

**Submission on Sri Lanka to the Commonwealth Ministerial Action Group (CMAG)
September 2014**

We write to you as a group of civil society organisations committed to supporting the Commonwealth in the realisation of its core values. As such, we outline below our deep concerns with the failure of the Government of Sri Lanka to uphold Commonwealth principles in relation to human rights and democracy.

1. We submit, that CMAG must pressure Sri Lanka to address the issue of accountability especially in the position it occupies as the Chair of the Commonwealth. The allegations Sri Lanka faces are grave. They range across a considerable period of time and continue into the present. The allegations that Sri Lanka must address include violations of international humanitarian law, arbitrary detention, enforced disappearances, compromised institutions of democracy, impunity and restrictions on civil society space including a crackdown on the freedoms of expression, association and assembly.

It is evident that Sri Lanka's response to the Secretary-General's Good Offices has been inadequate. In these circumstances the Commonwealth's response to "serious and persistent violations" falls short of expectations from the Commonwealth after the reforms have been put in place. The CMAG guidelines have a set of clearly laid out criteria and the situation in Sri Lanka, in our view, triggers CMAG attention. We appreciate that the Secretary General's Good-Office's work may be on-going, but we do not believe that it should be a limitation on CMAG's own mandate.

Following the UN High Commissioner for Human Rights' report on Sri Lanka, in February 2014, which reaffirmed several of our past and continuing concerns, an OHCHR investigation was launched in June 2014. The Sri Lankan government has consistently refused to recognise the investigation and denied cooperation towards the same by rejecting visas to the investigative team. The previous UN Commissioner Human Rights, Navi Pillay, stated that the investigation will continue despite the team not being able to gain access to Sri Lanka; and her successor, Prince Zeid Ra'ad Al Hussein, has urged Sri Lanka to cooperate with the investigation. The High Commissioner has also expressed concern over reports of threats against prospective witnesses for the investigation and urged Sri Lanka's government to ensure their protection.

Soon after the UN Human Rights Council launched its investigation on Sri Lanka, the Sri Lankan government moved to expand the mandate of its national commission to investigate into disappearances, and to also look into war-crimes. In our previous submissions, we have been calling for viewing such initiatives with caution as they are often strategically timed to deflect international attention. We accept that if conducted according to international standards, a domestic investigation could be an important step towards post-war reconciliation. However, presently, it is a case of - too little and too late, and the Commonwealth should not accept Sri Lanka justify its non-cooperation with the UN led investigation on grounds of undertaking parallel domestic inquiries.

2.1. *Situation of human rights defenders*: Sri Lanka continues to harass and intimidate human rights defenders. We have been calling for Sri Lanka to put in place effective institutional mechanisms to protect human rights defenders and guarantee civil society space. In light of the

cases presented below, and the many more that go unreported, it is vital that CMAG considers the human rights situation in Sri Lanka to be serious by bringing it under its scrutiny.

On 13 September 2014, Attorneys-at-Law Namal Rajapakshe and Manjula Pathiraja, received death threats by unidentified armed men who warned them against appearing in “unnecessary cases”. In an earlier incident, the duo, along with Lakshan Dias, were intimidated by a group of men at the Maradana Police station. Even though the headquarters inspector was present at the time of the incident, no police action has been forthcoming. All three victims are leading human rights defenders with long experience in public interest litigation and have represented a series of sensitive cases challenging government actions.

Despite the Commonwealth, in its Charter, committing itself to “peaceful, open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes”, threats and intimidation of journalists critical of the government continue unabated. On 14 April 2014, freelance journalist Sivagnanam Selvatheepan, a regular contributor to Tamil media outlets in Colombo, was brutally attacked by a group of men. In the past few months, Sunil Jayasekara, the convener of Sri Lanka's Free Media Movement, has received several anonymous death threats. Prageeth Eknaligoda, as is well known, has been missing since August 2010.

Worryingly, human rights defenders cooperating with international mechanisms have been subjected to reprisals and also labelled as traitors. On 15 June, Keheliya Rambukwella, government spokesperson and Media and Information Minister, reportedly threatened all those who intend to provide information to the UN investigation and promised to take action based on the evidence the ‘detractors’ give. Jeyakumari Balendran’s continued detention without charges, since March 2014, can only be viewed as reprisal for speaking about against war crimes and enforced disappearances. A day after, Jeyakumari’s arrest, when human rights defenders Ruki Fernando and Rev. Praveen Mahesan visited Killinochchi to look into her arrest, they too were arrested and questioned by the Terrorist Investigation Division (TID). These are just a few examples illustrating the environment of intimidation human rights defenders in Sri Lanka find themselves in.

The Government of Sri Lanka, on its part, is yet to respond to a joint communication sent in March 2014 by three special procedures mandate holders relating to the harassment of human rights defenders. We believe such systemic targeting of human rights defenders should concern CMAG.

