://thediplomat.com/2015/06/sri-lankas-slow-shift-on-war-attitude/> & <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/2015/internal-displacement-in-sri-lanka>

101 <http://srilankabrief.org/2015/06/resettlement-of-idps-sampur-issue-resolved/>

102 <http://groundviews.org/2015/05/17/valalai-jaffna-re-militarisation-of-released-villages-with-facade-of-resettlement/>

103 <https://thuppahi.wordpress.com/2015/07/26/the-forgotten-muslim-idps-in-sri-lanka-3/>

104 <http://srilankabrief.org/2015/06/resettlement-of-idps-sampur-issue-resolved/>

regime change, the influence of BBS has clearly reduced and in May 2015, the BBS General Secretary was arrested on a court warrant. He was later released on bail but it was made clear that at the very least this group would no longer enjoy the level of immunity as it had in the past. As hate speech has been one of the main intimidation tools used by the Sinhala Buddhists extremists, the Cabinet has approved amendments to the Penal Code to ban hate speech.<sup>105</sup>

Despite the decline of numbers of incidents of hate speech and hate violence compared to last year, outrageous incidents of hate speech in mainstream and social media continued.<sup>106</sup> Given that the extremist BBS failed badly in the General Election, there is a possibility of these attacks to recede.

In addition, no investigation into the anti-Muslim riots and murders in Aluthgama took place so far and no one has been convicted in connection to the incident. Albeit the Sri Lankan Army had reconstructed shops and houses damaged in the Aluthgama incident, the residents have not received compensation for the damage to their property.<sup>107</sup>

Attacks against Christians also continue. Since January 2015, over 26 cases of hate speech violence against and intimidation of Christians have been recorded.<sup>108</sup> All these attacks are against smaller evangelical prayer houses located both in Sinhala and Tamil dominated areas and some of them are serious in nature.

## THE CORE ISSUE: THE POLITICAL SOLUTION



*A newly built road across the Killai lagoon, North of Sri Lanka: brand new roads have not changed subsistence poverty levels.*

A maximum of devolution of power is an important pre-requisite for reconciliation. This has been demanded by Tamils for decades and is still the strongest demand by the minorities. The new Government has expressed that the resolution of the national question will be a key priority. The United National Party, in its manifesto before the Parliamentary elections, promised a maximum devolution to the regions within a unitary Constitution.<sup>109</sup> Even though several months ago, the Prime Minister was quoted saying “(w)e must have a political settlement and move forward, protecting peace and stability”,<sup>110</sup> so far nothing has been done in this regard. The Prime Minister has proposed to hold tripartite negotiations among the UNP, the SLFP, and the TNA to arrive at a political solution.<sup>111</sup>

## RECOMMENDATIONS:

1. Prioritise a lasting negotiated political solution to the ethnic issue before drafting the proposed new Constitution;
2. Release land of Tamils and Muslims that is occupied by the military;
3. Withdraw the military from civilian affairs in the former war zone ;
4. Implement the LLRC recommendations on reconciliation;
5. Establish a master plan with measurable objectives and timelines to uplift the war-affected people in the North and East;
6. Release or file cases against remaining Tamil political prisoners without any delay.

<sup>105</sup> <http://www.srilankamirror.com/news/item/3184-cabinet-bans-hate->

<sup>106</sup> A list of 37 incidents of anti-Muslim violence and hatred during January – April 2015 is available at [http://srilankabrief.org/wp-content/uploads/2015/06/Incidents\\_Jan-April\\_2015.pdf](http://srilankabrief.org/wp-content/uploads/2015/06/Incidents_Jan-April_2015.pdf)

<sup>107</sup> <http://www.thesundayleader.lk/2015/06/07/aluthgama-crawling-back-to-its-feet/>

<sup>108</sup> <http://nceasl.org/category/incident-reports/>

<sup>109</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=129680](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=129680)

<sup>110</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=129680](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=129680)

<sup>111</sup> <http://www.thehindu.com/news/international/n-ram-speaks-to-sri-lankan-prime-minister-ranil-wickremesinghe-on-tamils-and-13th-amendment/article7572191.ece>

## 4. FREEDOM OF EXPRESSION AND RIGHT TO ASSOCIATION: A NEW BEGINNING?

The 2014 World Press Freedom Index ranked Sri Lanka 165th out of 180 countries.<sup>112</sup> This is a good indicator of the state of freedom of expression in the country. Indeed, for several years now, the situation of freedom of expression and right to association in Sri Lanka has been worrying. However, with the change of the Government the situation slightly ameliorated.



