

Briefing Notes



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A protest in Colombo against the militarisation of North and East of Sri Lanka

CRITIQUE ON THE LLRC NATIONAL PLAN OF ACTION AND ITS IMPLEMENTATION



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LIST OF ABBREVIATIONS

ACF	Action Contre la Faim
CAT	Committee against Torture
GoSL	Government of Sri Lanka
HSZ	High Security Zone
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
JDS	Journalists for Democracy
LTTE	Tamil Tigers of Tamil Eelam
MP	Member of Parliament
NLC	National Land Commission
NFZs	No Fire Zones
NPA	National Plan of Action
PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
PTF	Presidential Task Force
RTI	Right to Information Act
SLA	Sri Lanka Army
TNA	Tamil National Alliance
UK	United Kingdom
UNHRC	United Nations Human Rights Council
UN	United Nations

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EXECUTIVE SUMMARY



The Lessons Learnt and Reconciliation Commission (LLRC) was appointed by President Mahinda Rajapaksa for the pursuit of reconciliation in Sri Lanka, following the conclusion of a 27-year-old war in May 2009. The Sri Lankan Government, in response to the 285 recommendations made by the LLRC, sought to implement the recommendations made through a National Plan of Action and appointed a Task Force Headed by Presidential Secretary, Lalith Weeraratna, to provide it with leadership.

This report looks at specific recommendations made by the LLRC in order to achieve reconciliation in the country by calling for institutional reform, introduction of new institutions for the delivery of expeditious justice and redressal to communities which suffered due to the war and the requirement to strengthen the processes which are currently in place, including strengthening public institutions. Furthermore, recommendations have been made to strengthen the country's human rights regime and the maintenance of law and order war.

Some key recommendations for the strengthening of democratic institutions included the call for the establishment of an Independent Permanent Police Commission, an Independent Public Service Commission, the appointment of a Special Commissioner of Investigation to investigate the alleged disappearances and an Independent Advisory Committee to monitor and examine the detention and arrest of persons, the disarmament of armed gangs through specific police action, the enhancement of the capacity of the Police Department for improved maintenance of law and order and the establishment of a National Lands Commission.

Sri Lanka's response to the call by the international community had been less than satisfactory. The Sri Lankan Government's onslaught on the Judiciary together with the crushing of political dissent had proved a potent combination that had undermined democracy while accelerating the path towards an authoritarian rule, threatening long-term stability and peace. The most significant blow to the country's democratic institutions was witnessed with the politically-motivated impeachment of the Chief Justice, reflecting both intolerance of dissent and the weakness of the political opposition, an outrageous act that undermined a vital organ of government.

The Executive and the Legislature have thus, together, incapacitated the last institutional check on the Executive, at a time when the State has made strong commitments to strengthen public institutions in a bid to help the country to return to normalcy.

Given Sri Lanka's failure to practically implement the recommendations by the LLRC, it is incumbent upon the international community to demand time-bound actions to restore the rule of law, investigate rights abuses and alleged war crimes by government forces and the Liberation Tigers of Tamil Eelam (LTTE) and to make a genuine effort to devolve power to Tamil and Muslim areas of the North and East.

The island's governance crisis became manifest with the impeaching of an independent Chief Justice whose ouster is traced by independent observers to two judgments delivered by her on crucial bills, one of which presented by the President's brother, Basil Rajapaksa, and which was designed to subvert the process of shared power through the provisions of the Thirteenth Amendment to the Constitution by creating a parallel mechanism.

So far, the government has failed to conduct credible and impartial investigations into allegations of war crimes, disappearances or other serious human rights violations or to take genuine corrective measures as recommended by the LLRC. In addition, an Independent Commissioner to investigate rights abuses has become a matter for examination by the National Plan of Action (NPA) while the government has in effect, removed the last remnants of judicial independence by unceremoniously impeaching the Chief Justice. At present, the military enjoys the same degree of control it enjoyed over terrain and matters during the time of war with many civilian tasks still being carried out or supervised by the military. Over 90,000 people remain displaced in the former war zones due to military occupation with no possibility of land restitution in the near future.

The government's actions in the past months have only contributed to the consolidation of its own political power, further diminishing the hope of achieving reconciliation and peace in the near future.

1. INTRODUCTION



LLRC commission in sittings

THE LESSONS LEARNT AND RECONCILIATION COMMISSION (LLRC)

The Lessons Learnt and Reconciliation Commission (LLRC) is a commission of inquiry appointed by Sri Lankan President Mahinda Rajapaksa in May 2010, following the conclusion of the 27-year long war in Sri Lanka. The LLRC was mandated to investigate the facts and circumstances which led to the failure of the ceasefire agreement made operational on 27 February 2002, the lessons that should be learnt from those events and the institutional, administrative and legislative measures which are required to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities.

The LLRC conducted operations for 18 months subsequent to which, a report was submitted to the President on 15 November 2011, containing 285 recommendations. The report was made public on 16 December 2011 after being tabled in the Parliament.

Among the key conclusions reached by the LLRC was the finding that the Sri Lankan military did not deliberately target civilians whereas the rebel Liberation Tigers of Tamil Eelam (LTTE) repeatedly violated international humanitarian law. The LLRC acknowledged however, the killing of civilians by the Sri Lankan military— though accidentally— contradicting the Sri Lankan Government's position of the humanitarian operations to liberate LTTE-held territory recording 'zero civilian casualties'.

Further, the LLRC apportioned equal blame to both the Sinhalese and Tamil politicians for causing a violent war and held the Sinhalese politicians responsible for failing to offer a durable political solution acceptable to the Tamil people and, the Tamil politicians, for continuously fanning the flames of militant separatism.

The LLRC has been significantly criticized by the international community including the UN Panel of Experts, recognized human rights organizations and others for its limited mandate and what they termed as an inbuilt role of having to exonerate the government and the armed forces from blame. Many critiqued the LLRC for its alleged lack of independence as a government-appointed body and its failure to meet minimum international standards or offer protection to witnesses who appeared before the Commission. With its credibility questioned due to its alleged absence of independence to serve the true cause of reconciliation, several advocacy groups including Amnesty International (AI), Human Rights Watch (HRW) and the International Crisis Group (ICG) refused to appear before the LLRC to share their views.

The eight-member Commission focused on the following:

How to prevent a similar conflict from taking place again;

Whether any people, group or institution bears any responsibilities for the conflict; and

Restorative justice or the steps that need to be taken to compensate or restore losses, whatever nature or form they may take

The LLRC was the response by the Sri Lankan Government to the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka released in 2011, appointed to advise the United Nations Secretary-General (UNSG) Ban Ki-moon on the issue of accountability with regard to alleged violations of international human rights and humanitarian law during the final stages of the Sri Lankan Civil War. The report is commonly referred to as the Darusman Report, named after the Chairperson of the UN Experts' Panel, Marzuki Darusman.

