

Briefing Notes

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Women marching to protest violence against women, Colombo, Sri Lanka

SRI LANKA 2013 WHITHER RECONCILIATION, ACCOUNTABILITY AND RULE OF LAW

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Photo cover: Two women in Colombo attend a March protest calling for government action against domestic violence and rape. Courtesy: Dinuka Liyanawatta / Ideastream.

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EXECUTIVE SUMMARY

Addressing the issues of Accountability, Reconciliation and Rule of Law are of pivotal importance to any post-war society. War leaves behind the matters of justice, equality and de-militarisation to be grappled with. Sri Lanka is no exception. This is more so when conflict remains, even after the war comes to an end, as in Sri Lanka today.

Almost five years after the end of a three-decade war, Sri Lanka still has not been able to address these issues. Local and international calls for a credible and independent investigation into allegations of serious violations of international human rights and humanitarian law that took place during the last phase of the war has not seen any positive response. The Government of Sri Lanka (GoSL) initially denied that any such violations took place. The Sri Lankan Minister of External Affairs has said on record that ‘the government is not answerable for war deaths’. The GoSL has refused to accept and comply with the two resolutions adopted by the 19th and 22nd session of the United Nations Human Rights Council on promoting reconciliation and accountability in Sri Lanka (A/HRC/19/L.2 and A/HRC/22/L.1/Rev1 respectively).

When the United Nations High Commissioner for Human Rights, Ms. Navaneetham Pillay, visited Sri Lanka in August 2013, she was called an „agent of

the terrorists“ and ruling party leaders used abusive language against her. A number of people who met her to share their grievances had to face reprisals from the authorities. “Dissent and making complaints to the UN is unpatriotic” was the message given to justify these reprisals.

The present government remains popular and won successive national and provincial elections after the end of the war. Yet, it remains extremely unpopular amongst Tamils in the war ravaged Northern province and to a lesser extent in the Eastern province. The Tamil National Alliance (TNA) won an overwhelming victory in the North and East in the first post-war parliamentary elections in 2010. More recently, the TNA won more than 78% of the votes in the first ever Northern Provincial Council elections in September 2013, despite threats and intimidations against leading candidates and Tamil newspapers supportive of its campaign.

There has been no progress on investigating even some of the specific cases highlighted by the LLRC, such as the LTTE cadres who surrendered to the Army and disappeared or the attacks on hospitals during the last phase of the war. There has also been no progress even on cases that the LLRC highlighted concerning the post-war period, such as the 2010 February disappearance and subsequent kill-



Sri Lanka from a paint brush: Artwork by Sri Lankan Artist Chandraguptha Tenuwara. Photo: Vikalpa

ing of human rights defender, Pattani Razeek, and the attack on the editor of the Tamil daily Uthayan, Kuganathan, in July 2011.

This culture of impunity has led to an ongoing discussion, domestically and internationally, on the need for an independent and credible accountability mechanism to investigate allegations of violations of international human rights and humanitarian law during the war. The TNA in particular has consistently called for such an independent impartial and international investigation. More recently, Maduluwaew Sobitha, a prominent Sinhalese Buddhist Monk from Colombo, who is considered as one potential joint opposition presidential candidate, also expressed his support for an international investigation. The small but influential Christian Clergy in the North and East has also consistently called for an international investigation as well as prominent human rights defenders and human rights organizations in Sri Lanka.

Internationally, such calls for an independent and international investigation also have gathered momentum: India has expressed its desire to see an „independent and credible investigation“ into the accountability issues in Sri Lanka; the Australian Senate has passed a resolution supporting the establishment of an „international accountability mechanism; and a group of US Senators have presented in February 2014 a resolution to the United States of America Congress calling for an „independent international accountability mechanism“ to evaluate reports of war crimes, crimes against humanity, and other human rights violations committed by both sides during and after the war in Sri Lanka. Leading human rights organizations, such as Amnesty International, Human Rights Watch, the International Crisis Group, and the International Commission of Jurists, have also echoed such calls.

The far reaching recommendations of the Sri Lanka's Lessons Learned and Reconciliation Commission (LLRC) on re-establishing democratic governance and the Rule of Law exist only on paper. The GoSL representatives have made contradictory statements on the status of implementing the LLRC recommendations ranging from „it is just start rolling“ to „almost complete“.

The Parliamentary opposition, the United National Party (UNP), has stated that „what the government has implemented are soft recommendations of the LLRC recommendations. It has not even thought of

implementing the hard recommendations“. Furthermore, in a statement issued in February 2014 the UNP stated „the rulers should have respected the rights of its citizens, irrespective of race, religion or place of origin and address the serious allegations levelled against them in a manner that is acceptable to the people of this country“.

According to a report published by the independent research institute Verité, even the implementation of some of the soft recommendations is very weak. The recent initiative of the GoSL, the Commission to Investigate Missing Persons, has come under criticism for lack of mandate and capacity.

The rule of law in Sri Lanka still suffers from the politicisation and militarisation of government institutions. The President is empowered to make all appointments to almost all institutions that should play the role of checks and balances and be independent in any democracy. On top of weakening the public institutions, widespread nepotism is having a debilitating impact on the democratic norms of the country.

With the breakdown of the rule of law, Sinhala Buddhist extremist groups have taken law into their hands and the Island's religious minorities have been at the receiving end of this: More than 300 recorded attacks on Muslim, Christian and Hindu religious places have taken place all over the country with complete impunity in 2013 alone, in some cases even with clear state patronage.

In the first quarter of 2014, leaders of the GoSL, including the President himself, have indicated their intentions to follow the Truth and Reconciliation Commission (TRC) of South Africa. In South Africa, the TRC was part and parcel of an in-depth democratisation process which included a brand new constitution. In post-war Sri Lanka, however, democracy has been in decline. The 18th Amendment to the Constitution of Sri Lanka and the illegal impeachment of the Chief Justice, Shirani Bandaranajeka, on political grounds illustrate this.

Democratisation and establishing accountability have to go hand in hand in Sri Lanka. Both these processes need to complement each other. The Government of Sri Lanka has shown neither the willingness nor the capacity to address these challenges and to move forward. This makes consistent international human rights interventions in relation to Sri Lanka all the more important and urgent.



1. THE CONTEXT

In May 2009, almost five years ago, war in Sri Lanka ended. Since then the issues of reconciliation and accountability, democratisation and good governance, rule of law and equality have been foremost concerns about Sri Lanka. There was strong international pressure to have an international investigation into allegations of war crimes, especially during the last phase of the war.

As a response to these concerns the Government of Sri Lanka (GoSL) appointed the Lessons Learnt and Reconciliation Commission (LLRC) in May 2010 and its report was published in December 2011.¹ The report contained far reaching recommendations although it argues that International Human Rights Law is not applicable to Sri Lanka's internal war. The LLRC report became a focal point in the post war political discourse on reconciliation and democratisation of Sri Lanka.

THE JOINT COMMUNIQUÉ

Following the LLRC report, the joint communiqué issued at the end of the Secretary-General's visit to Sri Lanka in May 2009 the Secretary-General announced the appointment of a Panel of Experts to advise him on issues of accountability in June 2010. The Panel submitted its report on 31st March 2011.² Acting on the recommendations of the Panel Report, the UN Secretary-General established an Internal Review Panel on UN actions in Sri Lanka. This Panel started its functions in late April 2012 and submitted its report in November 2012.³

Both these Panel reports raise the issue of accountability for massive violations of international human rights and humanitarian law, including civilian deaths that could be up to 40'000 or 70'000 in the last phase of the war, and emphasis



A Tamil woman cries for justice for the disappeared during the UN Human Rights Commissioner's visit to Sri Lanka. Photo courtesy: The Dark Room / Dinuka Liyanawatte / Reuters.

the need for an independent and credible investigation.

Fulfilling its pledge made at the Universal Periodical Review (UPR) 2008 the GoSL unveiled its National Action Plan for the Protection and Promotion of Human Rights in 2011.⁴ Although the GoSL representatives presented the human rights action plan as a breakthrough in strengthening democratic governance in Sri Lanka, by the end of 2013 it had already become history.⁵ Today, there is no discussion on the human rights action plan taking place.

The United Nations Human Rights Council (UNHRC) adopted two resolutions respectively in March 2012 and March 2013 on promoting reconciliation and accountability in Sri Lanka.

The 2012 March resolution (A/HRC/19/L.2/Rev1) “[c]alled upon the Government of Sri Lanka to implement the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission and to take all necessary addi-

¹ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011. Available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

² Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011. Available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

³ Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka, November 2012. Available at http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf

⁴ Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2011 – 2016. Accessed on 20/01/2014 at <http://www.hractionplan.gov.lk/>

⁵ Sri Lanka Brief (4 March 2013) “Unmasking Inaction: Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights 2011 – 2016”. Accessed on 20/01/2014 at <https://srilankabrief.wordpress.com/2013/03/04/unmasking-inaction-sri-lanka-national-action-plan-for-the-protection-and-promotion-of-human-rights-2011-2016/>

tional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankan”⁶

The 2013 March resolution (A/HRC/22/L.1/Rev1) “[e]ncourages the Government of Sri Lanka to implement the recommendations made in the report of the Office of the High Commissioner, and also calls upon the Government to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable; Encourages the Government of Sri Lanka to cooperate with special procedures mandate holders and to respond formally to their outstanding requests, including by extending invitations and providing access”.⁷

UNHRC RESOLUTIONS REJECTED

Officially, the GoSL refused to accept both resolutions.⁸ But in the context of growing international concerns the GoSL established a National Plan of Action (NPoA) to implement 91 selected LLRC recommendations in July 2012. Further 53 recommendations were added to the NPoA in July 2013.⁹

In February 2012, the GoSL appointed a military court of inquiry to investigate charges against the military over civilian deaths during the last phase of the war. In its report, which was submitted in April 2013, it was stated that the Military tribunal cleared its soldiers of killing civilians and accused the LTTE for killing civilians with impunity.¹⁰ In January 2014, External Minister Professor G.L. Peiris in an interview with the British Guardian stated that the GoSL “has no case to answer over the reported deaths of civilians at the end of the country’s civil war”.¹¹

The GoSL invited Ms. Navaneetham Pillay, the UN High Commissioner for Human Rights, to visit Sri Lanka which then took place in the last week of August 2013. In her report to the 24th session of the Human Rights Council held in September 2013 she noted that “the war may have ended, but in the

meantime democracy has been undermined and the rule of law eroded. [...] Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction”. Further she called upon „the Government to use the time between now and March 2014 to show a credible national process with tangible results, including the successful prosecution of individual perpetrators, in the absence of which she believes the international community will have a duty to establish its own inquiry mechanisms”¹²



Northern Provincial Council headed by Chief Minister C.V. Vigneswaran passed a resolution calling for international investigation into the alleged war crimes Photo courtesy: South China Morning Post.

