



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

Sri Lanka currently faces widespread criticism for shocking human rights abuses, past and ongoing. These abuses have been well documented and have twice been the cause of Sri Lanka's censure at the world's premiere human rights body, the UN Human Rights Council. The latest instance was the Council's resolution passed in March 2013 when the body decided to place Sri Lanka under its review for a year. The Government of Sri Lanka nevertheless has been defiant and has shown no significant signs of cooperating with the international community or moving towards accountability domestically.

In fact within weeks of the UN Human Rights Council resolution, mobs supported by Buddhist right wing groups attacked Muslim communities and Muslim owned business enterprises faced arson. This is a part of a long series of such events where non Sinhala-Buddhist religious symbols and places of worship have been attacked in Sri Lanka. Lack of police action in preventing or stopping such incidents and the fact that nobody has yet been held accountable for these incidents, confirm suspicions of the government's collusion in such attacks. In contrast, when peaceful protestors recently tried to oppose such acts the police swiftly intervened and dispersed the protestors. Last week a Tamil newspaper critical of the government faced attacks where the day's edition was burned and printing presses were damaged and nobody has as yet been held accountable yet. This once again is part of a long series of attacks on journalists and freedom of expression that have led to Sri Lanka being considered as one of the worst countries for independent journalism.

These very recent examples show that in the absence of sanctions, the Sri Lankan government has no interest in responding to international concerns on human rights abuses. The allegations Sri Lanka faces are grave and of a serious nature and range from egregious violations of international humanitarian law to extrajudicial killings, arbitrary detention, enforced disappearances, impunity and crackdown on freedoms of expression and assembly. These allegations have been found credible by UN experts. Four years after the end of the war, regions inhabited by the Tamil community are disproportionately militarised without human rights protections and with the army playing key role in civilian administration. 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.

Any argument that the situation in Sri Lanka may not be greatly different from that in other countries in order to warrant CMAG attention, cannot stand for two main reasons, among others. Firstly, the human rights situation in Sri Lanka is chronic. Sri Lanka is the only state in the Commonwealth that faces credible allegations of egregious international humanitarian law violations and has been under focused scrutiny at the UN Human Rights Council. This is further compounded by the successive failure of all domestic mechanisms for investigating human rights abuses, the deliberate removal of the independence of the judiciary and a steady and systematic oppression that targets specific communities, dissenters and those who challenge either ongoing militarization or monopolisation of political power. Lastly, the Commonwealth invited itself to the spotlight it faces over Sri Lanka by deciding to make the country host CHOGM and go on to Chair the organisation for two years. There was a clear awareness of the gravity of the situation in Sri Lanka when the country proposed itself as a potential host in 2009 and this led to the deferring of this proposal from 2011 to 2013 by Commonwealth Heads of Governments, in the possible hope of progress in the state of human rights. Four years after the 2009 decision there have been no significant improvement in the human rights situation in the country and rising international criticism is proof of this.

Unfortunately in the last four years, the strong public condemnation of Sri Lanka for its serious human rights abuses and scrutiny from the UN and the international community seems to have not had any impact on Commonwealth decision-making processes. Despite several calls for action by civil society, CMAG is yet to put Sri Lanka on its formal agenda. Moreover, the Commonwealth apparently is sticking to its plans of having Sri Lanka host the association's biennial Commonwealth Heads of Government Meeting (CHOGM) in November this year which normally will also lead to the country Chairing the Commonwealth till 2015. The Commonwealth Secretary-General's good offices have held very little promise of success in terms of a major change in Sri Lanka's democratic and human rights behaviour before the CHOGM. Even the removal of the Chief Justice which is a gross violation of clearly laid out Commonwealth standards such as the Latimer House Rules has been treated by the Commonwealth-Secretary General as a mere difference of opinion that can be rectified at a later stage. A perusal of the agreements the Secretary-General secured with the government during his visit to the country in September 2012 and February 2013 and of his six months progress report on agreements made in September (see Annexure) makes it clear that the approach so far risks appeasing the Sri Lankan government at the cost of fundamental Commonwealth values. . All this calls into question the Commonwealth's commitment to its values and to its vaunted newly instituted Commonwealth Charter.

Sri Lanka has become the first major test case for the newly adopted CMAG guidelines¹ and the Commonwealth response architecture envisaged in section 18 V of the document. It is now evident that on Sri

¹ Following the call for reform by Commonwealth Heads of Government in 2009, the Commonwealth undertook a major reform effort. The Commonwealth Eminent Persons Group (EPG) appointed to make recommendations on reform concluded that the Commonwealth Secretary General needs to speak out on violations of Commonwealth values and it further recommended a Commonwealth Commissioner on Democracy Rule of Law and Human Rights. In parallel CMAG carried out its own review and came out with major reform proposals that resolved for CMAG to fully implement its mandate of acting on serious and persistent violations of Commonwealth values by acting on situations of such violations that do not constitute an unconstitutional overthrow of government. The Commonwealth Secretary-General's role was enhanced giving the position an opportunity to act proactively when Commonwealth values are violated. The EPG's proposal for the Commissioner has not been successful and it has been argued that an

Lanka so far the response of the Commonwealth Secretary-General's office has been inadequate and certainly not to civil society's and international observers' expectations of these reforms. We call upon CMAG, an originator and guarantor of the reforms and the guidelines, to take action expediently in-order to keep these new reforms from coming undone and as witness to its own integrity and credibility.

We urge CMAG to put Sri Lanka on its formal agenda at the earliest and lay down clear benchmarks that the country needs to fulfill before it can host CHOGM in November. To this end we reiterate the following benchmarks we have been suggesting as a minimum since 2011. These benchmarks would require Sri Lanka to:

- Fully restore the rule of law
- Lift restrictions on the enjoyment of all fundamental freedoms for all people within its borders ;
- Restore Constitutional provisions that guarantee separation of powers and re-instate the independence of the three branches of government;
- Restore the independence of government institutions such as the Sri Lanka Human Rights Commission and ensure meaningful domestic implementation of the International Covenant on Civil and Political Rights;
- Repeal or amend laws, including the Prevention of Terrorism Act, that do not conform to international human rights standards,
- Institute effective mechanisms to protect journalists, civil society groups and human rights defenders who work for the promotion and protection of human rights;
- Allow full and credible international investigations into all allegations concerning violations of international humanitarian law in the country; and
- Fulfill 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.

In view of the deteriorating situation in Sri Lanka we now add the following specific benchmarks to this list, which would require Sri Lanka to:

- Reinstall the Chief Justice;
- Release or charge all political prisoners and provide full public access to a data-base of names/locations of those still held; and
- Ensure an enabling environment for civil society with full protection of the freedoms of expression, association and peaceful assembly.

Asian Forum for Human Rights and Development (FORUM-ASIA)

CIVICUS: World Alliance for Citizen Participation

Commonwealth Human Rights Initiative

International Movement Against All Forms of Discrimination (IMADR)

Sri Lanka Campaign for Peace & Justice