2. LEGAL AND POLITICAL FRAMEWORK – AN OVERVIEW

OVERVIEW

Following the release of the final report of the LLRC to the public on 16 December 2011, a National Plan of Action (NPA) was drawn up by the Government of Sri Lanka, specifying timeframes, key performance indicators and responsible agencies in respect to the future implementation of the LLRC recommendations. The NPA was released to the public on 26 July 2012 which was immediately criticized for its approach to some of the most important recommendations made and its heavy reliance on existing mechanisms and institutions for pursuing reconciliation in Sri Lanka.

JULY 2012: 60 PERCENT IMPLEMENTED

With the approval by the Cabinet of Ministers, President Rajapaksa appointed a Task Force, headed by Presidential Secretary Lalith Weeratunga, for the effective implementation and the sub recommendations were categorized under four main groups, to be implemented on long, medium and short terms basis.

It is noteworthy that at the time of appointing the Task Force, Cabinet Spokesperson and Media Minister, Keheliya Rambukwella, announced to the media in Colombo that 60 per cent of the short term recommendations have already been fulfilled.



The 18th Amendment consolidated President Mahinda Rajapaksa's political stranglehold. In this election cutout the Sinhala text says, 'Long live the king, the greatest'. Photo: www.telegraph.co.uk

The implementation of the LLRC recommendations and the political will required for such purpose ought to be assessed against a specific setting. In the immediate aftermath of a convincing electoral victory in January 2010 which reinstated Mahinda Rajapaksa as the President of Sri Lanka for a second term, the immediate first step taken was to consolidate his executive position further through the enactment of an Eighteenth Amend-

ment to the Constitution, removing the two-term restriction on the presidency. The amendment was passed with a two third majority.

Besides its immediate and effective dilution of the Seventeenth Amendment to the Constitution – passed with the blessings of a full House in a collective effort to depoliticize key public institutions in Sri Lanka, the 2010 constitutional amendment made strong attempt to reduce the independence conferred upon select public institutions which are of immense significance to the public and further concentrated power on the already powerful executive.

The said amendment also removed a strong deterrent to abusive use of executive power – the constitutional restriction on the number of terms an individual may serve as Executive President of Sri Lanka, further consolidating President Mahinda Rajapaksa's political stranglehold.

With a constitutional amendment having effectively diluted the impact of independent public institutions, Sri Lanka also had its Chief Justice impeached in January 2013 through a process that had earned both local and international ire, directly undermining the independence of the Judiciary and further eroding the already fragile public faith in the independence of public institutions and specially, the administration of justice.

STRONG EXECUTIVE AND WEAK GOVERNANCE

Various other efforts also have been successfully made to strengthen the position of the executive while undermining other arms of government. The unceremonious removal of the Chief Justice and the installation of a new Chief Justice who is not welcomed by a majority of legal practitioners and whose direct links to the current administration in his capacity as a presidential legal advisor has marred his integrity and independence. The past few months also demonstrated how the Executive and Legislature combined forces to undermine an important arm of government – the Judiciary.

It is in this context that this assessment is made as to how the current political conditions contributed to the implementation of the recommendations contained in the LLRC Report, specially the proposed action to strengthen public institutions.

This research compilation is a brief attempt to critically examine under the sub- themes of the Government's Plan of Action for the implementation of the LLRC recommendations, focusing on

the non-implementation of specific recommendations and sub-recommendations pertaining to the guaranteeing and capacitating of the independence of public institutions.



A young pro-democracy lawyer arguing with the police on journalist's right to access amidst one of the anti-impeachment demonstrations led by the Lawyers Collective. Photo: Vikalpa

3. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Sri Lanka's adherence to international human rights obligations has been in question since the war broke out in 2006, with the country experiencing an escalation of violence and widespread human rights violations. With the rights of civilians being compromised for the victory of a war against the Liberation Tigers of Tamil Eelam (LTTE), there had been little institutional capacity to ensure justice for innocent victims of violence and particularly those who lived within the war zones in Sri Lanka's North and the East, the very theatre of war.

In 2011, in the aftermath of the LLRC Report being made public, the UK Human Rights Report, launched by the UK Foreign Secretary, William Hague listed Sri Lanka among 28 'countries of concern'. It made special mention of Sri Lanka's flagging human rights record and drew attention to a report by 12 Non-Governmental Organizations (NGOs) to the UN Committee against Torture (CAT) which conducted an open session on Sri Lanka. The committee's subsequent report highlighted ongoing allegations of widespread torture, failure to uphold judicial and procedural safeguards of detainees, the alleged existence of secret detention centres, enforced disappearances and deaths in

detention, areas which the LLRC called for urgent addressing by the State.

INQUIRY ON THE CHANNEL 4 VIDEO

According to the National Plan of Action, among the key issues to be addressed by the Sri Lankan Government was the allegations levelled against the Sri Lankan Armed Forces by the JDS/Channel 4 video. The LLRC recommended the initiation of an independent investigation to establish the truth or otherwise of the allegations arising from the video footage given the seriousness of the allegations made. The NPA also acknowledged the need to carry out an assessment to ascertain the 'authenticity' of the footage, which was carried out by a Court of Inquiry of the Army, which submitted its report to the military head on 15 February 2013.

Unsurprisingly, the Army Court of inquiry that looked into Channel 4 allegations in its report to the Commander of the Army, Lieutenant General Jagath Jayasuriya, exonerated the Sri Lanka Army (SLA) from indiscriminate shellings which reportedly caused death and destruction to civilians and their property.

The report stated, the inquiry was carried out with regard to the allegation of excessive civilian casualties that said to have been caused due to heavy shelling. The six-member body in its report concluded that the Army High Command had “addressed their minds to International Humanitarian Law (IHL) well in advance as far back as in the 1990s, and all troops have been educated to observe the standard procedures that are followed to prevent civilian casualties.”

Further it stated: “Evidence before the court has conclusively established that the Humanitarian Operation was conducted strictly in accordance with the ‘zero civilian casualty’ directive made by His Excellency the President Mahinda Rajapaksa, and commanders at all times obeyed the said directive and the directives from the higher headquarters with regard to No Fire Zones (NFZs), and even where the LTTE terrorists had fired from NFZs, commanders refrained from firing at such NFZs. It has also been revealed that artillery commanders had added 500m to the boundaries of NFZs given by higher headquarters thereby extending the boundaries of NFZs by 500m,” the report stated.

The above inquiry and the report, released just days before the United Nations Human Rights Council (UNHRC) are attempts by the Sri Lankan State to clear its name and that of the Sri Lankan Armed Forces, despite an inquiry by a military court prima facie is likely to lack credibility given its own interest in furthering the cause of the military. It also defeats the possibility of achieving reconciliation and immediately casts a shadow of doubt over the government’s commitment to pursue justice for the civilians who lost their lives during the war.