Interestingly, the position of the GoSL on the implementation of the LLRC recommendations has changed from time to time. According to Mass Media and Information Minister, Keheliya Rambukwella, over 50 percent of LLRC recommendations had been implemented by March 2013.¹³ Speaking to media, the then Sri Lanka’s Human Rights Envoy and Minister, Mahinda Samarasinghe, stated that 99 percent of LLRC recommendations had been implemented by March 2013.¹⁴

In December 2013, the European Union emphasised that the GoSL must intensify its efforts to,

6 United Nations General Assembly, A/HRC/19/L.2,

8 March 2011. Available at <http://blog.unwatch.org/wp-content/uploads/Promoting-Reconciliation-and-Accountability-in-Sri-Lanka1.pdf>

7 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/ResDecStat.aspx>

8 <http://www.srilankabrief.org/2013/04/govt-wont-comply-with-unhrc-resolution.html#more>

9 <http://www.llrcaction.gov.lk/>

10 http://www.army.lk/docimages/image/LLRC_2013.pdf

11 <http://www.dailynews.lk/local/we-have-no-case-answer>

12 <http://www.srilankabrief.org/2013/09/oral-report-to-unhrc-pillay-sets.html>

13 <http://www.srilankabrief.org/2013/03/llrc-recommendations-over-50-pc.html>

14 <http://www.srilankabrief.org/2013/03/lanka-says-99-per-cent-llrc.html>



among others, fully implement the recommendations concerning credible investigations, demilitarisation, and the establishment of land dispute resolution mechanisms.¹⁵

In the same month, the United States of America stated that it will table another resolution on accountability and reconciliation in Sri Lanka at the upcoming 25th session of the UNHRC in March 2014.¹⁶

The GoSL has done everything that was “humanly possible” to implement the National Plan of Action for the implementation of the LLRC, according to the opinion expressed by the Secretary to the President Lalith Weeratunga in January 2014.¹⁷ He further stated that an international inquiry into war crimes in Sri Lanka would bring “chaos”.¹⁸

Also important to note is that since the end of war in 2009, on every occasion when the accountability issues was raised internationally, the GoSL has requested more time for its national reconciliation process.

NORTHERN PROVINCIAL COUNCIL RESOLUTION

In January 2014, the Northern Provincial Council (NPC) of Sri Lanka passed a resolution calling for international investigation into the alleged war crimes committed during the country’s ethnic conflict.¹⁹

Speaking at the conclusion of her two day visit to Sri Lanka on 1 Feb 2014, US Assistant Secretary of State for South and Central Asian Affairs, Nisha Biswal, rejected the suggestion that repeated resolutions against Sri Lanka might be leading to increased polarisation among communities in the country. Explaining the US position she stated that “[w]hat we have called for in the prior two resolutions, for a Sri Lankan-led process, to address issues of justice, reconciliation and accountability and for Sri Lanka to implement the recommenda-

*tions of the LLRC. [...] But when that space is not used productively and aggressively to pursue peace and to pursue reconciliation, to pursue justice and accountability, then it draws the concern of the international community. That is where we find ourselves”.*²⁰

Sri Lanka rejected „patently unfair“ allegations by the United States that its rights record had deteriorated in the five years since the end of the separatist war. Speaking of Nisha Biswal Foreign Minister G.L. Peiris stated that „[h]er observations are indicative of a mindset that solely wants to believe the worst and enthusiastically leaps to conclusions based on tendentious claims.“²¹

In February 2014, the Australian Senate passed a resolution backing the “international community to establish an independent international accountability mechanism to evaluate reports of war crimes, crimes against humanity, and other human rights violations committed by both sides during and after the war in Sri Lanka”.²²

¹⁵ <http://www.srilankabrief.org/2013/12/eu-passes-resolution-on-lanka-and-calls.html>

¹⁶ http://www.colombopage.com/archive_14A/Jano8_1389201225CH.php

¹⁷ http://www.colombopage.com/archive_14A/Jan24_1390543333CH.php

¹⁸ http://www.srilankabrief.org/2013/10/sri-lanka-govt-not-answerable-for-civil_3658.html

¹⁹ <http://www.srilankabrief.org/2014/01/sri-lankas-northern-council-seeks.html>

²⁰ <http://www.srilankabrief.org/2014/02/biswal-hints-at-international-probe-on.html>

²¹ <http://www.ceylontoday.lk/16-54744-news-detail-sri-lanka-rejects-us-criticism-over-rights-democracy.html>

²² <http://www.dailymirror.lk/news/43080-australian-senate-backs-war-crimes-probe-in-sl.html>

2. ACCOUNTABILITY, LLRC AND THE CALLS FOR AN INTERNATIONAL INQUIRY

For the last five years, **accountability** has been one of the main contested issues related to the last phase of war in Sri Lanka. The demand for an independent and a credible investigation into the alleged crimes against humanity in this period is based on three undeniable reasons:

1. There are credible evidences that the GoSL and the LTTE had violated international humanitarian and human rights law.
2. Almost all the commissions previously appointed by the GoSL during the three decades of war to investigate into human rights violations have not produced any desirable results, their reports have not been made public and no action has been taken to follow up.
3. Post war reconciliation cannot be achieved without establishing truth, serving justice to the victims and accountability for the crimes committed.

The LLRC report did not deal comprehensively with or with any of the above mentioned accountability issues.

However, the LLRC did recommend independent investigations into some allegations of violations of international humanitarian and human rights

law, such as the disappearance of LTTE cadres and a Catholic Priest after surrendering to the Army, attacks on hospitals and alleged footage of war crimes included in the UK's Channel 4 films. The LLRC also commented and recommended to end impunity number of other human rights violations.

The GoSL has also not taken any meaningful steps even in relation to accountability issues commented by the LLRC.

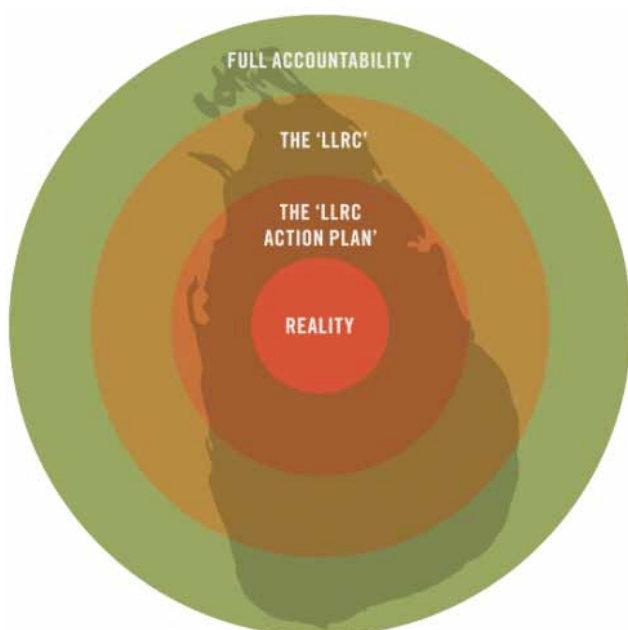
Two high ranking representatives of the GoSL, who have been defending the position of the GoSL at the UNHRC, have now come out openly emphasising the need for an independent and credible investigation.

FORMER AMBASSADORS

Dr. Dayan Jayatilaka, the GoSL Ambassador to the UNHRC during the last phase of war in 2008 – 2009 wrote in January 2014 that “*a credible local investigation by distinguished Sri Lankan personalities of high international repute*” is not on the government's agenda presented by the Secretary to the President Rajapaksa in January 2014, and that such a pledge is a must.²³

Prof. Rajiva Wijesinha, who was the head of the Peace Secretariat of the GoSL and a regular GoSL representative to the UNHRC until 2010, takes the argument further as he commented on the accountability issue in January 2014: “*But we need not only to act, but to show that we are acting, which means more transparency about the process. Only with that can we continue to assert that these things must be left to internal processes. And it will also help if we have credible figures at the fore. We have Justice Weeramantry, [...] who command credibility. We can also ask for observers from countries like India and Japan and South Africa. But we cannot continue to demand trust and patience when there are no signs of movement*”.²⁴

These words are coming from former GoSL representatives who argued just three years ago against human rights interventions by the UNHRC in Sri Lanka and now indirectly accept the fact that there has not been a credible and



Graphic courtesy: Sri Lanka Campaign

²³ <http://www.srilankabrief.org/2014/01/the-lalith-weeratunga-presentation-and.html>

²⁴ <http://www.srilankabrief.org/2014/01/sri-lanka-must-move-on-political.html>



independent investigation into the human rights violations. It is precisely because of this inaction from the part of the GOSL that since the end of the war the call for independent and credible international investigation has been on the rise among the Island's Tamil minority.

CATHOLIC BISHOPS

In this context, the Bishop of Mannar, Rayappu Joseph, calling for an international investigation to ascertain the truth about alleged human rights violations expressed that “[g]iven that most of the Tamils in the north and east of the country no longer have confidence in an internal process. This [an international investigation] will contribute to reconciliation”.²⁵

Since then, the Bishop Thomas Saundaranayagam of Jaffna has joined Bishop Rayappu Joseph in calling for an international investigation into the country's civil war. They made a request for such an investigation in January 2014 during a meeting with Stephen J. Rapp, an Ambassador-at-Large with the Office of Global Criminal Justice of the United States.²⁶

TAMIL NATION ALLIANCE

The Tamil National Alliance, which won an overwhelming mandate in the recently held Northern Provincial Council election and the major Tamil political party in the Sri Lankan Parliament, passed a resolution calling for an international investigation on 31 January 2014. This resolution stated that

*“[t]he total failure on the part of the Government to conduct an independent and impartial investigation acceptable by international standards on grave violations of international human rights and international humanitarian laws resulting in over 40’000 civilian deaths, so as to ascertain the truth and thereby facilitate genuine reconciliation. Such failure on the part of the Government renders an independent impartial, international investigation imperative”.*²⁷

Writing on the Welikada Prison Massacre report, which had concluded that prisoners had killed themselves by shooting at each other, a senior journalist and an editor, Ranga Jayasuriya, argued that “[the] Welikada Prison massacre inquiry report is no less than a whitewash. Here is one palpable case as to why internal investigations conducted by the incumbent government are not worth their salt”.²⁸

The Executive Director of the National Peace Council, Dr. Jehan Perera, agrees as well that the reason behind „the demand for an international investigation is the absence of any initiative on the part of the government to investigate the allegations of war crimes through a credible and independent domestic mechanism. In these circumstances, it is best for the government to be proactive about a credible and independent investigation“.²⁹