2.2. Attack on freedom of expression: Freedom of expression has been under serious attack in Sri Lanka with the authorities’ connivance both actively, by issuing diktats that curb expression, as well as passively, by going easy on non-state actors accused of violating freedom of expression, thus failing in protecting this fundamental human right.

In May 2014, while marking the fifth anniversary of its victory over the LTTE, the government ensured that communications, in and out of the North, remained stifled with a standing ban on any commemoration event in the Province. Jaffna based Uthayan, a newspaper that has faced several attacks and threats, had its offices sealed off by the military. It was reported that the University of Jaffna was also asked to remain closed from 16 to 20 May. Posters on the campus made death threats against professors and student leaders, who were accused of guiding

students to support terrorism, prompting the teachers at the University to issue a statement questioning such restrictions essentially aimed as preventing Tamils from commemorating the war-dead.

On 4 August 2014, a group of Buddhist monks and their supporters forcefully entered a private meeting being held in Colombo, where the families of the disappeared had gathered to reflect on the search for their loved ones. This flagrant disruption had no consequences for the mob, which attacked the meeting. Instead, the police called for the meeting to be closed claiming they could not guarantee the safety of participants. This was despite the officially stated commitment of the government to address the issue of enforced disappearances.

In recent times, freedom of the press has come under particular, escalated threat. Trainings organised by civil society organisations, for Tamil speaking journalists, have been disrupted by mobs alleging such trainings to be anti-national activities. In July, a training workshop for Tamil journalists on digital security, jointly organised by Rights Now Collective for Democracy and Sri Lanka Tamil Media Alliance, had to be called off abruptly after mobs shouted slogans outside the training venue, Sri Lanka Press Institute (SLPI). Earlier, Transparency International Sri Lanka, had to cancel its workshop on investigative journalism, aimed at training Tamil language journalists after the Ministry of Defence issued an order calling for the workshop to be stopped. Protesting mobs disrupted a similar workshop planned at a different venue and the police took no action.

On 1 July 2014, the government went a step further, and issued a circular declaring non-governmental organisations (NGOs), holding press conferences, trainings and workshops involving journalists and issuing press releases, as functioning outside their mandate and demanded an end to such activities with immediate effect. Given that the Constitution of Sri Lanka lays down very specific grounds on which fundamental freedoms of expression, assembly and association can be curtailed, the restrictions are in breach of constitutional provisions. Though the notification is selective in targeting NGO interaction with the media, its effects cascade on to media by curtailing its right to freely communicate to the public and deprives the public of its right to know and be informed.

Other arbitrary measures to restrict media include blocking news websites. According to a 25 March 2014 letter by the International Press Institute, the website of the Colombo Telegraph has been frequently targeted and periodically blocked. It is also reported that Sri Lanka's Telecom Regulatory Commission has issued instructions to mobile service providers to "block" websites critical of the government, under the cover of "technical problems".

These incidents are not isolated and are a part of a trend that appears to be growing. We believe that CMAG must not be a spectator when fundamental values of the Commonwealth are being persistently violated.

2.3. Religious extremism and impunity: We are concerned at the rising cases of religious intolerance and the impunity enjoyed by religious extremists. The lack of action against those who incite violence and espouse hate speech is deeply deplorable and troubling, especially in a context where the repeated inability and/or unwillingness to arrest and prosecute those violating the law is perceived by many as state support and/or sponsorship of such attacks.

Monks from the Bodu Bala Sena, an extremist Buddhist organisation, incited riots in June 2014 against the Muslim minority community, which resulted in the deaths of four people while scores were injured. This happened despite the President authorising in April 2014, the establishment of a special unit of the police to specifically probe into complaints arising out of religious violence, following the surge in violence against minority Christian and Muslim communities in recent times. The special police unit received a total of 287 complaints on its very first day, out of which 284 were filed against Buddhist monks. The unit has faced criticism from leaders of minority communities who have expressed their lack of faith in the Unit's ability to deliver justice.

2.4. Military's involvement in civilian matters: Over five years after the end of the war there is little evidence of normalcy in regions inhabited by the Tamil minority community. The army continues to play a dominant role in civilian administration and has an unwarranted influence over vulnerable civilian lives. The long duration of militarisation with the State's consent has allowed the army to embed itself in a number of aspects of public life and establish a de facto governance structure outside the parameters of democratic polity.

The Chief Minister of the Northern Provincial Council, C. V. Wigneswaran has in particular highlighted the military's involvement in civilian affairs in the North and forcible acquisition of land by the military. While the government claims that large areas previously held as high security zones are now being used for civilian activities, original inhabitants of those areas have been unable to return to their land. A recent report by the Sri Lanka Campaign for Peace and Justice, revealed that majority of the 25 square kilometre stretch in the Jaffna Peninsula remains under the military's control and is not being used for civilian purposes.