AN INDEPENDENT INVESTIGATION INTO THE DISAPPEARANCES

Calling for criminal justice with regard to those who surrendered or were arrested but were later reported as missing, **the LLRC specifically called for the launching of an independent investigation into the disappearances following the surrender or arrest of persons** and where such investigations provide evidence of any unlawful act on the part of the individual members of the Army, circumstances under which specific instances of death or injury to civilians could have occurred, and if such investigations disclose wrongful conduct, to prosecute and punish the wrongdoers.

Instead of initiating credible investigations that could have highlighted the genuineness of attempts made to address possible human rights

violations during the course of the war, the government has repeatedly resorted to clearing the security forces of all blame through processes that prima facie lack integrity.

EXONERATION OF THE SRI LANKA ARMY

The government also hastened to fulfill yet another commitment undertaken in the NPA by calling for an assessment on the damage caused to property during the period of the conflict, again, just a fortnight prior to the UNHRC sessions in Geneva. Linked to recommendation No: 9.37 b of the LLRC Report and largely overlooked until a week prior to the military court of inquiry exonerated the Sri Lanka Army (SLA) of having committed specific atrocities contained in the disputed Channel video footage, this survey is likely to take 12-24 months.

While the government advocacy continued, images of the vanquished Leader of the Liberation Tigers of Tamil Eelam (LTTE) Velupillai Prabhakaran’s 12-year-old son, Balachandran, also emerged, as yet another gruesome reminder of possible acts of wartime atrocities. The photographs received wide international publicity, purportedly taken during the final phase of the war when the unarmed child was allegedly murdered by the security forces. The defence authorities have unequivocally rejected the allegation by calling it a pre-Geneva gimmick to draw international attention and discredit the Sri Lankan Government.

The United Nations and several other international human rights agencies have been critiquing Sri Lanka for widespread human rights violations including crimes against humanity, allegedly committed during the final phase of the war.



Photographic evidence that Tamil Tiger chief Velupillai Prabhakaran’s 12-year old son, Balachandran, was alive in Sri Lankan military custody, a couple of hours before he was found executed on the final day of the war on 19 May 2013. Photo: JDS



4. HUMAN RIGHTS IN THE LLRC NPA

Under the theme area, ‘Human Rights,’ the NPA has proposed various activities in an attempt to implement the specific LLRC recommendations relating to the administration of justice, law enforcement and even the effectiveness of the relevant agencies in the discharge of their duties.

These recommendations cumulatively seek to address post-war requirements of strengthening public institutions in a bid to curb violations of the law and to ensure civil administration is re-introduced, strengthened and allowed to flourish in an atmosphere devoid of fear and intimidation. Eight months after the NPA’s introduction, it appears that especially with regard to this thematic area, what is recorded is minimal progress, even on paper. Besides, strong dilution of the recommended action, too, is observed as the NPA has consistently adopted conservative positions with regard to possible action by the State to address serious anomalies.

The key recommendations by the LLRC include: The requirement to direct the law enforcement authorities to take immediate steps to ensure that allegations of abductions, enforced or involuntary disappearances and arbitrary detention are properly investigated into; Appoint a Special Commissioner of Investigation to investigate alleged disappearances and to provide material to the Attorney General to initiate criminal proceedings as appropriate; Detailing out as to the requirement of capacitating the proposed office, the LLRC further recommends that experienced investigators be called upon to collect and process information on behalf of a Special Commissioner of investigation.

NPA RESPONSE

In response, the NPA has identified the need to “identify existing impediments’ with regard to preventing abductions and enforced disappearances” and looks to enhance the capacity of the Police Department and to establish community policing. In the absence of specific activities which are likely to get the authorities there, given the unparalleled record of police inaction in Sri Lanka, the NPA’s proposed actions fall way short of the expectations.

In what the rights community has termed a “highly unresponsive reaction” to recommendation No: 9.517 – among the most progressive of re-

commendations made – the NPA fell back on the need to invoke the present procedures as available in the Code of Criminal Procedure, overlooking the need to treat this as a special requirement, given that expeditious justice is necessary for a country emerging from war conditions to achieve a measure of normalcy through the application of the law.

Further, it was recommended that an independent advisory committee be appointed to monitor and examine detentions and arrests of persons taken into custody under the Public Security Ordinance (PSO) and the Prevention of Terrorism Act (PTA), two instruments that had been used by the State excessively, over a number of years. The LLRC further called for the introduction of a special mechanism to examine census of persons held in detention (for long periods without charges) and for the disposal of such cases, to which the NPA’s lukewarm response was to ‘identify and establish procedures in the existing system’ overlong the need for urgent action. The present systems and mechanisms do not inspire public confidence and the allegations of torture and illegal detention have been significant, using the provisions contained in the PSO and the PTA. The lethargy of the Police Department and the Attorney General’s Department has failed to deliver justice to hundreds of people who have been languishing in detention camps. Various human rights organizations as well as family members of detainees have continuously agitated for the release of their kin, if they cannot be charged within a reasonable timeframe. However, there is very little success that NPA may record in this regard.

ENFORCED AND INVOLUNTARY DISAPPEARANCES

Among the key recommendations which called for the strengthening of institutions and frameworks is recommendation No: 9.59 which required the framing of domestic legislation to specifically criminalize enforced and involuntary disappearances, one of the key criticisms against the Sri Lankan State. The global rights indices have annually reflected Sri Lanka’s reality in this specific area of rights abuse to which the NPA’s response has been a diluted undertaking to ‘examine’ the need for such legislation, defeating the LLRC’s actual purpose and converting the NPA into a process of re-examination than one of implementation. Besides, the LLRC was well-positioned to call

for various actions, both short and long term, if the Commission deemed suitable for the achievement of reconciliation expeditiously. The NPA

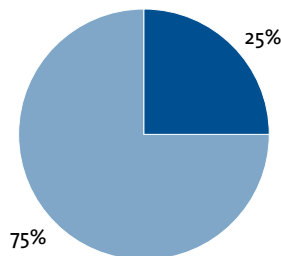
envisaged role was to give expression to the LLRC wisdom and to make the recommendations work, practically, at ground level.

The Social Architects conducted the survey from a sample of 2,000 households through 244 villages/communities in nine districts: Jaffna, Kilinochchi, Mullaitivu, Mannar, Vavuniya, Trincomalee, Batticaloa, Ampara and Nuwara Eliya.

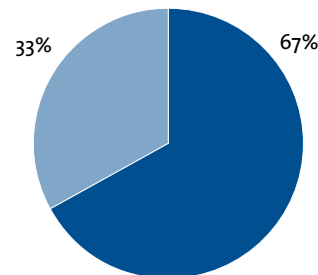
25% of TSA survey respondents have had a family member disappear. And that individual was usually the principal income earner of the family.