Farhan Haq, the Acting Deputy Spokesperson of UN Secretary-General Ban Ki-Moon stated in early February 2014 that “[w]e’ve made it clear that there needs to be more done to get at the heart of what happened in Sri Lanka. [...] a study of whether there’s any wrongdoing that’s occurred in the course of the final phases of the Sri Lankan conflict. The Secretary-General has said that repeatedly and we continue to hold by that”.³⁰

INTERNATIONAL COMMISSION OF JURISTS

In discussing the independence of judiciary and Rule of Law in Sri Lanka, the International Commission of Jurists made following observations: ‘The Sri Lankan justice system cannot ensure accountability for human rights violations and war crimes because the judiciary has been deprived of its independence and impartiality, and lawyers suffer intimidation, hindrance, harassment and improper interference. [...] There has been little if any progress at the national level in the proper investigation and resolution of human rights cases in a manner consistent with international law. [...] Victims of gross human rights violations and war crimes will be denied their rights under international law to remedy and reparations, including to

²⁵ http://www.srilankabrief.org/2014/01/sri-lanka-bishop-calls-for_8.html

²⁶ <http://www.srilankabrief.org/2014/01/catholic-bishops-tell-us-probe-sri.html>

²⁷ <http://www.srilankabrief.org/2014/01/sri-lanka-govt-asks-more-time-to-alter.html>

²⁸ <http://www.srilankabrief.org/2014/01/welika-da-prison-massacre-inquiry-report.html>

²⁹ <http://www.srilankabrief.org/2014/02/llrc-plus-is-only-viable-option-to.html>

³⁰ <http://www.srilankabrief.org/2014/02/sri-lanka-un-wants-accountability.html>

*truth and to justice, unless the international community ensures the creation of a credible, independent and impartial accountability mechanism for Sri Lanka.*³¹

The main parliamentary opposition agrees that the GoSL has not fulfilled its promises: *‘Over the past few years the government has failed miserably to fulfil the promises it made to the international community and that is why they are coming after the government. One has to understand that these are not resolutions against Sri Lanka. These are resolutions against the government on its unfulfilled promises.’*³²

Maduluwawe Sobitha Thero, a well-known Buddhist monk, who has been leading a campaign to abolish the executive presidency and one of the possible joint opposition candidate in the next presidential election recently told a Tamil newspaper that if there is a international investigation he will agree to it: *„Sri Lanka is a part of the international community, we have to abide by international norms, and if there is a call for an international investigation of events in the country I have no problem in agreeing. If we have nothing to hide then we can go before an international investigation and vindicate ourselves.’*³³

The policy of the Government of Sri Lanka has been **denial**. They have failed to take steps towards a genuine investigation on credible evidence of crimes against humanity during the last phase of war. The only remaining option for the victims to obtain truth and justice lies in an independent international investigation sanctioned by the United Nations.

³¹ <http://www.srilankabrief.org/2014/02/the-sri-lankan-justice-system-cannot.html#more>

³² <http://www.thesundayleader.lk/2014/01/12/lanka-in-for-serious-crisis-at-geneva-lakshman-kiriella-unp-mp/>

³³ http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=97526



A CASE STUDY

THE UNFINISHED STORY OF THE MATALE MASS GRAVE

On 24 November 2012, workers digging a trench in the compound of Matale hospital in central Sri Lanka made a gruesome discovery. Using a back-hoeing machine ahead of plans to build foundations for a new bio-gas unit behind a kitchen, workers began to unearth what appeared to be human remains.

Forensic excavation over the next three months confirmed at least 154 human skeletons, the largest mass grave discovered in Sri Lanka. Preliminary forensic reports submitted to Matale court painted a picture of torture and killings. Some bones showed evidence of nails hammered in before death and one leg bone was tied with a carefully knotted metal wire.

“There are several skulls that remain devoid of their skeletons”, a sign of decapitations, said one of the forensic reports. Evidence also pointed to the use of firearms and blunt instruments before death.



*One of the 154 skeletons unearthed
in the Matale mass grave.
Photo courtesy: AP*

Magistrate Chathurika de Silva told a court in Matale that tests carried out by archaeological and judicial medical officials showed the remains dated to between 1987 and 1990. During that period, thousands of men and women suspected of having ties to the rebels disappeared after being arrested by security forces.

In May 1989, Gotabhaya Rajapaksa, the current Secretary of Defence, was promoted and posted to Matale as the district coordinating officer “tasked with bringing the JVP under control”, notes C.A. Chandraprema in *Gota’s War: The Crushing of Tamil Tiger Terrorism in Sri Lanka*, published in May 2012.

There were more than 450 people recorded as missing in the Matale area during the period of the uprising, according to a later presidential inquiry. More than 20 people have submitted affidavits to the magistrate court, asking for a proper investigation and saying they suspect the skeletons belong to relatives who disappeared during those years.

Two retired judges and a former Parliament official were appointed to a Presidential Commission to investigate the mass grave in June 2013.

The Commission of Inquiry was to commence sittings within the first two weeks of July 2013 according to the Head of the Commission retired Supreme Court Judge Justice S.I. Imam. The commission had been asked to submit a report within six months.

Although eight months has passed not a single word has been heard of the commission’s progress or its final report.

This case study was compiled from news reports published in *The Diplomat* and *The Hindu*, available at <http://thediplomat.com/2013/07/in-sri-lanka-will-mass-grave-case-be-buried/> and <http://www.thehindu.com/news/international/three-members-appointed-to-probe-sri-lanka-mass-grave/article4837275.ece>

3. IMPLEMENTATION OF THE LLRC RECOMMENDATIONS

‘JUST STARTED ROLLING’ OR ‘ALMOST ALL IMPLEMENTED’!

Representatives of the GoSL have made contradictory statements over the implementation of the LLRC recommendations from time to time: They range from „just started rolling“ to „almost all implemented“!

Meanwhile the leader of the opposition, Mr. Ranil Wikremasinghe, said that *“the LLRC recommendations should be implemented to ensure democracy and preservation of human rights in the country”*. This statement also implies that in fact, the recommendations are not implemented. Speaking to media he said that the opposition will support *“any legislations needed to implement LLRC recommendations if the government made a positive move within two weeks”*.³⁴

But the GoSL so far has not brought forward any legislation necessitated by the LLRC recommendations.

*„With Sri Lanka fast approaching the 5th year anniversary of the defeat of the Liberation Tigers of the Tamil Eelam (LTTE) in May of this year [2014], the sources of the conflict are still being sustained and even reproduced. The situation in respect of human rights protection warrants urgent attention,*³⁵ stated the Centre for Policy Alternatives (CPA), a think tank based in Colombo commenting on the progress of the implementation of the LLRC recommendations in February 2014.

Despite the LLRC recommendation the overall human rights situation remained dire, according to CPA *‘dissent is met with hostility from the GoSL. Continued attacks on the media, threats against Human Rights Defenders (HRDs), incidents of arbitrary arrests and detention, reports of torture, gender based violence, institutionalized militarization, grave concerns regarding the independence of Judiciary and Police continue to seriously undermine the rule of law and by extension the reconciliation process. In addition, the past year has seen an increase in the number of incidents of attacks against places of religious worship- most of which have been conducted very publicly with near total impunity’*.³⁶

WHO AND WHAT IS RIGHT?

This section cites some contradictory statements by GoSL representatives concerning the LLRC. These statements show the irresponsible attitude of the authorities towards the LLRC recommendations and that even the representatives of the GoSL themselves do not have a clear idea of the implementation process.

“IT’S JUST STARTED ROLLING, NEED A YEAR OR SO...”

Presidential Secretary, February 2014

The President’s Secretary, Lalith Weeratunga, made this statement when asked about the progress of implementing the LLRC’s recommendations and added that *“maybe in a year or so we would see the bulk of the recommendations being implemented”*.³⁷ Furthermore, he stated at a briefing for Permanent Representatives in Geneva that *“everything humanly possible has been implemented”*.³⁸

„ALMOST ALL RECOMMENDATIONS IMPLEMENTED.“

National Human Rights Commission (NHRC), February 2014

National Human Rights Commissioner, Dr. Prathibha Mahanamahewa, referred here to the recommendations of the Lessons Learnt and Reconciliations (LLRC).³⁹

„85 PERCENT IMPLEMENTED.“

Foreign Minister, February 2014

Foreign Minister, G.L. Peiris, said *“[w]e have implemented 85 percent of the LLRC’s recommendations”*.⁴⁰

„99 PERCENT IMPLEMENTED.“

Sri Lanka’s Human Rights Envoy, March 2013

Sri Lanka’s Human Rights Envoy, Minister Samarasinghe, referred here to the recommendations of the Reconciliation Commission.⁴¹

³⁴<http://www.srilankabrief.org/2014/02/sri-lanka-implementing-llrc-proposals.html#more>

³⁵<http://www.srilankabrief.org/2014/02/progress-achieved-in-implementing.html>

³⁶ibid

³⁷<http://groundviews.org/2014/02/07/sri-lanka-reconciling-and-rebuilding-framing-the-lies/>

³⁸<http://www.lankamission.org/index.php/2013-08-29-07-25-36/mission-statements/788-secretary-weeratunga-briefs-geneva-diplomats-on-progress-in-national-reconciliation>

³⁹<http://www.srilankabrief.org/2014/02/hrc-debunks-us-envoys-allegations-as.html>

⁴⁰ <http://www.srilankabrief.org/2014/02/opposition-slams-sri-lanka-government.html>

⁴¹ <http://www.srilankabrief.org/2013/03/lanka-says-99-per-cent-llrc.html>

„OVER 50 PERCENT IMPLEMENTED.“

Media Minister, March 2013

Media Minister, Keheliya Rambukwella, mentioned that „[t]he government has completed implementing over 50 percent of the Lessons Learnt and Reconciliation Commission (LLRC) recommendation“.⁴²

A monitoring report by the independent research institute, Verité Research, showed that even the „soft“ LLRC recommendations related to „national languages, social integration and reconciliation“ have not been implemented. According to a summary report, publicly available in November 2013, „[t]he LLRC made nineteen recommendations on the subject of ‘national languages, social integration and reconciliation’. Six of these recommendations have seen ‘partial progress’, nine recommendations have seen ‘poor progress’ and the remaining four have seen ‘no progress’“.⁴³

HUMANLY IMPOSSIBLE?