*Human rights activists address people at a demonstration in front of the main railway station in Colombo in July 2015.*

### FREEDOM OF EXPRESSION

The International Media Assessment Mission to Sri Lanka visited Sri Lanka from 8th to 14th May 2015 to assess the media freedom situation in the country. The Mission welcomed the positive changes that occurred since the new Government came into power, including: the steps taken to end the threats against and pressure on media outlets and journalists; the unblocking of websites; moves to provide legal protection on the right to information; an invitation to exiled journalists to return to Sri Lanka; and the allocation of relatively greater editorial freedom to the State media.<sup>113</sup>

Immediately after the Presidential election the new Government invited exiled journalists and human rights defenders to return. Only few journalists and human rights defenders actually returned and it is reported that the struggle to come home was a long and frustrating struggle with very little support from the Sri Lankan Government and the Embassies to integrate back into society.<sup>114</sup> Many others do not want to return

for manifold reasons: fear of persecution prevails; lack of safety assurances; violent mob is still active; problems of reintegration; but also due to other personal reasons, such as ill-health and the difficulties of school children to absorb the changing context.<sup>115</sup>

Soon after the Presidential election, the Telecommunication Regulation Commission (TRC) was ordered to lift the ban on all news websites blocked under the former President Rajapakse.<sup>116</sup> Although this ban violated the basic right to freedom of expression guaranteed by the Constitution, about ten news websites critical of the former Government had been blocked by the then President Mahinda Rajapakse.<sup>117</sup> State media has also stopped to discredit critics of the Government, and journalists who previously were branded as traitors and terrorist supporters were invited to television talk shows and were interviewed publicly.<sup>118</sup>

But despite of all these measures and the fact that the control over state media has reduced,<sup>119</sup> state media still remains significantly biased. Although it has been recommended that the Government transforms the three State broadcasters into independent public service broadcasters and ensures that the State print media group is able to operate independently. No steps have been taken in this regard<sup>120</sup> and no policy statements were made in favour of such transformations by either the President or the Prime Minister.

The right to information is recognized as a fundamental right through the 19th Amendment to the Constitution. The Right to Information Act is yet to be passed but it is an important step towards ensuring accountability and transparency in public affairs. It introduces that every public authority – defined widely as authority, e.g. Par-

<sup>112</sup> <https://index.rsf.org/#/>

<sup>113</sup> <https://www.article19.org/data/files/medialibrary/37968/Statement.SL-Mission.May15.final.pdf>

<sup>114</sup> <https://rukiiii.wordpress.com/category/exiled-journalists-hrds/>

<sup>115</sup> <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

<sup>116</sup> <http://economictimes.indiatimes.com/news/international/world-news/sri-lankas-new-government-promises-end-to-repression/articleshow/45847884.cms>

<sup>117</sup> <http://in.reuters.com/article/2014/05/21/uk-sri-lanka-censorship-media-idINKBNoE11TT20140521>

<sup>118</sup> <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

<sup>119</sup> <https://www.colombotelegraph.com/index.php/a-preface-to-post-january-08th-media-in-sl/>

<sup>120</sup> <https://www.article19.org/data/files/medialibrary/37968/Statement.SL-Mission.May15.final.pdf>

liament, ministries, local authorities, and private companies, performing a public function - has to have an information officer responsible for dealing with public requests for information.<sup>121</sup> The proposed Right to Information Act also provides a long list of grounds which may justify secrecy,<sup>122</sup> including territorial integrity and national security, protection of relations of the state with any other state, retaining the confidentiality of 'certain' information, such as information regarding law enforcement, contempt of court and parliamentary privileges.<sup>123</sup>

Investigations into the murder of Lasantha Wickremathunga and the disappearance of Prageeth Eknaligoda are being carried out with renewed vigor. Yet, the progress, especially concerning the murder of Lasantha Wickremathunga, remains unclear.

