



**Joint Civil Society Submission on Sri Lanka to the
Commonwealth Ministerial Action Group (CMAG)
September 2013**

1. Sri Lanka has been under review by the UN Human Rights Council, since March 2013 for its government's egregious human rights abuses, both past and ongoing. The UN Secretary-General's Panel of Experts on Sri Lanka, in its April 2011 report, found credible allegations associated with war crimes and crimes against humanity committed by both, the Government of Sri Lanka and the LTTE. These abuses have been well documented and have twice been the cause of censure at the Council. In the latest development, the UN High Commissioner for Human Rights, Ms. Navi Pillay, in her observations at the end of her official mission to Sri Lanka between 25 and 31 August 2013, highlights several of our past and continuing concerns.

2.1. Four years after the end of the war, regions inhabited by the Tamil minority community continue to be disproportionately militarised. The army continues to play a dominant role in civilian administration and has an unwarranted influence over vulnerable civilian lives. In the Northern and Eastern provinces, large tracts of land have been taken by the military from private citizens. The High Commissioner warns that such developments will only make complex land issues in Sri Lanka more difficult to resolve.

2.2. We are concerned that the use of the army to curb popular protests is becoming more frequent along with impunity. At Weliveriya, in Sri Lanka's Western Province, ordinary people who were merely demanding safe drinking water were met with harsh military action. Three deaths resulted due to the alleged use of excessive force in controlling the demonstration. The government has allowed the Army to investigate itself on the causes of these deaths. The Government of Sri Lanka's continued resistance to initiate credible investigations when ever serious human rights violations are alleged, prompted the High Commissioner to caution that "Unless there is a credible national process, calls for an international inquiry are likely to continue".

2.3. Attacks on journalists and the clamp down on freedom of expression continue. In August 2013, the Sri Lanka Working Journalists' Association along with other free media organisations, in a letter to the Chair of Sri Lanka's National Human Rights Commission (NHRC), asked it to address long neglected issues of media freedom in the country. It

has specifically asked the NHRC to inquire into the “progress or lack of progress” of police investigations into the cases of attacks on journalists, and to make a “preliminary update” available by 31 October 2013. The High Commissioner, too, underlines in her Statement, the deaths of more than 30 journalists since 2005 and has urged the Government of Sri Lanka to issue immediate orders to halt the harassment and intimidation of journalists and human rights defenders.

2.4. Since CMAG’s last meeting in April, cases of religious intolerance have been on the rise. Again, there has been a lack of police action in preventing or stopping such incidents or protecting their victims. In recent months, hard-line Buddhist groups have mounted a campaign against Muslim and Christian minority groups, accusing them of promoting extremism and conversion. The High Commissioner expressed concern at the surge in the incitement of hatred and violence against religious minorities, including attacks on churches and mosques and the lack of swift action against the perpetrators.

2.5. The Supreme Court of Sri Lanka has held the impeachment, in January 2013, of the Chief Justice, illegal. This has led to a continuing constitutional crisis. We had drawn CMAG's attention to this issue at its April 2013 meeting.¹ The High Commissioner has pointedly stated that "The war may have ended, but in the meantime democracy has been undermined and the rule of law eroded... and apparent politicization of senior judicial appointments, have shaken confidence in the independence of the judiciary". The independence of the judiciary and the separation of power as stated in the Commonwealth (Latimer House) Principles are objective and verifiable benchmarks for assessing compliance with Commonwealth’s fundamental political values. Legal opinion that has recently come to light supports the contention that Commonwealth Principles have been breached in a way that must compel serious consideration of Sri Lanka by CMAG.

2.6. Following the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), the Government of Sri Lanka has only very recently appointed a Commission of Inquiry on Disappearances (the Commission). Without early actions that demonstrate its intentions to act vigorously to bring wrongdoing to justice, many see this as a measure of expediency by the government to blunt criticism as the country readies to host your international meeting – the CHOGM. So far there have been no reports of the Commission having consulted important stakeholders such as the families of the disappeared, human rights defenders or lawyers. Ms. Pillay was also disappointed to learn of the limited mandate of the Commission which will only cover disappearances

¹ Most recently in January the government sacked the Chief Justice of the country through a process that was found illegal by the country’s Supreme Court. The Chief Justice had previously intervened and held government plans to vest disproportionate powers with the Finance Minister unconstitutional. Commonwealth professional bodies and experts have found the removal of the Chief Justice to be a clear violation of the Commonwealth’s Latimer House Rules.

in the Northern and Eastern Provinces while leaving the many “white van” disappearances reported in Colombo and other parts of the country beyond its scope.

2.7. Sri Lanka is accused of widespread harassment and intimidation of human rights defenders. We have been calling for Sri Lanka to put in place effective institutional mechanisms to protect human rights defenders. In her Statement, the High Commissioner mentions the reports she received from several people who met with her that they were visited by police or military officers before and after her mission. Some such reported cases include that of a middle-aged man, from the North-Eastern Mullaitivu district, who, like many other war victims, had met the High Commissioner and was subsequently threatened with physical harm by intelligence officials. A 63-year old Christian priest was also visited by plain clothed police officers and questioned for hours regarding his meeting with the High Commissioner. These are a few cases that have come to light but we have no reason to believe that these are isolated and not part of a pattern of intimidation by powerful actors.

3. In sum, the allegations Sri Lanka faces are grave and range, across a long time period, from violations of international humanitarian law to extrajudicial killings, arbitrary detention, enforced disappearances, impunity and crackdown on freedoms of expression and assembly.

4. Sri Lanka has become the first major test case for the newly expanded mandate of CMAG. It is evident that Sri Lanka’s response to the Secretary-General’s good office 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 the Secretary General’s Good-Office’s work may be ongoing, but we do not believe that it should be a limitation on CMAGs own mandate.

5. We reiterate our continuing concern echoed by the High Commissioner - “Sri Lanka... is showing signs of heading in an increasingly authoritarian direction”. We urge the CMAG to take swift action in-order to halt this descent. Urgent action will keep faith in the expanded mandate CMAG crafted for itself.

6. We therefore call upon the CMAG to:-

- I. Put Sri Lanka on its formal agenda.
- II. Consider the implications of Sri Lanka being the Chairperson-in-Office of the Commonwealth of Nations.
- III. Invite UN High Commissioner for Human Rights, Ms. Navi Pillay, to brief CMAG on the situation in Sri Lanka.
- IV. Continually review Sri Lanka’s performance on the following benchmarks:

- a. Restore Constitutional provisions that guarantee the separation of powers and re-instate the independence of the three branches of government;
- b. Restore the independence of government institutions including the Human Rights Commission of Sri Lanka and ensure meaningful domestic implementation of the International Covenant on Civil and Political Rights;
- c. Repeal or amend laws, including the Prevention of Terrorism Act, that do not conform to international human rights standards;
- d. Institute effective mechanisms to protect journalists, civil society groups and human rights defenders who work for the promotion and protection of human rights;
- e. Allow full and credible international investigations into all allegations concerning violations of international humanitarian law in the country;
- f. 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;
- g. Reinstate the illegally impeached Chief Justice of Sri Lanka;
- h. Release or charge all people held in detention and provide full public access to a data-base of names/locations of those still held; and
- i. Ensure an enabling environment for civil society with full protection of the freedoms of expression, association and peaceful assembly.
- j. Ensure that the Northern Provincial Elections are conducted in a free and fair manner and that the safety and security of political activists are guarded at all times.