„The Government of Sri Lanka has done all that was ,humanly possible‘ to implement the National Plan of Action for the implementation of the Lessons Learnt and Reconciliation Commission (LLRC).“

*Secretary to the President, Lalith Weeraratunga*⁴⁴

This section refers to specific LLRC recommendations⁴⁵ which either have not been implemented by the GoSL or incompletely so:

DEMOCRATIC GOVERNANCE

9.215 Independent Police Commission to monitor performance of Police Service and ensure that all Police officers act independently and maintain a high degree of professional conduct.

- Although the Police Commission has been appointed, the appointments have been made by the President, and thus, are not seen as independent.
- Police has continued to display a high degree of political bias and unprofessional conduct, e.g. by stopping families of disappeared persons coming to Colombo in March 2013⁴⁶ and

November 2013, by by-standing as Buddhist groups supported by the government attacked Christian & Muslim places of worship & establishments.

9.218 Establishment of an Independent Institution with a strong investigative arm, to address the grievances of all citizens, in particular the minorities, arising from the abuse of power of public officials and other individuals involved in the governance of the country.

- No such institution has been established and there is not even a process initiated to establish such an institution.

9.226 Establishment of Independent Public Service Commission so as to ensure that there is no political interference in the Public service, and to ensure that equality provisions in the Constitution are employed.

- Although the Public Service Commission has been appointed, the appointments have been made by the President, and thus, are not considered as independent.

9.228 Constitutional amendments to provide for provisions in the Constitution to allow for judicial review of proposed legislation.

- No such provisions have been proposed.
- Government has instead rushed through parliamentary processes as “urgent bills” matters that clearly did not appear to be urgent.



Three unarmed civilians were killed by military shooting randomly at a peaceful protest in Welipaya in August 2013. Photo: Vikalpa.

⁴²<http://www.srilankabrief.org/2013/03/llrc-recommendations-over-50-pc.html>

⁴³<http://cl.ly/360n2u133B3e>

⁴⁴ http://www.colombopage.com/archive_14A/Jan24_1390543333CH.php

⁴⁵http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

⁴⁶ <http://groundviews.org/2013/03/07/police-detains-families-of-disappeared-from-northern-sri-lanka-and-prevents-peaceful-protest-and-petition-to-the-un/>, <http://groundviews.org/2013/04/14/protecting-violent-protesters-and-dispersing-peaceful-protesters-new-role-for-police-and-some-buddhists-in-sri-lanka/>, <http://nceasl.org/category/religious-liberty/incident-reports/>, <http://blog.srilankacampaign.org/2012/05/attack-carried-out-on-muslim-mosque.html>

FREEDOM OF EXPRESSION

9.115 (a & b) Steps taken to prevent harassment and attacks on media personnel and institutions, and imposition of deterrent punishment on such offences.

- No steps have been taken: Journalists and media institutions have been threatened and attacked even after the LLRC report.⁴⁷
- No punishments have been given for perpetrators of any of the attacks on journalists and media institutions.

9.115 (c) Conclude investigations into past incidents of such illegal action against media personnel and institutions.

- No investigations have been concluded into any attacks on journalists and media institutions.

9.115 (d) Ensure freedom of movement of media personnel in the North and East in order to help the exchange of information so as to help the process of reconciliation.

- Journalist's freedom of movement continues to be restricted.⁴⁸

9.115 (e) Legislation to provide for right to information

- The government has said there is a proposed legislation but there has been no consultation with opposition parties, civil society, religious bodies and even professionals bodies such as of journalists or lawyers.
- No consideration has been given to a previous draft which had been prepared by the Editors Guild, the Free Media Movement and the Centre for Policy Alternatives, and which had been subjected to extensive discussion.

RECOMMENDATIONS OF FORMER COMMISSIONS OF INQUIRY

9.120 Implementation of recommendations of the Report of the Presidential Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights arising since August 2005. In particular, the investigation and prosecution of offenders involved in the incidents of the death of five students in Trincomalee in January 2006 and 17 aid workers of ACF in August 2006.

- None of the reports of the Commissions of

Inquiries before and after LLRC, e.g. The Udalagama Commission, Mahanama Tillekeratne Commission, Roshane Chanka Commission, have been published or shared with victims or their families.

- Hence, it is impossible to know whether recommendations are being implemented or not.

9.48 Immediate implementation of recommendations by past Commissions which consist of a special mechanism to address the issue of disappearances and deter future occurrences.

No such implementation has happened: The Commission of Inquiry appointed in August 2013 has not been mandated to implement or address these previous recommendations.

ARREST AND DETENTION

9.54 Law enforcement authorities to adhere to applicable legal provisions when taking persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention.

- This continues to be violated, especially in the North, for example through the arrest of youth in Jaffna in November 2013.⁴⁹

9.54 (a) An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.

- This has also been violated, especially in the North, again for example through the arrest of youth in Jaffna in November 2013⁵⁰

DE –MILITARISATION

9.134 Disengagement of security forces from civil administration related activities as soon as possible, and in the case of their participation in the land restitution process, for it to be confined to and used to expedite releasing maximum extents of such land, while taking into account security considerations.

- The Governors of Northern and Eastern provinces continue to be former military personnel.
- The military continues to interfere in civil activities, especially in the North, e.g. it obstructed a seminar organized by the Mannar Citizens Committee⁵¹ or obstructed religious events, demanded details of religious activities, forcibly attended meetings of civil society groups.

⁴⁷ See <http://en.rsf.org/sri-lanka.html>, <https://www.cpj.org/asia/sri-lanka/2013/>

⁴⁸ <http://groundviews.org/2012/10/31/restrictions-and-intimidation-on-journalists-covering-resettlement-process-in-the-vanni/>, <http://www.ceylontoday.lk/59-13681-news-detail-relocated-to-nowhere.html>

⁴⁹ <http://www.srilankaguardian.org/2013/12/calling-for-their-immediate-release.html>

⁵⁰ <http://www.srilankaguardian.org/2013/12/calling-for-their-immediate-release.html>

⁵¹ <http://www.srilankabrief.org/2013/06/military-ordered-government-officials.html>



Tamil people in Valikamam (Jaffna) protesting against the military taking over more than 6,000 acres of their land on 29 April 2013. Photo: Vikalpa.

9.208 Investigation into allegations against the EPDP. Absence of an investigation would create a sense of impunity.

- No such investigations have taken place.

DISAPPEARANCES

9.59 Domestic legislation to be framed to specifically criminalise enforced or involuntary disappearances.

- The government has claimed that the Ministry of Justice has formulated a draft amendment to the Penal Code to criminalize enforced disappearances and has commenced processing of it in accordance with the established procedure. But no copy of the draft has been made available to families of disappeared persons, civil society, professional bodies such as lawyers, or opposition parties and there have been no consultations on the contents of the draft.

APOLOGY TO CITIZENS

9.248 Joint declaration by all leaders (of all sides) to apologise to innocent citizens who fell victim to conflict due to collective failure of political leadership.

- No such apology has been made and no announcement has been made by the government or major opposition parties, except the Tamil National Alliance.

REMEMBRANCE

9.285 Separate event to be set apart on the National Day to 'express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such bloodletting in the country again'.

- Remembrance events have been obstructed, and organizers threatened⁵²

NATIONAL ANTHEM

9.277 Maintenance and support of the practice of the National Anthem being sung simultaneously in two languages to the same tune.

- Government has obstructed the singing of the historical practice of singing the national anthem in Tamil.

RELIGIOUS FREEDOM

9.267 Prevent incidents where places of worship are vandalised by unknown mobs.

- Police had watched by as Buddhist extremist groups and mobs have vandalized more than 300 places of worship of Christians and Muslims.
- Police had also shut down some places of worship.
- The government has not even acknowledged the trend of such incidents and dismissed them as "isolated incidents".

POWER SHARING

9.184 & 9.185 The root cause of the ethnic conflict in Sri Lanka lies in the failure of successive Governments to address the genuine grievances of the Tamil people and a political solution is imperative to address the causes of the conflict.

- The LLRC's acknowledgement about the root cause of the conflict has not been acknowledged clearly and consistently by the government, which has often termed it a "terrorist problem".
- The dialogue between the government and TNA has stalled and the government has not responded to the request of TNA to put up constructive suggestions.
- A positive development was the holding of the Northern Provincial Council elections in September 2013 but the election was marred by misuse of state resources by the ruling government, attacks on opposition candidates and media. After the election, which saw a heavy defeat for the government and more than 78% voting for the Tamil National Alliance, the elected Chief Minister and members of the Council have complained of various obstructions to carry out their mandate. The government refuses to acknowledge Police and Land powers of the Provincial Council, despite the Constitution guaranteeing the same.

⁵² <http://groundviews.org/2012/05/19/three-years-after-the-war-in-sri-lanka-to-celebrate-or-mourn/>

A CASE STUDY

ABUCTION AND KILLING OF PATNI RAZEEL

What: Abduction and Killing of Human Rights Defender Patni Razeek
Who: Supporters of governing politicians
Where: Polonnaruwa, North Central Province
When: 11 February 2010



*After remains were found Patni Razeek's funeral was held.
Photo: Unknown source from the internet.*

LLRC Observation on this case:

5.32 The Commission is equally concerned that undue political interference has also contributed to the lapses on the part of the Police.

Patni Razeek disappeared on 11 February 2010 in Polonnaruwa while engaging in an official duty of the Community Trust Fund. Mr. Razeek was last seen getting into a van with some persons.

It was quickly established that Pattani, a rights activist and civil organizer, was abducted and later murdered. The police in Kavaththamunai, Oddamavadi, Valaichenai in an Eastern Province area, discovered his body and exhumed it on 29 July 2011, after a lapse of one and a half years after the abduction.

For many years now the Sri Lanka Government has been urged by UN agencies and International Human Rights Organizations as well as several governments to take effective steps to stop abductions and forced disappearances in the country, however, much has yet to be done by the government in this regard.

The investigation has made little progress since July 2011.

Excerpts from a longer essay by Kingsley Karunaratne

4. THE FOCUS: RULE OF LAW

The main concerns of the LLRC report were around democratic governance and rule of law. Its recommendations were hailed as a harbinger of a new era of rule of law in the country by many.

The LLRC report said in recommendations 8.196 – 8.198: *“Over a period of time there has been a weakening of public institutions vital to the functioning of democracy thereby eroding the sovereignty of the people. The political culture of the country has made the general public powerless and helpless to a point that they have become dependent on politicians to obtain any services and amenities they are entitled to. The politicians and the political elite exercise the power of the State to the detriment of others. This has led to a high degree of corruption undermining the rights of the citizens.”*

Over the years the situation has not improved.