The provision of psychosocial services, something that falls almost exclusively under the purview of the GoSL, is another major issue cited in the LLRC's Final Report that the GoSL still has not addressed. In fact, based on TSA's preliminary findings, it appears the GoSL is nowhere near close to fully implementing this recommendation, as 90% of respondents in need of psychosocial assistance have been unable to obtain it.

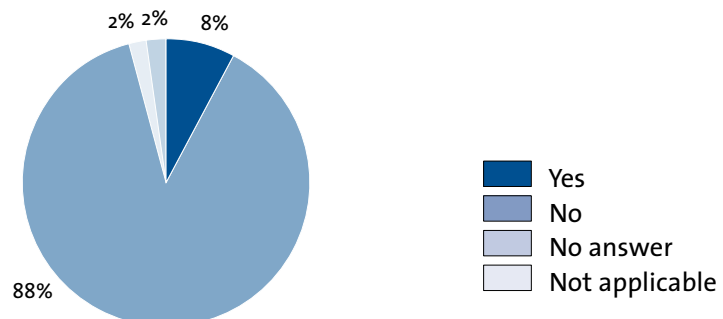
Has anyone disappeared in your family?



Was the disappeared member the principal income earner of the family?



Was your family able to secure any assistance to deal with the psychological trauma caused by the disappearance?



Courtesy: Groundviews

DETENTION

The LLRC upheld the requirement of immediate de-escalation to achieve normalcy, the purpose towards which specific recommendations were made, highlighting the need to deal with matters relating to detentions as a matter of extreme priority. One recommendation was to issue certificates when a person is discharged to prevent the person from being taken into custody, unless there is fresh evidence and to address laws delays to expedite prosecution or the discharge of detainees. Despite elaborate claims by the government, there had been little progress in this front.

On the contrary, Sri Lanka recently moved a fresh amendment to the Criminal Procedure Code to

extend the detention period from 24 to 48 hours, a moot point at a period of time when there is no ongoing war or conditions that merit the requirement for additional hours of detention. By doing so, it works contrary to the strong LLRC recommendation aimed at reconciliation and further consolidates the position of the law enforcement authorities to detain and retain persons in custody for an additional 24 hours.

THE ILLEGAL ARMED GROUPS

There is strong emphasis on the need for both the Ministry of Defence and the Police Department, in recommendations 9.73. It recommended conducting of investigations in respect of allegations against illegal armed groups, the institution of

criminal proceedings against offenders and for the introduction of specific measures to ensure law. A key contributor was to be the immediate disarmament of these groups. **The NAP's responses to these specific recommendations are both disappointing and regressive.** In fact, it records that during the time of conflict, illegal armed groups were known to operate in the theatre of conflict and steps have been taken to effectively eliminate such groups, which is a completely false position to take. These groups continue to remain in operation, extorting and instilling fear among the people but due to their well-established political connections, they do not have to fear arrest.

THE 'GREASE DEVILS'

Particularly with regard to the call to disarm, the NPA's position was to examine crime statistics and measures to improve law and order situation in the country. Nevertheless, the absolute failure to contain the situation was evident when the country experienced a phenomenon referred to as the 'grease devils' that terrorized parts of the Eastern Province and later spread to other parts of the country. There were eyewitness accounts that indicated that the 'devils' were military personnel who roamed the towns and cities at night, terrorizing people and when pursued, withdrew to various military camps. Despite the claims of effective vigilance by the authorities, there had been little progress in containing the militant groups, according to the local people, continue to rule the roost. Some of these groups have been allegedly involved in carrying out systematic attacks on students, activists and journalists in the Northern Province. A particular allegation had been the repeated violence unleashed by the group backed by Minister Douglas Devananda which is reportedly responsible for attacks on the pro-Tamil National Alliance (TNA) publishing house, 'Uthayan.'

PARAMILITARY GROUPS

It is important to note that there are continued reports emerging from the former war zone that the armed groups continue to threaten and have serious impact on civilian life. To date, local people claim that Minister Douglas Devananda backed group continues to administer the area, in commando style when the need be – a charge so far not cleared – and this is a strong indictment on the government's commit to introduce normalcy through disarmament. In addition to Devananda, another government politician's group, too, had been identified for spreading violence in the region. Known by his 'nom de guerre', Karuna, during his days as eastern commander of the LTTE, Minister Vinayagamoorthy Muralitharan is said

to be continuing with his armed groups. Neither the government nor the authorities charged with the task of maintain law and order have even made an attempt to arrest the growing violence by invoking the provisions of law against these powerful groups.

In fact, it has being reported that the Minister of Economic Development, Basil Rajapaksa, has once informed the US ambassador that two close allies of the President – Douglas Devananda and Vinayagamoorthy Muralitharan alias Col. Karuna – were posing problems in the Northern and Eastern Provinces by allowing their armed cadres loose on political enforcement missions.



Journalists calling for ending impunity in Sri Lanka, January 2013. Photo: Vikalpa.

SUPPRESSING THE MEDIA

The Rajapaksa administration has gone down in history as one of the worst periods for freedom of expression in the country, and especially, the physical safety of journalists. Some 18 journalists have been killed, over 40 abducted and a similar number has been driven to exile fearing for their lives during this period. The Committee to Protect Journalists (CPJ), Reporters Sans Borders (RSF) and the International Federation of Journalists (IFJ) – three international organizations promoting media freedom – have slated Sri Lanka to be among the most dangerous countries in the world for journalists to practice their craft.

The failure on the part of the law enforcement agency, the Police Department, is best assessed against the LLRC recommendations with regard to the fostering of media freedom in the country. One of the key suggestions have been to take urgent steps to prevent harassment of and attacks on the media personnel and institutions, in addition to prioritizing the investigation, prosecution and disposal of past incidents of any such illegal



action. It is recorded history that none of the murders of journalists, despite the passage of time, have been either concluded or wrongdoers prosecuted.

In response to the plethora of rights violations that have terrorized the country's media industry and its practitioners, the NPA undertook to pursue grievance redressal, a suggestion that falls extremely short of expectations given the violence suffered by the small industry in the past few years. Important to note is the mechanisms suggested by the NPA, which is to promote actions through the Police, the filing of fundamental rights applications and lodging complaints with the Press Council (with a wider jurisdiction and enhanced powers) all of which may, given the past failures, completely fail to inspire confidence. The investigations into alleged attacks on journalists have been often tainted by politics and gross interference and given the continued police inaction, there appears to be no public institution with sufficient independent and the necessary will to ensure justice.

Some of the gross violations against the media remain unaddressed to date. It is difficult to maintain a degree of faith in these investigations, including the judicial processes, given the past

experiences, well-documented by a number of local and international media rights groups. Two well-known journalists, Editor of the Jaffna-based Uthayan, N Vithyatharan and Sunday Times columnist, J S Tissainayagam ended up compromising their rights to secure freedom from jail. Tissainayagam, the first journalist arrested under the draconian Prevention of Terrorism Act (PTA) for alleged intention to incite violence through his writing and allegedly furthering terrorism through fundraising. Sentenced for 20-years of rigorous imprisonment on 3 May 2010, he was pardoned by the Sri Lankan President, Mahinda Rajapaksa, to coincide with the International Press Freedom Day, subsequent to his family agreeing to drop their fundamental rights suit against the arrest. In similar fashion, Vithyatharan who was also in custody was released subsequent to the withdrawal of the fundamental rights case filed on his behalf alleging arbitrary arrest.