Despite a general decline of attacks against and intimidation of journalists and media workers, journalists in Jaffna have highlighted the remaining challenges concerning press freedom, including self-censorship, due to: uncertainty about the political future of the country; restrictions on access to information; and continued surveillance and monitoring of journalists.<sup>124</sup>

Other unsettling incidents have been reported:

- In March 2015, several persons dubbing a film related to the militarization were arrested by the Police in Colombo and equipment of the studio confiscated.
- In early May 2015, a journalist was attacked by a local politician due to his efforts to report problems in a local health clinic.
- In the Eastern Province, harassment and intimidation of the family of a Muslim woman activist continues to date, after she had expressed her opinion about the legalization of sex work back in 2012.
- From the Northern Province, an alarming number of cases have been reported<sup>125</sup>: on 7th April 2015, three journalists who were collecting information about a protest against water pollution were attacked with knives by two police

officers in Jaffna<sup>126</sup>; on 8th April 2015, a Tamil journalist was detained in connection with a story he wrote criticizing the police<sup>127</sup>; on 28th April 2015, four Tamil journalists based in the Northern cities of Mannar and Vavuniya were summoned for questioning by the Police in Colombo; and also in April 2015, the Vice Chancellor of the University of Jaffna had been refused permission to speak in a discussion on a book written by a University academic about the end of the war.<sup>128</sup>

In early July 2015, President Sirisena announced the reactivation of the Press Council established under the Press Council Law. Most members are appointed by the President but two journalists are chosen by media organizations. The Council had previously been dissolved by default since January 2015. Under this Law, media outlets are forbidden to publish documents related to Cabinet decisions without the permission of the Cabinet, as well as related to defense and fiscal matters. The Law also provides for wide-ranging punitive powers, including the imprisonment of journalists and publishers.<sup>129</sup> The Sri Lanka Press Institute vehemently condemned the decision of the President and termed the reactivation as 'illegal'<sup>130</sup>. Although members were appointed to the Press Council, it remains inactive to date.

## END IMPUNITY: FREE MEDIA MOVEMENT CALLS FOR SETTING UP A SPECIAL UNIT

The Human Rights Commission of Sri Lanka (HRC-SL) which should be transformed into an independent institution after reinstating the 17th Amendment should immediately initiate investigations into the killings of and attacks on journalists and media institutions during the last ten years. For this purpose, a special division within the Human Rights Commission should be established with the necessary infrastructure and financial allocations. The HRC-SL should be allowed to access information that has been already collected by the state intelligence services concerning these incidents.<sup>131</sup>

121 <http://groundviews.org/2015/05/07/the-right-to-information-act-finally-a-reality/>

122 <http://www.slguardian.org/sri-lanka-analysis-of-constitutional-right-to-information-guarantee/>

123 [http://lawcom.gov.lk/web/images/stories/reports/draft\\_freedom\\_of\\_information\\_act\\_2006.pdf](http://lawcom.gov.lk/web/images/stories/reports/draft_freedom_of_information_act_2006.pdf)

124 <http://www.freemedia.at/newssview/article/press-release-international-mission-calls-for-end-to-surveillance-of-journalists-in-northern-sri-la.html>

125 <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

126 <http://srilankabrief.org/2015/04/sri-lankan-police-at-war-with-tamil-journalists-in-jaffna/>

127 <https://www.cpj.org/2015/04/journalist-faces-charges-after-publishing-report-c.php>

128 <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

129 <https://cpj.org/2015/07/sri-lanka-moves-to-re-establish-restrictive-media-.php>

130 <https://freemediasrilanka.wordpress.com/2015/07/05/slpi-and-its-constituent-partners-condemn-reactivation-of-press-council/>

131 <http://srilankabrief.org/2014/12/fmm-presents-media-reform-proposals-common-presidential-candidate/>

The Prevention of Terrorism (Temporary Provisions) Act has not yet been repealed or amended and therefore, continues to pose grave threats to the right to freedom of expression. The Act, which facilitates arbitrary and capricious official conduct, including torture, makes serious incursions into the freedom of expression and into the media by requiring in certain circumstances governmental approval for printing, publishing and distributing publications and newspapers.<sup>132</sup> The Act also empowers the Minister of Defense to issue restriction orders that infringe on the rights to freedom of expression and association.<sup>133</sup>