SRI LANKA IN WORLD INDEXES

In 2013, Sri Lanka was ranked 28th in the Failed State Index, out of 178 countries. The worst indicator of Sri Lanka was human rights. The index

researched and produced by the Reporters without Borders (RSF).⁵⁵

Kishaly Pinto Jayawardane is one of the Sri Lankan legal academics who regularly addresses the implementation of the LLRC recommendations. In November 2013, she wrote: *“The deterioration of the Rule of Law was a core focus of the LLRC report. We have not seen the government’s adherence to that LLRC focus so far. On the contrary, the ‘soft’ recommendations of the LLRC have been reluctantly implemented while its ‘hardcore’ recommendations that go to the dismantling of this Presidency’s authoritarian and militaristic power structure remains glossed over.”*⁵⁶

FRIDAY FORUM AGREES WITH PILLAY

Confirming the increasing authoritarian trend in the country, the Friday Forum summarised in its most recent statement the following: *“The issues raised above indicate the debilitating impact of an authoritarian Executive Presidency, acting as if the Constitution and the laws of the land are irrelevant in governance.”*⁵⁷



RSF World Press Freedom Index: Sri Lanka grouped with worst press freedom offenders. Map: RSF

The crux of the matter here is strengthening the independent institutions. On the contrary, in September 2010, the GoSL delivered a death blow to independent institutions by replacing the 17th Amendment, which envisaged checks and balances to the powerful Executive Presidency by introducing independent commissions, with the 18th Amendment. Under the 18th Amendment to the constitution of

Sri Lanka the President has the power to appoint the below mentioned commissions.⁵⁸

reported *“a significant worsening of the Human Rights indicator over last five years”*.⁵³

Sri Lanka was ranked 89 and is termed a hybrid state in the World Democracy Index 2012. A hybrid state has attributes of a heavy concentration of powers at the hands of the ruler and the absence of independent institutes.⁵⁴

Sri Lanka was placed at 165th place out of 180 countries in the World Press Freedom Index 2013

⁵³ <http://ffp.statesindex.org/srilanka>

⁵⁴ https://portoncv.gov.cv/dhub/porton_por_global.open_file?p_doc_id=1034

⁵⁵ <http://rsf.org/index2014/en-index2014.php>

⁵⁶ <http://www.srilankabrief.org/2013/11/sri-lanka-putting-lankan-state-on.html>

⁵⁷ <http://www.srilankabrief.org/2014/01/in-sri-lanka-authoritarian-executive.html>

⁵⁸ <http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act%28E%29.pdf>

The Chairman and members of the

1. Election Commission
2. Public Service Commission
3. National Police Commission
4. Human Rights Commission
5. Permanent Commission to Investigate Allegations of Bribery and Corruption
6. Finance Commission
7. Delimitation Commission
8. Chief Justice and Judges of the Supreme Court
9. The President and Judges of the Court of Appeal
10. Members of the Judicial Service Commission
11. Attorney General
12. Auditor General
13. Ombudsman
14. Secretary General of Parliament

President Rajapaksha stated that an Election Commission is not necessary even though the constitutional provisions provide otherwise.⁵⁹ This statement is a clear expression of the Presidential powers over the appointment of the so-called independent commissions.

The unlawful and politically motivated impeachment of the Chief Justice Shirani Bandaranayaka, which was met with universal condemnation, shows the complete GoSL's disregard of the independence of judiciary.⁶⁰

Former Attorney and legal adviser to the cabinet Mohan Peiris, who has defended the GoSL at the UNHRC for years, was appointed by the President as new Chief Justice. In apparent admission of his unlawful appointment the new Chief Justice went on record recently stating that the rule of law is not practiced anywhere.⁶¹

NEW CJ PEIRIS NON-QUALIFIED

ICJ cited two appointments, including that of Mohan Peiris, to the judiciary as examples of growing politicisation in the country:

'In January 2013, immediately following the impeachment of Chief Justice Bandaranayake, the President appointed his own former legal advisor and Attorney-General Mohan Peiris as the new



President Rajapaksha: All powers in one hand.
Photo courtesy: Bloomberg.

Chief Justice. Mohan Peiris had never served as a judge. During his 33-month tenure as Attorney-General, he did not prosecute a single case of crimes committed against journalists, human rights defenders or lawyers. In November 2011, he apparently misled the UN Committee against Torture on the fate of missing journalist Prageeth Eknaligoda implying, without foundation that Mr Eknaligoda was living in a foreign country. [...]

*In January 2014, President Mahinda Rajapaksa appointed the eighth most junior person of the Attorney General's office, Buveneka Aluvihare, to the Supreme Court. Buveneka Aluvihare was one of two individuals who successfully prosecuted and obtained a conviction against General Sarath Fonseka, President Mahinda Rajapaksa's main political rival in the 2010 election.*⁶²

AN ADVISER TO PRESIDENT!

Another recent example of institutional breakdown was the appointment of former Law College Principal as the Legal Director of the Presidential Secretariat by President Mahinda Rajapaksa. He was sacked after the President's son, a student of the Law College, received highest marks in the final law examinations. Newspapers reported that the Principal was sacked because of examination irregularities. During his term as Law College Principal, the Sri Lanka President's own son was given preferential treatment when he sat for the final law examinations: „And regardless, if allegations are made, they must be fairly inquired, made open to the public and concluded with propriety. Yet, this is not the case. Instead we have interesting games of tit for tat; an individual is sacked for alleged ir-

⁵⁹ <http://www.srilankabrief.org/2013/04/no-use-for-election-commission-president.html>

⁶⁰ For details description of impeachment of the Chief Justice, see <http://www.srilankabrief.org/2013/12/sri-lanka-unfair-impeachment-of-chief.html>

⁶¹ <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-027-2014>

⁶² <http://www.srilankabrief.org/2014/02/the-sri-lankan-justice-system-cannot.html>



regularities and is then employed elsewhere with a blinking of an eye. This indeed is a good case of the institutional breakdown that this country faces where the law as a norm, is openly and defiantly flouted” wrote Kishali Pinto Jayawardena.⁶³

One of the LLRC recommendations in the sphere of rule of law was to de-link the Police Department from the Ministry of Defence. Instead the GoSL created a new Ministry called Law and Order under the President to supervise the Police Department. Major General (Rtd) Nanda Mallawarachchi was appointed as the Secretary to the new Ministry.⁶⁴ This move has been seen as a further militarisation of the police in contrary to the LLRC recommendations.

The GoSL has failed to transform the National Human Rights Commission of Sri Lanka (NHRC) into an independent institution, as recommended by the LLRC. This is a telling example of the politicisation of the country’s independent institutions. The NHRC-SL was downgraded to B status in 2008 by the International Coordinating Committee of National Human Rights Institutions due to its non-compliance to the Paris Principles⁶⁵, adopted by the UNHRC. Sri Lanka remains to date in this category.

TWO FACES OF THE SRI LANKA POLICE



Faced with the Buddhist extremist crowd, the Senior Superintendent of Police, Premalal Ranagala, is smiling and listing as a disciple. Colombo, 26 August 2013.

Photo: Vikalpa



Faced with a crowd of peaceful women protesters, the Senior Superintendent of Police, Premalal Ranagala, is threatening: „I tell you, STOP this.“ Colombo, 2 January 2014.

Photo: Vikalpa

⁶³ <http://www.sundaytimes.lk/140202/columns/the-great-tragedy-of-our-non-law-81880.html>

⁶⁴ http://www.defence.lk/new.asp?fname=Ministry_of_Law_and_Order_established_20130824_05

⁶⁵ The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights.

5. POLITICAL BIAS AND INACTION: THE NATIONAL HUMAN RIGHTS COMMISSION OF SRI LANKA (NHRC)

This section examines the political bias and inaction of the NHRC of Sri Lanka.

COMMISSIONERS AND SENIOR STAFF: CONFLICT OF INTEREST⁶⁶

In February 2012, one of the Commissioners, Dr Ananda Mendis, who had reached out to several HRDs, including the author of this note, resigned after just one year in office. He complained of “inefficiency” in the workings of the Commission, of sub-standard crime scene investigations, and of “interference” by a senior executive officer.⁶⁷

Dr Mendis was replaced by Dr Prathiba Mahanamahewa, Dean of the Faculty of Law at a military academy, namely the Kotelawala Defence University. This appointment constitutes a conflict of interest because Dr Mahanamahewa has turned out to be a defender of the government’s rights records and supporter of the government’s campaign against UN scrutiny on the rights record.

The Additional Secretary of the NHRC also serves as a senior government official, the Chairman of the Land Reform Commission (LRC). The LRC has been used by the GoSL to reward its supporters gain votes in elections.⁶⁸

„UNHRC GOING AGAINST THE UN MANDATE“ – NHRC, SRI LANKA

Immediately after the appointment of the Commissioners in February 2011, the Chairman of the NHRC went on record defending the human rights record of the government and criticizing international calls for accountability for allegations of war crimes and human rights violations.⁶⁹ In 2012-2013, Dr Mahanamahewa has taken on a similar role, particularly supporting the government in its efforts to campaign against the resolution on Sri Lanka passed at the UN Human

Rights Council. Dr Mahanamahewa has publicly condemned both UNHRC Resolutions and called for a counter resolution by Sri Lanka, accused the UNHRC of going against its basic principles and acting contrary to the UN mandate. He observed that the second resolution was dangerous because it urges Sri Lanka to allow an opportunity for UN Rapporteurs to make observations regarding violations.⁷⁰

„IMPEACHMENT AGAINST THE CHIEF JUSTICE IS RIGHT“ – NHRC, SRI LANKA

Dr Mahanamahewa also defended the impeachment process against the former Chief Justice, Dr Shirani Bandaranayake, and called it „constitutional“⁷¹, even when the highest courts in Sri Lanka, the Supreme Court and the Court of Appeal, determined the process to be unconstitutional. The Bar Association of Sri Lanka (BASL), as well as lawyers and judges associations around the world and the UN Special Rapporteur on the independence of judges and lawyers had also condemned the unconstitutional impeachment process.

RECOMMENDATIONS AND REPORTS NOT SUBMITTED

The NHRC has ignored ongoing local and international campaigns asking the government to ratify human rights treaties, such as the Optional Protocol to the Convention against Torture and to the Convention against Disappearances, despite its mandate according to Article 10 (e) of the NHRC Act to “*make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights*”.

In addition, the NHRC has not taken the initiative to submit to Parliament reports on issues related to, among others, media freedom, torture, disappearances, extrajudicial executions, based on its power specified in Article 30 of the NHRC Act to “*whenever it considers it necessary to do so, submit periodic or special reports to Parliament in respect of any particular matter or matters referred to it, and the action taken in respect thereof*”.