In addition, S. Kavitharan, a reporter and G. Kuhnathan, the news editor of Uthayan, had been attacked recently, reportedly by the armed gangs of a minister representing the district. Predictably, no arrests have been made and the two journalists now live in Switzerland as the latest additions to the Sri Lankan exiled journalists' community.

LLRC recommendation	GoSL report: LLRC NPA Monitoring 26 February 2013	Sri Lanka Brief comment 1 March 2013
<p>9.115a- c Take all steps to prevent harassment and attacks on media personnel and institutions.</p> <p>Give priority to the investigation, prosecution and disposal of such cases.</p> <p>Properly investigate past incidents of such illegal action.</p>	<p>Online complaint system will be launched in March 2013 by the Sri Lanka Press Council (SLPC) enabling media personnel to lodge any complaint immediately. Such complaints received will be monitored promptly and remedial actions will be taken within 24 hrs. Draft amendments to the Press Council Act to empower the Council with a wider jurisdiction were submitted to the Legal Draftsman.</p> <p>A Draft of Code of Conduct (white paper) prepared by the Ministry has already been submitted to Ministerial Consultative Committee in Parliament to get consent. Action has been initiated to take public opinion on the white paper.</p>	<p>Harassment and intimidation continue to-date. All major journalists/editors/ owners institutions has rejected the SLPC as a repressive mechanism. The media community has rejected the SLPC</p> <p>There is draft code of conduct agreed upon by journalists, editors and owners and a self-regulatory body established by those organisations. State regulation of media is an outdated concept.</p> <p>No progress on the recommendation to properly investigate past incidents of such illegal action: No investigation has been completed on killings, abductions and assaults of journalists and arson attacks on media.</p>
<p>9.115d Ensure the freedom of movement of media personnel in the North and East.</p>	<p>Completed. No restrictions experienced by media personnel.</p>	<p>Media and journalists do not have unrestricted access to former war zone and to resettled IDPs.</p>
<p>9.115e Enact legislation to ensure the right to information</p>	<p>The Cabinet Office will be the interface for the interaction with the Cabinet of Ministers on the acceptance of such legislation by the legislature.</p>	<p>The government stated policy is that no right to information act (RTI) is necessary. 2005 RTI act was approved by the cabinet and there is no need for new draft.</p>



RIGHT TO INFORMATION LAW

Among the key ideas promoted by the LLRC was the introduction of a Right to information law. On the contrary, the government did everything within its power to ensure a resounding defeat of the proposed RTI, a Private Member's Bill proposed by senior opposition parliamentarian, Karu Jayasuriya. According to the NPA, there is Cabinet agreement to the introduction of such a law but it is yet to decide on a suitable timeframe, thus causing the RTI, a strong tool of transparency and accountability, to hibernate in a country that has too much kept as secrets of the State.

Further, instead of enhancing the institutional capacity of the media, the government in recent months made attempt to register news websites, without having a clear legal or constitutional mandate. In the recent months, there had been raids on website offices, journalists attacked and significant manipulation of the media, and the current trends do not indicate a government desirous of strengthening the media framework in the country or creating conditions for the media institutions to become more independent.

Thus, the redressal mechanisms proposed by the government to ensure media freedom fall way short of industry expectations and do not seek to ensure justice for an industry that had been at the receiving end of State-sponsored violence for years. The absence of political will to strengthen the institutional framework comes also linked to police inaction and despite elaborated recommendations for capacitating the Police Department. So far, the actions taken and the results yielded do not augur confidence.

Similarly, the LLRC has called for ensuring the freedom of movement by the media personnel to the North and the East of Sri Lanka, barred entry for a few years, unless as an embed. This has prevented the actual situation of the war being reported by local journalists and resulted in distorted accounts.

Following the closure of Menik Farm in late August 2012, Sri Lanka's largest displacement camp, three separate news teams from newspapers and an international news agency in search of fresh information about the conclusion of the resettlement process were prevented from having access to the area due to lack of authorization by the Ministry of Defense, the agency which is no longer in charge of former displaced communities. The news teams were aggressively turned away by the military who not only claimed they

had the right to decide on the issue of media access but also rejected written approval granted by relevant government agent for not being approved by the defense authorities in Colombo. This indicates not only the lack of access to the former war zones by media persons but clearly establishes that, instead of strengthening civil administration, there is the ongoing superimposition of the defense will on public institutions, making normalcy a pipe dream.

RECOMMENDATIONS OF PAST COMMISSIONS

Among the foremost issues that the LLRC wished to have addressed through a comprehensive plan of action was the implementation of recommendations by past commissions with regard to two incidents that occurred in the year 2006.

The LLRC recommendation 9.120 specifically urged due adherence to international human rights obligations by requiring the implementation of recommendations of the said commissions, particularly relating to further investigations and the prosecution of offenders involved in the death of students in Trincomalee in January 2006 and 17 aid workers of the Action Contre la Faim (ACF – Action Against Hunger) in August 2006, two incidents that brought the State immense disrepute both locally and internationally.

These recommendations, made to ensure the prevalence of law and order and return to normalcy following the war are yet to see results. Despite the status being indicated as ongoing, six years after the violent incidents, there had been limited progress in ensuring justice for the death. Instead, recording further deterioration in the area of human rights and reducing any available space for promoting harmony among communities, there is increasing violence between communities, particularly the Sinhalese and Muslims.

The increasing levels of violence and unexpressed hostility among communities is also linked to the lack of restorative action and the recognition of rights of communities, if they do not belong to the majority community, the Sinhalese.

Irrespective of the claims made, just as the time of these two specific incidents taking place in 2006, the administrative structures are yet to be replaced by civil administration in a meaningful manner. Some of the most significant functions are still being carried out only by the armed forces. Despite government claims, the public and the

media has limited access to certain areas, though it no longer is so on paper.

For all practical purposes, the Police continue to take orders from the defense authorities who immediately create immediate serious boundari-

es and bring in a military flavor to the function of law and order maintenance-related duties discharged by the police. This has been one of the key recommendations by the LLRC as well – to de-link the police from the defense authorities and to empower the Police Department.

5. LAND RETURN AND RESETTLEMENT



Almost three years after the Sri Lankan government looked into resettling up to 100,000 Muslims displaced from the country's North during the 1983-2009 civil war, thousands of Muslim families still find themselves in limbo, without the means to return to their former homes. Photo: Amantha Perera/IRIN.