Currently, government functioning is structured in a way to facilitate military oversight in civilian matters. The minister responsible for defence is also in-charge of urban development. The NGO Secretariat that governs all matters relating to NGOs and their functioning is placed under Ministry of Defence. In the latest example of the military's continued central role in the decision making of the country, Sri Lanka's security regime refused to allow participation of Sri Lankan civil society actors at an event where delegates from around the world, including military and police personnel from Sri Lanka, were to discuss human rights in the Asia Pacific region, from 15 to 17 September. University of Sydney and University of Colombo, as organisers of the event, were forced to withdraw participation of two local Sri Lankan NGOs or risk having to proceed without representation by the Sri Lankan defence forces and police.

Such heavy-handedness by the military, to control speech and assembly, violates the fundamental rights of the individual and should deeply worry the Commonwealth.

2.5. Judicial Independence: The issue of independence of the judiciary remains sadly unresolved. While the Supreme Court of Sri Lanka under the new Chief Justice appointed by the President, may have given the Parliament a free rein in deciding the tenure of judges, the implication of this development is that the procedure for the removal of judges is not required to be guided by strictly laid down norms, but rather political judgments - this is a grave blow to democracy. The Secretary-General commissioned legal opinions of independent experts support the contention that Commonwealth (Latimer House) Principles, which are objective and verifiable benchmarks for assessing compliance with Commonwealth's fundamental political values, have been breached in a way that must compel serious consideration of Sri Lanka by CMAG.

2.6. *Protection of Victims of Crime and Witnesses*: We are pleased to note that following the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), the Sri Lankan Cabinet recently approved the draft of a Bill to protect witnesses and victims who come forward to assist investigations, titled 'Assistance to and Protection of Victims of Crime and Witnesses'. It is due to be presented in the Parliament.

However, as highlighted by the Centre of Policy Alternatives, there are several significant concerns regarding the Bill that need to be addressed for it to be effective. The first and foremost issue concerns the Board of Management, which largely comprises of members of government ministries, national institutions, including the Human Rights Commission of Sri Lanka, members appointed by the Executive, and nominees of the Attorney General (AG) and Inspector General of Police (IGP). Given the proposed work of the Board, it is essential for it to engage and appoint independent experts in mental health and social protection to deliver on technical questions. The recent politicisation of the office of the AG and the IGP raises concerns over independence of the Board especially in light of its wide range of powers to influence policies, legislation and procedures. The Bill also lacks a comprehensive policy regarding management of the proposed compensation fund for the victims. Finally, the collation of testimonies is subject to the presence of a judicial or public official at the time of the collection, which might hinder the witnesses and victims from testifying. We firmly believe, in its present formulation, the Bill may not be able to achieve its intended purpose and needs strengthening. We urge CMAG to highlight these concerns to the Government of Sri Lanka and support it in bringing the legislation up to international standards.

3. We thus, call upon CMAG to put Sri Lanka on its formal agenda and continually review its performance on the following benchmarks:

- a) Cooperation with the international investigative team mandated by the UN Human Rights Council to enable it to complete its probe into all allegations concerning violations of international humanitarian law in the country;
- b) Restore Constitutional provisions that guarantee the separation of powers and reinstate the independence of the three branches of government;
- c) Restore the independence of government institutions including the Human Rights Commission of Sri Lanka and the Election Commission and ensure meaningful domestic implementation of the International Covenant on Civil and Political Rights;
- d) Repeal or amend laws, including the Prevention of Terrorism Act, that do not conform to international human rights standards;
- e) Take effective steps to deter attacks on religious places of worship and businesses enterprises owned by members of minority communities and reverse the culture of impunity that in respect of attacks already perpetrated;
- f) Institute effective mechanisms to protect journalists, civil society groups and human rights defenders who work for the promotion and protection of human rights including those who provide information to the international investigation team probing into war-crimes;
- g) Fulfil all recommendations directed to it by the UN Secretary General's Panel of Experts and those recommendations of its own LLRC that are consistent with the recommendations of the UN Panel;

- h) Release or charge all people held in detention and provide full public access to a database of names/locations of those still held;
- i) Ensure an enabling environment for civil society with full protection of the freedoms of expression, association and peaceful assembly.

We thank you for your attention to these very pressing issues.

Sincerely,

Centre for Policy Alternatives
CIVICUS: World Alliance for Citizen Participation
Commonwealth Human Rights Initiative
Families of the Disappeared
Human Rights Watch
INFORM Human Rights Documentation Centre
International Movement Against All Forms of Discrimination and Racism
Lawyers Collective
Right to Life Human Rights Center