⁶⁶ See the section “Membership & Selection” of the Sri Lanka chapter, in: ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570> and the section “Membership & selection process” of the Sri Lanka chapter, in: ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>

⁶⁷ See the section “Membership & Selection” of the Sri Lanka chapter, in: ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570>, and in particular, footnote 34.

⁶⁸ See <http://www.dailynews.lk/2010/11/18/news43.asp>.

⁶⁹ See the section “Relationship with State” of the Sri Lanka chapter, in: ANNI report of 2012, available at <http://www.forum-asia.org/?p=15570> and the section “HRCSL joint project with the UNDP” of the Sri Lanka chapter, in: ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>

⁷⁰ See the section “HRCSL joint project with the UNDP” of the Sri Lanka chapter, in: ANNI report of 2013, available at <http://www.forum-asia.org/?p=16441>, and footnotes 80-86

⁷¹ See <http://archives.dailynews.lk/2012/11/21/news01.asp>



CASE STUDIES OF NHRC'S INACTION - LACK OF ACTION - DELAYED ACTION IN PROTECTING HRDS

- When families of disappeared persons from the North were stopped from coming to Colombo to submit a petition to the UN, they made a complaint to the head office of the NHRC in March 2013. The NHRC Vavuniya branch summoned the complainants and respondents twice in 2013, but the police did not turn up and there has been no further action or information provided to the complainants.
- When families of disappeared persons were again stopped from going to Colombo for a human rights event in November 2013, they had complained to the Vavuniya branch of the NHRC again. No action has been taken to date.
- The Centre for Policy Alternatives (CPA) and its Executive Director filed a complaint (Complaint No. HRC/3083/13) before the NHRC on 12 August 2013 against the government-owned Independent Television Network of Sri Lanka (ITN) and its Chairmen. The complaint was on the basis that a news item appearing on the 7 p.m. Sinhala language news broadcast of ITN on Sunday, 14 July 2013 violated several fundamental rights of both CPA and its Executive Director. There was no response to this complaint.
- Woman Human Rights Defender, Dr Nimalka Fernando, filed a complaint with the NHRC on 6 November 2013 (Complaint No. HRC/4203/2013) about violating her rights as a HRD by the government-owned Sri Lanka Broadcasting Corporation (SLBC). The NHRC has sent a letter to the SLBC requesting them to produce the tape and other relevant information before 25 November 2013, but to the best of the complainant's knowledge, this has not been complied with and the NHRC has not done any follow up. In addition, the NHRC has not informed her of updates to date despite the complainant asking for updates in a letter dated 18 December 2013. The NHRC also appeared unable or unwilling to stop the continuing attacks on her and other HRDs by the SLBC, even after the complaint.
- Another Human Rights Defender, Mr Ruki Fernando, filed a complaint about the disruption of a peaceful vigil by the police in April 2013 (Complaint No. 1548/13). This complaint was supported by video footage, photos and eyewitness testimonies but has also not been resolved yet.

6. ATTACKS ON MINORITY RELIGIOUS RIGHTS

Over the recent years, attacks on minority religious rights by Buddhist extremist groups have been on the rise with almost complete impunity. Buddhists, the religious majority forms 70.19% of the country's total population of 21.5 million. Hindus (12.61%), Muslims (9.71%) and Christians (7.45%) are the main religious minorities in Sri Lanka.⁷²

The Secretariat for Muslims (SFM) has documented 284 incidents of harassment, intimidation and violence perpetrated against the Muslim community during the year 2013.

The National Christian Evangelical Alliance of Sri Lanka (NCEASL) has documented 103 incidents of violence against the Christians for the same period. The report says that approximately 40% of incidents were never reported.

Dozens of Hindu religious sites have been defaced, vandalized and destroyed during the same period.



A common sight: Child monks participate in Buddhist extremist agitations.
Photo: Unknown source from internet.

These Buddhist extremist groups openly advocate the use of force against the religious minorities and refer to their members as an unofficial police: *“From today onwards, each of you must become an unofficial civilian police force against Muslim extremism”*, Gnanasara Thero charged at the crowds, who cheered in response according to reports of the DailyFT.⁷³

Hate speech against religious minorities is an integral task of these Buddhist extremist groups and the GoSL has not enacted legislation against hate speech as recommended by the LLRC.

On 3 December 2013, Buddhist monk Anuradhapura Amitha Dhamma Thero claimed that he had destroyed the mosques in Anuradhapura and vowed that he would destroy the ones in Kegalle in the same way. At the Bodu Bala Sena meeting in Anuradhapura on 5 October 2013, its leader Gnanasara Thero stated that *“when different missionaries visit your homes, there is no use of informing the police”*, implying that there are no laws to deal with the problems created by minority religious groups in the country. The monk further explained that *“we have to make our own laws,”* and that *“we should use the broom”*. On 5 September 2013, the same monk issued a warning that *“the public will take the law into their own hands”* if *halal* is not done away with.⁷⁴

According to the SFM, the frequency of press statements, press conferences and press releases by the extremist groups speaks of the manner in which concerted efforts are being made to maintain the pressure, the fear and intimidation on the minority groups, and to keep the issues alive with a Sinhala Buddhist majority.

In January 2014, over 100 concerned Sri Lankan citizens issued a statement condemning these attacks. The statement said: *“We, the undersigned, strongly condemn the continuing attacks on places of worship by Buddhist extremist mobs, the inaction of the Police in the face of these violent attacks and their failure to take the assailants into custody [...]”* and urged *“law enforcement authorities to ensure strict adherence to the rule of law and prosecute those who are responsible for these heinous crimes, in the existence of abundant evidence available with the public and media organisations.”*⁷⁵

The Friday Forum, writing in the name of dozens of eminent citizens of Sri Lanka, expressed their concern on the growing environment of religious intolerance, the alarming disregard of religious and cultural diversity, and the erosion of values concerning the respect for diversity in Sri Lanka. The Forum also noted that these negative trends

⁷² <http://www.statistics.gov.lk/PopHouSat/CPH2011/index.php?fileName=pop43&gp=Activities&tpl=3>

⁷³ <http://www.ft.lk/2013/02/18/this-is-a-sinhala-country-sinhala-government-bodu-bala-sena/>

⁷⁴ <http://www.srilankabrief.org/2014/02/attacks-against-muslim-community-in-sri.html#more>

⁷⁵ <http://www.sacw.net/article7376.html>



have not received an effective response from the government and the silence on the part of the government, even after the violent attacks, is shocking. It also pointed a finger towards the President being responsible for this:

“The recent interview on Al Jazeera where the President stated that violent incidents of religious intolerance occurred because of the rape of a girl child, and also that such violence was an inevitable consequence of such acts, is particularly shocking. This, apart from being inaccurate, is a Presidential justification of persons illegally taking the law into their own hands, and an admission that the government has abdicated its role in maintaining law and order and protecting its citizens. That leading

*members of the government support some extremist groups undermines the commitments of the government to ensure the safety and security of all communities”.*⁷⁶

Emphasizing that “what we are witnessing is nothing less than the emergence of an ethno-religious fascist movement from the dark underside of Sinhala society”, former Sri Lankan diplomat, Dr Dayan Jayatilka, also points a finger towards the government. “Benign tolerance, if not early patronage, on the part of the regime: A precursor of this phenomenon was the anti-Muslim propaganda conducted by a party which is a constituent of the government and which concurs with the current calls of the new militant movement”.⁷⁷



Having declared open the Buddhist Leadership Academy of the anti-minority and violent Bodhu Bala Sena (Buddhist Brigade) on 9 March 2013, the Defence Secretary, Gotabaya Rajapaksha, is walking with its leader, Galabodaatthe Gnanasara. Photo courtesy: Ministry of Defence.

⁷⁶<http://www.srilankabrief.org/2014/01/in-sri-lanka-authoritarian-executive.html>

⁷⁷<http://www.srilankabrief.org/2013/09/govt-denials-will-not-make-problems.html>

A CASE STUDY

ATTACK ON CHRISTIAN PRAYER GATHERING

What: Attack on Christian prayer gathering

Who: Mob led by Buddhist monks

Where: Jeevana Diya Church, Kadjugahadeniya, Meegoda, Colombo District

When: 8 September 2013

At about 11 a.m., while a group of 30 to 40 Christians were gathered together for prayer, a mob of about 30 villagers led by three Buddhist monks forcibly entered the premises. They destroyed all the musical instruments in the premises and caused damage to furniture and glass windows. The pastor who was leading the prayer was assaulted by one Buddhist monk who hit him over the head with a guitar until the guitar broke and the pastor fell unconscious on the floor. The pastor's mother who attempted to intervene and begged the monk to stop assaulting her son was scolded in derogatory language and was beaten by some members of the mob. Both the pastor and his mother, who is also a heart patient, were admitted to the local hospital following the attack.

The other Christians were verbally abused by the attackers who told them that this is a Buddhist village and demanded that the prayer meetings were stopped immediately. Police officers arrived on the scene after the mob left the premises. No arrests have been made so far.

Excerpt from the NCEASL report on attacks against Christians in Sri Lanka, 2013

A CASE STUDY

ATTACK ON MOSQUE

What: Mosque attack with a pig's head

Who: A mob of masked individuals

Where: Mahiyangana, Badulla District

When: 11 July 2013

A mob of masked individuals stoned the Mahiyangana Mosque, assaulted the mosque trustee, broke into the mosque and threw a pig's head, its flesh and blood into its precincts. To further reinforce the mood of terror, they switched off the electricity during the attack. The incident took place at 11.30 p.m. as the Muslims of Mahiyangana offered special Ramadan Tharaweeh night prayers. Many of the windows were broken. The onslaught lasted up to 20 minutes before the power was restored and the aggressors were made to leave. No one has been arrested. Prior to the attack, the mosque trustee had been attacked with chilli powder and threatened against continuing Friday prayers in the mosque and warned that the worst was yet to come. Disregarding the threats, the mosque conducted the Friday prayers.