The breaking out of the war in 1983 had resulted in Sri Lankans being converted overnight into either refugees or internally displaced. While a significant number of Sri Lankan Tamil refugees continue to live in South Indian camps as refugees, the continued military engagements have repeatedly rendered many people living in the North and the East, internally displaced.

The LLRC has given much prominence to the humanitarian issue of internally displaced communities as well as refugees, particularly by calling for the protection of their right to restitution.

Specific mention had been made in the LLRC urging action to secure the legal ownership to property by the Internally Displaced Persons (IDPs). Despite the supposed capacitating of the Ministry of Lands, it is highly unlikely that this agency, like all agencies that have been made to practically function under the defense authorities, to take meaningful steps in restoring lands on former owners, given that some of the private lands are currently being occupied by the military.

There are IDPs who were returned or relocated while the military continues to occupy their homes and lands without due compensation been paid to them. Additional problems have also been recorded, such as the lands provided to returnees being inadequate to support their livelihoods. The only positive observed in this regard, in terms

of institutional building, is the appointment of a special committee to examine durable solutions and the move to formulate a comprehensive State policy on the Muslim IDPs displaced from the North. However, the task was assigned to the Presidential Task Force (PTF) which civilians tend to abhor and these IDPs continue to be plagued by problems relating to return and restitution.

A key recommendation that goes to the very heart of land ownership, No: 9.142, refers to the review of the two existing High Security Zones (HSZs) in Palaly in Jaffna and Sampur in Trincomalee. In addition, it is recommended that action be taken to review the small extents of private lands currently utilized for security purposes with a view to releasing them without compromising national security.

According to Military Spokesperson, Brig. Dharshana Wanigasuriya, there are no High Security Zones (HSZs) in Sri Lanka anymore. Following the amendments to the emergency regulations promulgated under the provisions of the Public Security Ordinance (PSO), the HSZs ceased to exist, but that is only according to the law. Still, the military prevents the public from entering places including former designated HSZs without any authorization.

It is also a fact that some of the IDPs who were relocated to areas in Mullaitivu and Jaffna Districts



were not resettled due a requirement to maintain large military cantonments. For this purpose, the military continue to occupy local peoples' properties, both lands and homes. Addressing this issue requires not just the effective implementation of Lands Ministry circular, the lukewarm activity proposed by the National Plan of Action, but allowing a free hand and the necessary political backing to ensure that people's rights are no longer violated, even four years after the war.

Though there had been some discussions on the appointment of a National Land Commission

(NLC) in conformity with the LLRC recommended action, the status is unclear and viewed by the people as non-progressive. To formulate an appropriate future national land policy guidelines is a dire requirement, there are urgent land-related issues that the government must focus on and given the lethargy associated with implanting agencies and the ineffectiveness of their service delivery, it is possible to conclude that the land rights of the former displaced people will remain a serious concern for years to come.

6. MEASURES ON RECONCILIATION

In proposing measures for reconciliation in Sri Lanka, much emphasis was accorded to the need to promote democratic institution-building in the country. A number of recommendations were included to achieve this end, with strong focus on effective maintenance of law and order, administration of justice, grievance redressal mechanisms and actions to ensure a variety of rights including protection against torture and illegal detention, language and right to return and restitution.

The elaborate recommendations have also called for the strengthening of a number of public institutions which are currently either highly politicized or ineffective. Where anomalies in the existing mechanisms have been observed – in addition to proposing capacity building and democratization of public institutions – the LLRC has made strong recommendations for the creation of new institutions to expedite processes in ensuring rights and redressal to current grievances.

Herein, the NPA focus is on institution-building and democratization of existing mechanisms.

DE-MILITARIZATION

The LLRC attached strong significance to the requirement of phasing out the security forces, in a bid to restore normalcy and to demilitarize the Northern region. Though a timeline of six months was indicated for the phasing out of the involvement of security forces in civilian activities, those who live and visit the area can clearly understand that there is significant military presence, additional cantonments being built and decisions by the local authorities being superseded by the Defense Ministry, in stark contrast to what was envisaged by the LLRC.

A case in point is the former IDP camps that the government agents have authorized people to visit being declared out of bounds by the military and how they continue to play a decisive role in matters connected to resettlement, relocation and even regular aid distribution processes. This has impacted on the call to capacitate public institutions. Even though public servants are the designated authorities for local level decision-making, they are often overruled by the military, reducing them to mere rubber stamps, on occasion.

Among the key undertakings under the National Plan of Action are the commitments given under timeframes to disarm persons possessing unauthorized weapons and to prosecute such persons.

While there may exist the necessary legal instruments – namely the Offensive Weapons Act and the Firearms and Explosives Act – it is no secret the some of the groups, strongly linked to Ministers Douglas Devananda and Vinayagamorrthy Muralitharan continue to rule the roost. There had been widespread allegations against these operatives though criminal justice is not activated against them. The Attorney General as per recommendations has improved the quality of the investigations on record, but the groups continue to unleash terror in the regions where they remain politically unchallenged. It is claimed that, following enhanced capacity, there is a rate of successful prosecutions, however, civilians allege that the groups are a law unto themselves and the police does not dare take any action against them due to fear of reprisal.

DE - LINKING THE POLICE

Among the foremost recommendations for the demilitarization is the call to ensure the rule of law. The LLRC strongly advocates the delinking of the Police Department from the institutions dealing with the armed services and calls for the establishment of an Independent Permanent Police Commission to monitor police performance. The National Plan of Action stoically claims that such an independent commission is ‘in existence’ whereas the country’s experience is of a highly politicized Commission which has taken little action against police inaction when complained against, in addition to the appointments no longer being independent, given that the President is the appointing authority. With no actual measures being taken to de-politicize the Commission which was – under the Seventeenth Amendment sported a strong streak of independence – there is little hope that the current Commission, though identified as ‘independent’ by the NPA, be able to withstand political interference and adopt independent stances on law enforcement issues.

INDEPENDENT PUBLIC SERVICE COMMISSION

A similar blow had been dealt to the onetime Independent Public Service Commission which is now under the purview of the President who is also the appointing authority. The absence of a strong and independent public service had been the bane of Sri Lanka and the key reason for widespread corruption. Though the LLRC has called for an independent body, the NPA has fall back on its strategy of lukewarm responses and to hail the current Commission as an independent body, thus brushing aside the important call for a Commission that is truly independent.

When the Seventeenth Amendment to the Constitution became law with an overwhelming majority in the House, it provided for the rendering of key public institutions independent. With the enactment of the Eighteenth Amendment to the Constitution in the aftermath of a presidential electoral victory, the Rajapaksa administration has effectively brought all the independent commissions under its political authority, further consolidating overarching executive powers over every sphere of life.