The International Media Assessment Mission during its visit to Sri Lanka in May 2015 acknowledged that much needs to be still done to ensure the growth of a robust, diverse and professional media in Sri Lanka. It raised, among others, concerns regarding the excessive politicization of most media, the lack of editorial freedom, and the lack of professional standards in the media. This includes also issues related to the qualification of journalists, the quality of academic training programmes, the availability of ongoing high quality training opportunities for journalists, low wages, poor working conditions and benefits for journalists, obstruction of the right to join trade unions, weak systems for promoting and supporting ethical standards, and ethnic divisions within the media, including instances of negative reporting and a culture of ‘communalism’.<sup>134</sup>

### A VIEW FROM JAFFNA: “IT IS A FEELING OF FREEDOM BUT NOT REAL”



“There has been a change with regard to media freedom in Jaffna and Northern Province after the Presidential election and the formation of the new Government. Killings and abductions have ceased. Now there is an air of freedom but unfortunately harassment of journalists continues. They are being followed and unnecessarily questioned.

Jaffna was captured by the Sri Lankan military in 1996, some 20 years ago. The military intelligence officers who started to work in Jaffna then are still here. They know almost everything about people they keep an eye on. Media and journalists are prime targets of their focus. Their work ideology is to suspect and to monitor. This is the ideology of the post-war Rajapakse regime. They use harassment and threats as deterrent.

Their military mind-set of suspecting everyone has not changed. If they do not change their approach to accept innocence of anyone until proved guilty, then there cannot be any meaningful change.

The media freedom situation has improved after the new Government was formed. But surveillance and monitoring continue. For example, on 19th July 2015, an officer from the National Security Bureau called me and inquired about the Jaffna Press Club. The very same person called me last year also. He wanted to know whether we receive funds from the Tamil Diaspora. We have 150 members who pay SLR 200 a month.

In January this year, I visited Singapore for a workshop organised by the International Federation of Journalists (IFJ) on the invitation of the Free Media Movement. Within a week of my return, the same intelligence officer called me and inquired about the purpose of Sunil Jayasekara [then convenor of FMM] and a senior journalist called Hana Ibrahim visiting Singapore for the same workshop. He even boasted of knowing some details of Sunil Jayasekara’s personal habits.”

*Excerpts from a discussion with R. Dayabaran,  
a senior journalist and advisor to the Jaffna Press Club,  
Jaffna, 21st July 2015*

<sup>132</sup> <http://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/>

<sup>133</sup> <https://www.article19.org/data/files/pdfs/publications/sri-lanka-agenda-for-change.pdf>

<sup>134</sup> <https://www.article19.org/data/files/medialibrary/37968/Statement.SL-Mission.May15.final.pdf>

The gag order imposed by the courts on human rights defender Ruki Fernando related to his arrest by the Terrorist Investigation Division (TID) in March 2014 while on a fact finding mission to the North is still in force. Appeals by his lawyers to repeal the gag order remain unanswered.

## FREEDOM OF ASSEMBLY AND ASSOCIATION

Under the new Government space has opened leading to a significant boost of the right to freedom of assembly and association. Members of civil society have been able to hold assemblies more freely and with less fear.<sup>135</sup>

In January 2015, following an extraordinary gazette notification by the new President, the NGO Secretariat was moved from the purview of Sri Lanka's Ministry of Defense to the Ministry of Policy Planning and Economic Affairs.<sup>136</sup> Nevertheless, the formal circular issued by the NGO Secretariat restricting the publication of press releases, the conduct of press conferences and trainings for journalists has not been formally withdrawn.<sup>137</sup>



*Dr Nimalka Fernando*

The Prime Minister appointed well-known human rights activist, Dr Nimalka Fernando, to chair an Advisory Committee to report on restrictions imposed on NGOs and on remedial steps to be

taken. Another well-known human rights activist Attorney-at-Law Sudarshana Gunawardane was appointed to the same Committee as well.

Despite having a general sense of more freedom after the elections, several incidents that undermine the right to freedom of association have been reported: For example, on 1st May 2015, while observing a May Day rally in Colombo, a prominent political commentator and university academic was hospitalized after being attacked by political forces loyal to the former President.<sup>138</sup>

Other incidents were related to the Remembrance Day events for Tamils killed during the war in mid-May 2015: the police obtained court orders to prevent these events and they interrogated organizers, participants and media at some of these events, compelled organizers to change venue, and subjected Remembrance Day events to heavy surveillance. Police also used tear gas and water cannons to disperse protesters, for example, in Jaffna, hundreds of protesters were arrested as these protests against the rape and murder of a teenaged school girl turned violent.<sup>139</sup> Also in May 2015, an event, which discussed the importance of memory and commemoration in the process of reconciliation, came under surveillance and intelligence officers reportedly took photographs of participants.<sup>140</sup> These photographs could be used to identify participants by the security forces.