Excerpt from the Secretariat for Muslims (SFM) report January – August 2013



Another political analyst, Executive Director of the National Peace Council, Dr Jehan Perera, followed a similar line: “Mosques and churches have been attacked, the perpetrators have been filmed, the evidence given to the police, but no action has been taken to arrest the perpetrators. There is a strong ethnic majority nationalist campaign that has both tacit and explicit government backing.”⁷⁸

Unfortunately, the reaction of the GoSL to these extremist forces and anti-religious actions has been one of indirect justification as shown by the Friday Forum. Speaking to a weekly newspaper, Foreign Minister, Prof G.L. Peiris, made this more than clear:

*“In many cases, those are not churches, temples or mosques; those are rooms in private houses which are being used as prayer rooms. Then let’s say on a public holiday, there is a greater deal of noise and there is reaction from the neighbourhood. That has nothing to do with religious intolerance and even less so to do with the government support. It is a local neighbourhood reacting to what it considers as a disturbance.”*⁷⁹

An official communiqué by the Ministry of External Affairs reaffirmed the same position saying that attacks on minority religions are just isolated incidents. *“It is well-known that many of the facili-*

*ties for religious worship which have been targeted are those operating in violation of the guidelines governing the establishment of these places.”*⁸⁰

The powerful Defence Secretary, Gotabhaya Rajapaksa, goes further: Instead empowering the police to arrest and bring to justice the roaming Buddhist extremist mobs, he portrayed Muslim extremism as imminent threat that Sri Lanka currently faces: *“It is a known fact that Muslim Fundamentalism is spreading all over the world and in this region. [...] The possibility that such extremist elements may try to promote Muslim extremism in Sri Lanka is a cause for concern.”* He went on to justify the emergence of the Sinhala Buddhist extremism: *“One of the consequences of the increasing insularity amongst minority ethnic groups is the emergence of hard line groups within the majority community.”*⁸¹

This shows that in Sri Lanka today, the LLRC recommendations for ethnic harmony have been completely turned upside down. Justifying the emergence of anti-minority extremism and turning a blind eye to hate speech and violence propagated by extremist Buddhist groups, the GoSL has clearly abandoned its duty to protect the universally recognised rights of the religious minorities in Sri Lanka.

⁷⁸ http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=87692

⁷⁹ <http://www.srilankabrief.org/2014/02/religious-freedom-in-sri-lanka-see-no.html>

⁸⁰ http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=97138

⁸¹ <http://www.sundaytimes.lk/130908/news/muslim-fundamentalism-gotabaya-and-hakeem-61321.html>

7. DISAPPEARANCES, THE LLRC AND THE PRESIDENTIAL COMMISSION ON MISSING PERSONS



Tears from a mother for her missing son. Photo: Vikalpa.

Sri Lanka has witnessed tens of thousands of involuntary and forced disappearances of suspected rebels and civilians during the last five decades. This is an area Sri Lanka needs short-term as well as long-term remedies, including law reform. The LLRC made a number of observations and recommendation in this regard, among others:

LLRC Recommendation 9.46
Direct law enforcement to take immediate steps to ensure that allegations of abductions, involuntary disappearances and arbitrary detention are investigated; prosecute wrongdoers there-upon.

Number of cases of disappearances reported to the LLRC	3.596
Number of cases security forces and police allegedly involved	1.018 ⁸²
Number of cases allegedly took place after surrendered to the security forces	45 ⁸³
Number of cases already investigated by the Terrorist Investigation Division of the Police according to the LLRC Action plan (TID)	2.547 ⁸⁴
Number of People traced by the TID by January 2014	14 ⁸⁵

The TID is one of the police investigation arms, which has a reputation to be inhuman in its methods. Entrusting the TID to investigate allegations against the police and security forces is neither credible nor independent. The large number

of cases reported to the Presidential Commission on missing persons, which was instituted in August 2013, is an indication of the week implementation of LLRC recommendation 9.46.

82 Annex 5.1 of the Annexes to the Report of the LLRC

83Annex 4.15 of the Annexes to the Report of the LLRC

84 Government of Sri Lanka, National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Thematic Area: Human Rights, January 2014, in: Monitoring Report: Human Rights, page 1.

85Monitoring Report: Human Rights, page 1.



PRESIDENTIAL COMMISSION ON MISSIONS PERSONS: THE REALITY

The Presidential Commission on Missions Persons⁸⁶ has received 13,700 complaints by January 2014. The Commission had its first sittings in Kilinochchi on 18 – 21 January 2014. After observing the procedures, the Collective of the Families of the Disappeared Persons has now made follow-up points.⁸⁷

1. Military personnel alleging to represent the Commission have gathered data from family members of disappeared, registered them, and requested them to sign English forms, which they did despite not understanding the content of the document. The Commission should ensure that military personnel are not involved at all in the process, whereas civilian officials, such as the Grama Sevaka, should be employed in this role and trained on how to provide families with the necessary information.
2. The representatives of the Legal Aid Commission (LAC) were not granted access to the Commission's hearings, despite being officially invited by the Commission itself. Officials who identified themselves as representatives of the Ministry of Defense prevented the LAC from observing the process from 19 January 2014 onwards. The Commissioners should uphold the independence of the process and be the sole authority in relation to the decision making process.
3. The Commission did not clarify and communicated the criteria adopted to select cases to be taken up before the Commission and its priority order. It should be made clear on which basis the cases have been chosen and prioritized, as well as a timeline for the hearing of all cases should be established and made public.
4. State counsels from the Attorney General's Department assisted the Commissioners in compiling data provided by family members. If the Commission decides to take any legal action through Habeas Corpus, the AG's department appears against the petitioner, i.e. family member, on behalf of the Government. The Commission should in future employ only

officials that can adhere to their duty in an impartial manner safeguarding norms of due process.

5. At the hearings, the Commission did not dispose of an adequate number of Tamil speaking officials, and therefore had to appeal to impromptu interpreters which affected the information gathering process. In particular, the following was noticed in regards to the interpreters: their number was inadequate; they were providing only summary interpretations, both incomplete and inaccurate; they pre-empted answers to questions; they even argued with complainants and were often hostile with testifying family members. Furthermore, the testimonies have been systematically transcribed in English preventing the families from checking the recorded information.

PARALLEL PROCESS: DECEIVING THE FAMILIES

On 13 and 17 January 2014, family members of disappeared persons from Kilinochchi district were visited in their homes by officials alleging to represent the Commission. These officers requested and recorded the personal information of their disappearances' cases. Later on, those families were summoned on 20 January 2014 to the Harmony Centre in Kilinochchi Town, where they were escorted in military busses by police officers. At the Harmony Centre, they met representatives of the Ministry of Economic Development; Ministry of Child Development and Women's Affairs, the Ministry of Social Services, the Rehabilitation of Persons, Properties and Industries Authority, the Samurdhi Authority, the Department of Labor, and the Department for Registration of Persons. The family members were informed that they would be offered compensation for their missing or disappeared relatives. They were requested to fill in another form provided by the Rehabilitation of Persons, Properties and Industries Authority in order to obtain amounts ranging from SLR 100,000 to 300,000 based on each individual case. According to information available to the Collective of the Families of the Disappeared Persons, only nine families accepted to sign the form and got the compensation along with a death certificate. On the very same day, these family members were transferred to Iranamadu, Kilinochchi district, to attend a ceremony officiated by the Member of Parliament for the Hambanthota District, Hon. Namal Rajapakse, and the Sri Lan-

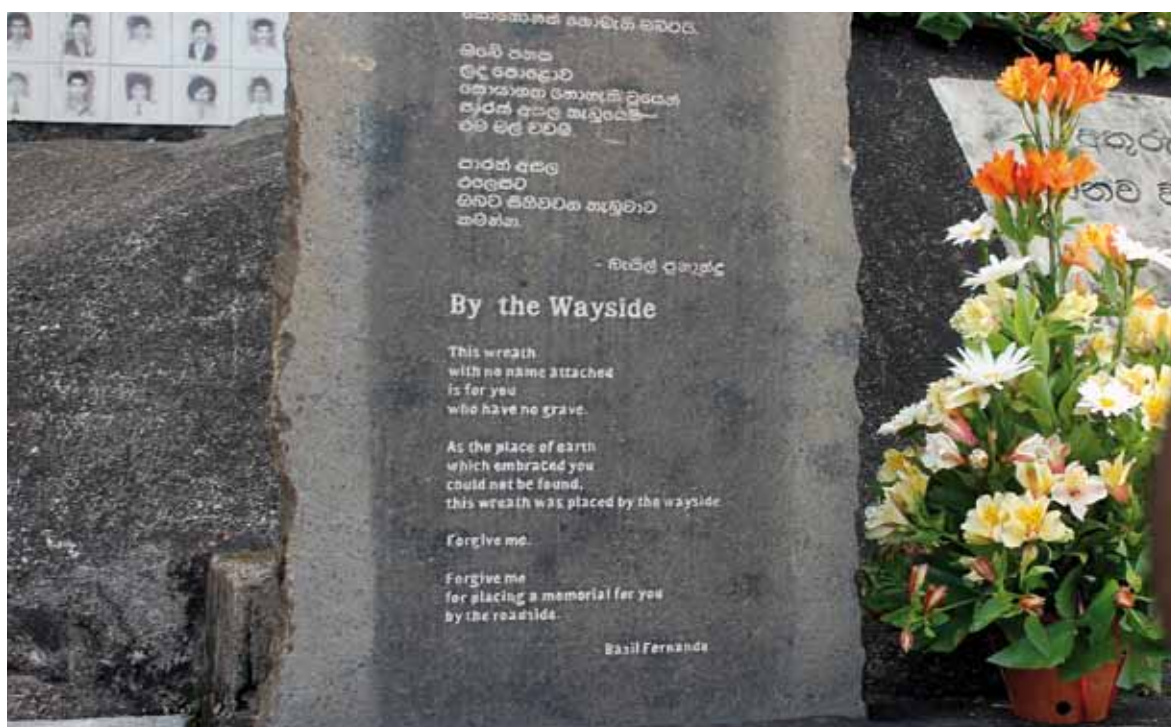
⁸⁶ Instituted by the President in August 2013

⁸⁷ Edited version of a letter by Brito Fernando, see <http://www.srilankabrief.org/2014/02/the-truth-about-presidential-commission.html>

ka Freedom Party organizer for the Killinochchi District, Ms Geethanjali Naguleswaran. During the ceremony, the family members were given a cheque of SLR 100.000 each.

The Collective of the Families of the Disappeared Persons inquired from the Commission whether it was aware of the above mentioned process at the Harmony Centre and whether it actually came under the mandate of the Commission itself. As no official information was provided to the public, the Collective questioned the legal framework of the Harmony Centre process.

Furthermore, the Collective of the Families of the Disappeared Persons expressed its concern that the Commission had not provided any information concerning the follow up of the hearings to verify and document the disappearances cases so far. The Collective inquired in its letter which means had been allocated to the Commission for the purpose verification and documentation of cases and the timeline of the process itself. According to the information available to the Collective of the Families of the Disappeared Persons, only a minimum percentage of disappearances cases submitted to the Commission, i.e. less than 150, were heard during the hearings in Kilinochchi.



Monument for the Disappeared at Raddoluwa Junction, Seeduwa, Sri Lanka.