The LLRC had recommended the establishment of an independent institution with a strong investigative arm to address grievances of all citizens, particularly the minorities, arising from the abuse of power by public officials and others individuals involved in the governance of the country. That

this need is so clearly identified is an indication of recognition of a certain Sri Lankan fact – that the island’s public institutions require fresh efforts to depoliticize and beyond that, to address the issue of power abuse by public officials. Though the NPA sets an ambitious six-month time frame for the achievement of this, it falls way short of the envisaged reforms and redress mechanisms by the LLRC.

During the same timeframe, the NPA has undertaken on paper, to introduce measures and mechanisms including legal amendments to strengthen grievance redressal mechanisms which are currently in place. This undertaking is far from being achieved, two months after the self-imposed deadline.

COMPROMISING THE JUDICIARY

There have been many widely-publicized efforts to undermine the Judiciary, the most recent is the direct interference with a vital public institution which lead to the impeachment of the first woman Chief Justice in the country, Dr. Shirani Bandaranayake. This signified the final death knell to any measure of independence which a specific arm of government may enjoy.



The Chief Justice Shirani Bandaranayake leaving her official residence on 14 January 2013: She was told by Police Officers that she cannot speak to the media as she is no longer the Chief Justice. Photo: Reuters

The island also survived a constitutional crisis when Parliament voted in support of a motion to impeach the Chief Justice, disregarding a Supreme Court ruling that the process was illegal and threatened the island’s judicial independence.

The Court’s robust defense of the “immutable Republican principle of the independence of the judiciary,” and its reiteration of the fundamental importance of the rule of law underpinning its

interpretive arguments, proved futile before the determined executive. However, the determination represented an important precedent for the supremacy of constitutional values over claims of parliamentary immunity. Moreover, by asserting the jurisdiction to review the legality of Standing Orders that affect the rights of citizens, the determination decisively rejected the notion that Parliament is supreme. The Court's determination, which emphasized the sovereignty of the people and the supremacy of the Constitution, is an important judicial reminder that the plausibility of constitutional arguments must be judged by reference to first principles of constitutionalism, and not inappropriate invocations of unconstitutional values and outdated doctrines.

However, the impeachment was carried out, despite the Court of Appeal having nullified the Parliamentary Select Committee's findings, indicating that the role of the judiciary was of little importance to an executive working in collaboration with the legislature to undermine its supremacy. Given that questions over the legality of the impeachment process against the Chief Justice have now been settled definitively by the Supreme Court and Court of Appeal, what may be now required in furtherance of democracy and the independence of public institutions may be to inquire into the validity of the particular executive action though it calls for an inquiry into an all-powerful and immune president who is currently invincible in his position. Sri Lanka's current crisis cannot be overlooked simply because of the fact, that on the face of it, the presidential prerogative appears to have won the day and the President has seemingly limitless power. The direct undermining of the Judiciary is likely to cause serious repercussions both of a constitutional and judicial kind, and Sri Lanka's biggest and the latest challenge stems from that.

This move by the Rajapaksa administration to declare war directly on the Chief Justice and thereby hold the independence of the judiciary hostage has further eroded public trust in the system of administration.

The move also caused an outcry among opposition lawmakers, religious leaders and lawyers, prompting the international community including the United Nations and international legal bodies to express concern over the integrity of justice in Sri Lanka. International and local rights groups, especially professional legal bodies, expressed their dismay at the turn of events, which

they identify as a direct undermining of the independence of the judiciary. "This impeachment calls into question issues about the separation of powers in Sri Lanka and the impact of its absence on democratic institutions," the U.S. Embassy said in a statement.

LAWYERS THREATENED



Lawyers across the country were united in their opposition to the unlawful impeachment of Chief Justice Shirani Bandaranayake.

Photo: Unknown source from internet

Lawyers across the island have been agitating against the removal but despite strong protests by international and local legal bodies, as well as eminent persons, some of the lawyers who protested the arbitrary executive cum legislative action came under threats and acts of intimidation. It had been well-documented that there were attempts made on the life of a lawyer named Gunaratne Wanninayake, that shots were fired outside the residence of President of the Bar Association of Sri Lanka (BASL), Wijeyadasa Rajapakshe and a murder attempt was made on well-known human rights lawyer, J C Weliamuna. Lawyers who appeared on behalf of Dr. Bandaranayake or publicly defended her or called for an impartial inquiry which recognized the value of due process continue to live in fear of violence and intimidation.



Mr. Lakshan Dias, a well known human rights lawyer, at the receiving end. Photo: Lanka eNews

Lawyer's Collective Wants Harassment of Lawyers Immediately Stopped!

26 February 2013

"The Lawyers' Collective has been following the incidents of harassment and threats on lawyers, who actively challenged the unconstitutional impeachment of the 43rd Chief Justice of Sri Lanka. As previously disclosed several lawyers, senior and junior, have come under threats. Series of incidents of surveillance on the lawyers were also reported in Colombo as well as outside.

Mr. Lakshan Dias a well known human rights lawyer and activist who was a leading figure in the anti- impeachment activities has come under strict surveillance making his life vulnerable for physical attacks. He had also been followed by a white van, which incident has been reported to the Moratuwa Police on 25th February 2013, under reference CIB-1-232/442.

We remind the Government of its constitutional duty to protect and respect the citizen's right to dissent and to engage in critical governance activities. The lawyer's struggle was a discharge of their constitutional duty to protect independence of judiciary, which they will continue to do, despite threats.

The Lawyers' Collective therefore urges the Government to investigate into these incidents and ensure that the lawyers, who have stood up against the illegal impeachment of the highest judicial officer of the Country, will not be subjected to any further intimidation."

In a direct rejection of any international scrutiny of a process flawed from its commencement, the Sri Lankan Government also prevented the International Bar Association's Human Rights Institute (IBAHARI) by blocking a delegation into Sri Lanka in early February 2013, including a much expected former Chief Justice of the Supreme Court of India, Justice J S Verma. The government claimed that the information contained in the online visa applications were inaccurate, which the IBAHARI has clearly rejected. A visa had been issued to one member of the delegation, facilitated through the relevant national diplomatic channels on 18 January 2013 but was revoked on 29 January 2013. Approval to enter the country was suspended on 29 and 30 January 2013 in the cases of the other delegates, who had applied and been approved for entry to Sri Lanka through the online application process on 21 January 2013, a clear indication of the government's approach to possible inquiry by eminent lawyers who may justly express their concerns over Sri Lanka's frail status of democracy.

Dr Mark S Ellis, Executive Director of the International Bar Association stated: *"It is disappointing that the Sri Lankan authorities have missed the opportunity to cooperate on a visit by respected foreign members of the legal system. It will suggest to the international community that the Sri Lankan authorities are fearful of having independent eyes on the issues of interest to the legal profession."*

The government appears to consider that the people's sovereignty rests in the parliament and that the judiciary has no power to question anything that is done by the parliament. The assertion that the sovereignty of the people rests on the parliament alone is a deviation from the basic constitutional principle that the sovereignty of the people is expressed through all the three branches of government: the parliament, the executive and the judiciary. The attempt is to treat the judiciary as if it is not a separate branch of the government but rather a subordinate institution to the parliament.