In June 2015, surveillance and intimidations related to freedom of assembly was also reported from the Eastern Province: organizers, participants and supporters of protests against sexual violence against women and children were subjected to intimidations before, during and after the protests.<sup>141</sup>

## RECOMMENDATIONS

1. A credible and competent inquiry mechanism should be established to investigate the killings, disappearances, abductions of journalists and media workers as well as other attacks on these groups and other media institutions in order to bring the perpetrators to the justice and determine the appropriate reparation;
2. The Right to Information Act should be passed and its full and speedy implementation should be assured;
3. The State broadcasters should be transformed into independent public service broadcasters in line with international standards. Editorial independence of the State print media group should be established on the basis of non-partisan and public services values and by providing suitable legal provisions;
4. Non-Government organisations (NGOs) should be able to function independently of government control, adhering to the applicable rules and regulations in the country.

<sup>135</sup> <https://www.forum-asia.org/uploads/wp/2015/06/FoAA-in-Sri-Lanka.pdf>

<sup>136</sup> <http://srilankabrief.org/2015/06/no-more-defence-ministry-supervision-for-ngos-deputy-minister/>

<sup>137</sup> <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

<sup>138</sup> <http://groundviews.org/2015/05/03/world-press-freedom-day-2015-and-freedom-of-expression-in-sri-lanka/>

<sup>139</sup> <https://ihrdc.wordpress.com/tag/sri-lanka/>

<sup>140</sup> <https://www.forum-asia.org/uploads/wp/2015/06/FoAA-in-Sri-Lanka.pdf>

<sup>141</sup> <https://ihrdc.wordpress.com/>

## ADDENDUM 1: THE PLEDGES OF THE GOSL TO THE UNHRC, SEPTEMBER 2015



“For truth seeking, the establishment by statute, of two mechanisms [will be established].

- (i) A Commission for Truth, Justice, Reconciliation and Non-recurrence to be evolved in consultation with the relevant authorities of South Africa. This mechanism is envisaged as having a dual structure: a ‘Compassionate Council’ composed of religious dignitaries from all major religions in the country and a structure composed of Commissioners.
- (ii) An Office on Missing Persons based on the principle of the families’ right to know, to be set up by Statute with expertise from the ICRC, and in line with internationally accepted standards.

On the Right to Justice, what is being proposed is for a Judicial Mechanism with a Special Counsel to be set up by Statute. This takes into account the right of victims to a fair remedy and aims to address the problem of impunity for human rights violations suffered by all communities.

On the Right to Reparations, an Office for Reparations to be set up by Statute to facilitate the implementation of recommendations relating to reparations made by the proposed Commission on Truth, Justice, Reconciliation and Non-recurrence, the Office of the Missing Persons, the LLRC and any other entity.

In order to guarantee non-recurrence, it is proposed that a series of measures would be undertaken including administrative and judicial reform, and the adoption of a new Constitution. A series of measures including amending the penal code to criminalise hate speech and enforced disappearances are also in process. The best guarantee for non-recurrence is of course a political settlement that addresses the grievances of the Tamil people. We hope that we can achieve this through the adoption of a new Constitution.

These mechanisms will be evolved and designed through a wide process of consultations involving all stakeholders, including victims. Moreover, each mechanism is envisaged to have the freedom to obtain assistance, financial, material and technical from our international partners including the OHCHR.”

*Sri Lankan Foreign Minister Mangala Samaraweera,  
addressing the 30th session of the UNHRC on 14th September 2015 in Geneva.*

## ADDENDUM 2: EXCERPTS OF THE OHCHR REPORT, SEPTEMBER 2015

“Among the most serious crimes documented in the report are the following:

- **Unlawful killings:** Numerous unlawful killings between 2002 and 2011, were allegedly committed by both parties, as well as by paramilitary groups linked to the security forces. Tamil politicians, humanitarian workers, journalists and ordinary civilians were among the alleged victims of Sri Lankan security forces and associated paramilitaries. [...]
- **Sexual and gender-based violence:** One shocking finding of the investigation was the extent to which sexual violence was committed against detainees, often extremely brutally, by the Sri Lankan security forces, with men as likely to be victims as women. [...] Not a single perpetrator of sexual violence related to the armed conflict is so far known to have been convicted.
- **Enforced disappearances:** Enforced disappearances affected tens of thousands of Sri Lankans for decades, including throughout the 26-year armed conflict with the LTTE. There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population. In particular, there are reasonable grounds to believe that a large number of individuals who surrendered during the final phase of the war were disappeared, and remain unaccounted for. [...]
- **Torture and other forms of cruel, inhuman or degrading treatment:** Brutal use of torture by the Sri Lankan security forces was widespread throughout the decade covered by the report, and in particular during the immediate aftermath of the conflict. [...]
- **Recruitment of children and their use in hostilities, as well as abduction and forced recruitment of adults:** Information indicates patterns of abductions leading to forced recruitment of adults by the LTTE, which intensified towards the end of the conflict. [...]
- **Attacks on civilians and civilian objects:** There are reasonable grounds to believe that many attacks during the last phase of the war did not comply with international humanitarian law principles on the conduct of hostilities, particularly the principle of distinction. [...] The presence of LTTE cadres directly participating in hostilities and operating within the predominantly civilian population, launching attacks from close proximity of these locations, and the LTTE policy of forcing civilians to remain within areas of active hostilities, may also have violated international humanitarian law. [...]
- **Denial of humanitarian assistance:** There are reasonable grounds to believe that the Government placed considerable restrictions on freedom of movement of humanitarian personnel and activities, and may have deliberately blocked the delivery of sufficient food aid and medical supplies in the Vanni in the Northern Province which may amount to the use of starvation of the civilian population as a method of warfare. Such conduct, if proven in a court of law, may constitute a war crime.
- **Violations during the detention of internally displaced people (IDPs) in closed camps:** [...] Almost 300.000 IDPs were deprived of their liberty in camps for periods far beyond what is permissible under international law. [...]

*Edited excerpts from the press release issued by OHCHR<sup>1</sup> on 16th September 2015 on the Report<sup>2</sup> of the Office of the United Nations High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*

1 <http://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?lsMediaPage=true>

2 <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>

## LIST OF ABBREVIATIONS

AG	Attorney-General
BBS	Bodu Bala Sena
CJ	Chief Justice
EPDP	Eelam's People Democratic Party
FMM	Free Media Movement
GoSL	Government of Sri Lanka
EPF	Employees' Provident Fund
FNO	Federation of National Organisations
FTZ	Free Trade Zone
IDMC	The Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IFJ	International Federation of Journalists
IGP	Inspector General of Police
JHU	Jathika Hela Urumaya (National Heritage Party)
LLRC	Lessons Learned and Reconciliation Commission
LTTE	Tamil Tigers of Tamil Eelam
MP	Member of Parliament
NCEASL	The National Christian Evangelical Alliance of Sri Lanka
HRC-SL	National Human Rights Commission of Sri Lanka
NPC	Northern Provincial Council
OISL	Office of Human Rights High Commissioner's Investigation on Sri Lanka
PCICMP	The Presidential Commission to Investigate into Complaints of Missing Persons
STF	Police Special Task Force
PTA	Prevention of Terrorism Act
RTI	Right to Information Act
SFM	The Secretariat for Muslims
SLFP	Sri Lanka Freedom Party
TID	Terrorist Investigation Division
TNA	Tamil National Alliance
TRC	Telecommunication Regulation Commission
UK	United Kingdom
UN	United Nations
UNHRC	United Nations Human Rights Council (as of June 2006) / United Nations Human Rights Commission (before June 2006)
UNP	United National Party
UNFGG	United National Front for Good Governance
US / USA	United State of America

## IN MEMORY OF SUNILA ABEYSEKERA: BUILDING THE BASE



*Sunila Abeysekera, a human rights defender, a friend, a sister and a comrade to many passed away exactly two years ago on 9th September 2013.*

**“So the challenge is really: to see where are the individuals, where are the groups that you can reach out to; to say that you cannot have a struggle for rights of one community, one group, one sector of people which is not linked to a broader struggle for democracy and rights for everybody in Sri Lanka. I think for me, that is an analytical and political challenge that we are facing right now.”**

*Sunila Abeysekera, February 2013*