8. THE VISIT OF THE HIGH COMMISSIONER OF HUMAN RIGHTS

Human Rights High Commissioner, Navi Pillay, visited Sri Lanka during the last week of August 2013. The context of the visit is embedded in Resolution A/HRC/22/L.1/Rev1 on Promoting reconciliation and accountability in Sri Lanka adopted by the 22nd session of the Human Rights Council: It requested the High Commissioner to present an oral update to the Council at its 24th session in September 2013 and to submit a comprehensive report followed by a discussion at the 25th session in March 2014.

The High Commissioner's visit was met with a barrage of accusations and mud slinging. The High Commissioner was targeted personally, as well as in her official position.



A mother's plea to Navi Pillay: Victims' expectations were high.

Photo Courtesy: Dushi Kanagasabapathipillai

ACCUSATIONS AND MUD SLINGING

*"Some media, ministers, bloggers and various propagandists in Sri Lanka have, for several years now, on the basis of my Indian Tamil heritage, described me as a tool of the LTTE. They have claimed I was in their pay, the 'Tamil Tigress in the UN'. This is not only wildly incorrect, it is deeply offensive. This type of abuse has reached an extraordinary crescendo during this past week [during the week of her visit in Sri Lanka in August 2013], with at least three Government Ministers joining in"*⁸⁸, the High Commissioner said at the press conference at the end of her official visit to Sri Lanka.

The way the UN Human Rights High Commissioner was treated by the Sri Lankan authorities both with contempt and in an abusive manner is an illustration and clear manifestation of the harassments and attacks human rights defenders and dissenting voices face in Sri Lanka. As the High Commissioner noted in her statement at the press conference the *"type of surveillance and harassment appears to be getting worse in Sri Lanka [...] utterly unacceptable at any time, it is particularly extraordinary for such treatment to be meted out during a visit by a UN High Commissioner for Human Rights"*.⁸⁹

HEAD START BY THE PRESIDENT

The vilification campaign was given a head start by President Rajapaksha himself: While the High

Commissioner was visiting Sri Lanka, the President, who was on a state visit to Belarus, told his counterpart Alexander Lukashenko that both nations are being targeted unfairly by the UNHRC. A banner headline in the Sri Lankan state-run Daily News branded the UNHRC to be an *"anti-Lankan catspaw"*.⁹⁰

Her visit was viewed as an interference with Sri Lanka's domestic affairs by the ruling party. The Transport Minister, Kumara Welgama, stated on record that *"Navi Pillay's Interference is not acceptable"*.⁹¹ The National Freedom Front (NFF), a partner of the ruling coalition, labelled the objective of the visit *"to fulfil the agenda of the Tamil Diaspora, who is seeking revenge for the defeat of the LTTE"*.⁹² Joining the chorus was another Member of Parliament (MP) representing the ruling party, Monitoring MP of the Media Ministry, Manusha Nanayakkara. He expressed in a public gathering that *"Navi Pillay has come to Sri Lanka not to prepare a report on the situation in Sri Lanka as she has already made that report"*.⁹³ An AFP news story from Sri Lanka quoted a Sri Lankan Cabinet Minister, Wimal Weerawansa, who questioned the impartiality of the High Commissioner

⁹⁰ <http://www.srilankabrief.org/2013/08/sri-lanka-president-slams-un-rights.html#more>

⁹¹ <http://www.srilankabrief.org/2013/08/navi-pillays-intervention-not.html#more>

⁹² <http://www.srilankabrief.org/2013/08/navi-pillay-in-sri-lanka-to-serve.html#more>

⁹³ <http://www.srilankabrief.org/2013/08/navi-pillay-came-with-report-prepared.html#more>

⁸⁸ <http://www.srilankabrief.org/2013/08/sri-lanka-is-showing-signs-of-heading.html#more>

⁸⁹ Ibid

on her ethnicity: “Navi Pillay came here, as a Tamil woman, to satisfy the wishes of Tamil separatists”, and he added that a fair report cannot be expected from her.⁹⁴

ABUSIVE STATEMENT BY A MINISTER

The most outrageous statement came from the Public Relations and Public Affairs Minister, Mervyn Silva, who boasted of his close ties to President Rajapaksha. Addressing a public meeting in Maradana, Colombo, he said that “he was willing to marry the visiting UNHRC Commissioner Navaneetham Pillay”. He also mentioned that “[w]e are a nation that wore garments prior to the white man, and I will teach Madam Pillay a bit of our history”.⁹⁵

BRANDED AS A „TERRORIST AGENT“

The Defence Secretary, Gotabhaya Rajapaksha, who is considered the power behind the throne, criticised the High Commissioner for deviating from her mandate and said that „she had ended up taking up petty political issues at the behest of those who couldn’t stomach the eradication of the LTTE”.⁹⁶ Further, he blamed the visit of the High Commissioner stating that it was “influenced by propaganda from remnants of the Tamil Tiger rebels who lost the civil war four years ago”.⁹⁷ The state-controlled Ceylon Daily News accused the High Commissioner being on the side of the terrorists: “Despite her stout denials to the contrary, even though she may not be on the pay of the Tamil Tigers if we are to take her word for it, she is certainly acting in encouragement of its odious terrorist project”. The editorial in that newspaper concluded that “she is not a fit or proper person to hold the high office of UN High Commissioner for Human Rights”.⁹⁸

PERSONAL ATTACKS OF THE WORST KIND

The worst personal attack on Navi Pillay came from the ruling party itself, the Western Provincial Council Minister and second-in-command of the Buddhist monks party JHU (National Heritage Party), Udaya Gammanpila. On 28 August 2013 addressing a public rally, he said: ‘Madam Navi Pillay is a Tamil woman. She is coming to our

country to inquire whether our war heroes have killed 40.000 Tamils that is to find out whether her own people were killed or not. She was a very poor woman when she was young. Her father was a driver. She was educated by the donations from the Tamil people in her city. So she is someone who has to render a huge service to her nation. Her husband Gabi Pillay was arrested as terrorist suspect in 1971. It was the first time in South African history that a terrorist suspect was released because of her arguments. After that anyone arrested as a terrorist suspect in South Africa run to retain Navi Pillay madam. So she is someone who appeared for hundreds of terrorist suspects. Whenever she heard the word terrorist what comes to her mind is her husband. In every terrorist suspect Navi Pillay madam sees an emotional client.”⁹⁹ Recently, after this statement was made, Gammanpila has been appointed as the Colombo district leader for the ruling coalition - as remuneration according to a Lanka C News report.

FALSIFIED ACCUSATION BY THE GOSL

The GoSL levelled two specific accusations against the High Commissioner: The first accusation was that she had attempted to pay a floral tribute where LTTE Leader Vellupillai Prabhakaran had been killed. The second was that she had asked President Rajapaksha during their private meeting to remove a statue of Sri Lanka’s first Prime Minister from Colombo’s Independence Square. Both these accusations were given wide publicity in Sri Lankan media and both are wrong.

The High Commissioner’s office rejected both accusations and expressed that it was a “gross misrepresentation” to pretend Navi Pillay was planning to honour the LTTE, especially as “(s)he made her views on the LTTE very clear in her statement”.¹⁰⁰ Responding to the second accusation, the Office stated: “We consider it deeply regrettable that government officials and other commentators continue what appears to be a coordinated campaign of disinformation in an attempt to discredit the High Commissioner or to distract from the core messages of her visit”.¹⁰¹

94 <http://www.srilankabrief.org/2013/08/sri-lankan-cabinet-minister-questions.html#more>

95 <http://www.srilankabrief.org/2013/08/married-sri-lankan-minister-says-he-is.html#more>

96 <http://www.srilankabrief.org/2013/09/gotabhaya-tells-pillay-us-had-no-moral.html#more>

97 <http://www.srilankabrief.org/2013/09/sri-lanka-criticizes-un-rights-chief.html#more>

98 <http://www.srilankabrief.org/2013/09/navi-pillay-clearly-she-is-on.html#more>

99 see the Sinhala language news report at <http://lankacnews.com/sinhala/main-news/100108/>

100 <http://www.srilankabrief.org/2013/09/floral-tribute-at-mullivaikal-gross.html#more>

101 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13756&LangID=E>



LIST OF ABBREVIATIONS

ACF	Action Contre la Faim
AFP	Agence France Presse
AG	Attorney-General
BASL	The Bar Association of Sri Lanka
CPA	Centre for Policy Alternatives
EPDP	Eelam's People Democratic Party
GoSL	Government of Sri Lanka
HRDs	Human Rights Defenders
ICJ	International Commission of Jurists
IDPs	Internally Displaced Persons
ITN	Independent Television Network of Sri Lanka
JHU	Jathika Hela Urumaya (National Heritage Party)
LAC	Legal Aid Commission
LLRC	Lessons Learned and Reconciliation Commission
LRC	Land Reform Commission
LTTE	Tamil Tigers of Tamil Eelam
MP	Member of Parliament
NCEASL	The National Christian Evangelical Alliance of Sri Lanka
NFF	National Freedom Front
NHRC	National Human Rights Commission
NPC	Northern Provincial Council
PTA	Prevention of Terrorism Act
RSF	Reporters Sans Frontières (Reporters Without Borders)
RTI	Right to Information Act
SFM	The Secretariat for Muslims
SLBC	Sri Lanka Broadcasting Corporation
SLR	Sri Lankan Rupee
TID	Terrorist Investigation Division
TNA	Tamil National Alliance
TRC	Truth and Reconciliation 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
UPR	Universal Periodical Review
US	United State of America



A mother participation in memorial meeting on 15 February 2014, the words on the Cross indicate in Sinhala: Jesumaria Kingsley, Madapaduwa, Wella, Halawatha. Photo: screenshot from a Vikalpa video.

“For a regime that had the eagerness to repeal the 17th Amendment and introduce the draconian 18th Amendment virtually overnight, for a regime that impeached the Chief Justice through a process that lasted less than two weeks and for a regime that grants approval to any multi-billion dollar deal over the counter it is nothing short of ridiculous to ask for five more years to implement recommendations that were made by a Sri Lankan Commission tasked with looking into bringing about peace and reconciliation in our country. These absurdities once again demonstrate the insincerity of the ruling regime.”

Parliamentary Opposition United National Party, February 2014

The story behind the photo: On 15 February 2013 fishermen in Chilaw, Sri Lanka organised a peaceful protest against rising petrol prices. The government/police responded with guns, killing one man and leaving three disabled for life. Jesumaria Kingsley, a 40 year-old Catholic fisherman, was among the injured and lost a leg. Thereafter, he had to stop going to sea and the family was left without an income. His eldest son, Sebastian, 14, left school to help his mother and siblings. Helping fishermen, Sebastian earned less than three dollars a day. Frustrated by the helpless situation, exactly four months after the shooting, Jesumaria Kingsley committed suicide.