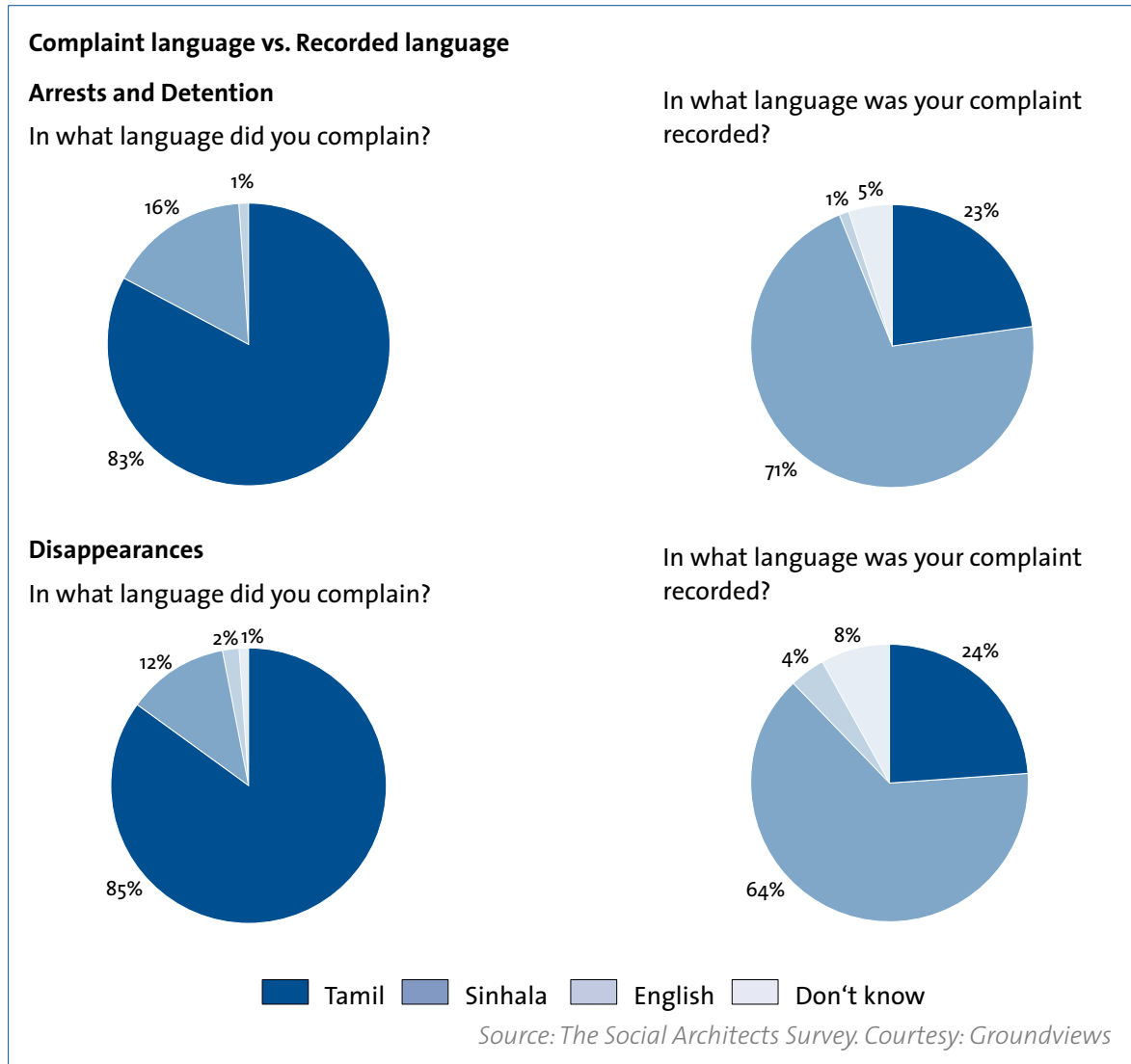
LANGUAGE TO BUILD BRIDGES

Among the key reasons for the conflict and the failure to record a measure of success in reconciliation efforts are directly linked to the country's failure to foster a two-language policy, despite the Sri Lankan Constitution conferring equal status on both Sinhala and Tamil languages.

Though Tamil is recognized as a national language, it is predominantly used only in the Tamil-

speaking areas whereas, despite its official status, it is not used in most public intuitions. A key and recurring complaint had been the inability for Tamil-speaking people to record a statement at most police stations in their own language or to access other services without knowledge of Sinhala.

For constitutional and policy commitment, the Tamil language has always been treated as a poor cousin of the Sinhala language, the language of the majority community, the Sinhalese. Recognizing the importance of language parity, the LLRC has made clear recommendations, promoting the use of language as a practical link to foster harmony and understanding among communities.



The LLRC stresses on language policy and mostly on its implementation, in addition to calling for the empowering of the National Language Commission as an authority with adequate powers.

The NAP however, records a conservative approach, by highlighting only the need for effective monitoring of the implementation of Sri Lanka’s “trilingual nation by 2020” initiative, undertaken by the Ministry of National Languages and Social Integration together with the Presidential Task Force on a Trilingual Society.

Despite foresighted suggestions which can pave the way for reconciliation by fostering understanding and mutual respect among ethnic com-

munities, Sri Lanka celebrated its 65th national independence on 4 February 2013 amidst furious debating whether to sing the National Anthem in two languages. This proposal was vehemently opposed by a section of the public, indicative of the majority Sinhalese reaction to the call for language parity, which was then the key reason that fuelled political dissent to the level of a militant conflict.

Despite calls to strengthen the relevant ministry and to ensure that the language policy is fully implemented, the path to reconciliation in Sri Lanka is replete with issues that are carried forward from a murky past in addition to new problems caused by growing intolerance.



7. CONCLUSIONS

The LLRC was a government-appointed committee mandated to propose effective and urgent measures for promoting reconciliation in post-war Sri Lanka. The conclusion after the National Plan of Action being implemented for eight months is its sheer lack of progress and focus. The NPA had diluted the proposed measures and relied on conservative and minimum action which will inevitably fail to deliver Sri Lanka from its current abyss.



Desire for democracy is alive. Photo: Vikalpa

“The statement at the 22nd Session by the Minister Samarasinghe , while listing progress and plans, fails to address substantive issues such as the devolution of power and power sharing despite the GoSL’s two-thirds majority in Parliament. More than 45months after the end of the war, there are still no credible answers provided to the issues raised such as why the Government is unwilling to share a list of all detainees. The statement also fails to recognise ongoing violations in Sri Lanka including disappearances, religious violence and threats to human rights defenders, lawyers and media activists.”

Civil Society Collective, Sri Lanka