

report

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No war, no peace: the denial of minority rights and justice in Sri Lanka





Kirupakaran Krisanthini, an 11 year old Tamil whose father was abducted and killed in Thiriyai. She is among more than 100 children living in the Sivanda Thaovanam Orphanage in Trincomalee, Sri Lanka, 2009.

Robin Hammond / Panos.

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Minority Rights Group International

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Abbreviations

APRC	All Party Representative Committee	NGO	Non-governmental organization
CID	Criminal Investigation Department	NIC	National Identity Card
COHRE	Centre on Housing Rights and Evictions	NUA	National Unity Alliance
CPA	Centre for Policy Alternatives	OCHA	United Nations Office for the Coordination of Humanitarian Affairs
CPC	Civil Protection Force	OHCHR	United Nations Office of the High Commissioner for Human Rights
CWC	Ceylon Workers Congress	PTA	Prevention of Terrorism Act
DS	Divisional Secretariats	PTF	Presidential Task Force
EPDP	Eelam People's Democratic Party	SLMC	Sri Lanka Muslim Congress
GA	Government Agents	SLR	Sri Lankan rupees
HRW	Human Rights Watch	TID	Terrorist Investigation Department
HSZ	High Security Zones	TNA	Tamil National Alliance
ICCPR	International Covenant on Civil and Political Rights	TOI	Tamil of Indian origin
ICRC	International Committee of the Red Cross	UDA	Urban Development Authority
IDP	Internally Displaced Person	UNF	United National Front
INGO	International non-governmental organization	UNHCR	Office of the United Nations High Commissioner for Refugees
LLRC	Lessons Learnt and Reconciliation Commission	UNP	United National Party
LTTE	Liberation Tigers for Tamil Eelam	UPFA	United People's Freedom Alliance
MLO	Military Liaison Officer	UTHRJ	University Teachers for Human Rights Jaffna
MRG	Minority Rights Group International		
NESOHR	North East Secretariat for Human Rights		

Executive summary

With the end of the conflict between Sri Lankan government forces and the Liberation Tigers for Tamil Eelam (LTTE or ‘Tamil Tigers’) in 2009, normality has returned for much of the population of Sri Lanka. But for members of the country’s two main minority groups – Tamils and Muslims – living in the north and east of the country, harsh material conditions, economic marginalisation, and militarism remain prevalent. Drawing on interviews with activists, religious and political leaders, and ordinary people living in these areas of the country, MRG found a picture very much at odds with the official image of peace and prosperity following the end of armed conflict.

Across the region, many members of the Tamil and Muslim communities remain displaced, living in IDP camps or resettled to areas where they have not been provided with adequate housing have limited livelihood opportunities in violation of international standards, and have limited livelihood opportunities. Parts of the region are still designated as High Security Zones (HSZ), meaning that people formerly resident in these areas cannot return. In other areas, land has been appropriated for hotels and other development projects, with mostly Sinhalese labour brought in from other areas of the country. Unable to return to their land and resume the income-generating activities that they practiced before the conflict, and excluded from these new employment opportunities, many Muslims and Tamils are living in poverty. Even outside the HSZs, much of the north and east of the country effectively remains under military control. Some members of minority communities living in army-controlled areas interviewed for this report spoke of intimidation and harassment at the hands of the military, including sexual harassment and rape. As with violence committed against civilians during the course of the conflict, perpetrators are able to act with impunity, and victims are denied access to justice.

In addition to these difficult day-to-day conditions, some Tamils interviewed for this report spoke of their alarm at creeping ‘Sinhalization’ and the resulting erosion of their right to express their cultural, religious, and linguistic identity. The victory of government forces over the LTTE was presented, in their eyes, as a victory of the Buddhist Sinhalese majority over (mainly) Hindu Tamils and Muslims. They spoke of the erection of Buddhist statues and shrines in Hindu areas, and of place names changed from Tamil to Sinhalese. Add this to the list of

grievances that prompted the conflict in the first place and remain unaddressed – lack of access to land, lack of political autonomy, and failure to implement existing legislation relating to the use of the Tamil language – and it is easy to see why those interviewed for this report spoke of their despondency, fear, and lack of hope for the future of minority rights in Sri Lanka.

Key recommendations:

- The President should clearly outline his government’s policy and position on minorities and create a mechanism to consult widely with minority representatives across the country.
- The government should ensure that return and resettlement programmes conform to international standards. All IDPs should be included in this process, including ‘old’ IDPs.
- All development plans for the north and east should be opened up for a full and informed consultative process with representatives of minority communities from the area.
- The government must take concrete steps to demilitarize the north and east.
- The government should appoint a commission to study the land issues faced by minority communities in the north and east, and legislative changes needed to redress land issues should be identified and implemented.
- Existing laws guaranteeing language rights should be fully implemented.
- The government should remove all restrictions on freedom of movement and assembly in the north, and remove restrictions imposed on NGOs and civil society operating and working in the north and east.
- The UN Independent Expert on Minority Issues should be granted an invitation by the government to visit the country in order to report to the United Nations Human Rights Council on the situation of minorities in Sri Lanka.
- The government should work together with civil society to develop an independent, impartial and credible justice and reconciliation mechanism to investigate and account for serious human rights violations committed by both sides in the conflict, i.e. successive Sri Lankan governments and the Liberation Tigers for Tamil Eelam (LTTE).

SRI LANKA



Introduction

For the greater part of its post-independence history, Sri Lanka has seen bloodshed and suffering, mainly due to three decades of conflict that claimed over 100,000 lives.¹ In May 2009, with the defeat of the separatist Liberation Tigers for Tamil Eelam (LTTE or ‘Tamil Tigers’), by the Sri Lankan military, the country entered a new era.² In the conflict-ridden north and east, people are no longer woken at night by the sound of air force planes dropping bombs, or exchanges of artillery fire and shelling by the rebels and army. Children can go to school without fear of being abducted and forcibly conscripted into the LTTE.³ In the south of the country, people can go to work without fear of being caught in a suicide bomb.⁴ Life is slowly returning to normal, but the absence of armed conflict has yet to transform into lasting peace for all communities.

The end of the conflict was marked by a wave of triumphalism on the part of the government and supported by many among the majority Sinhalese community. There were celebrations in Colombo and several state-sponsored victory ceremonies.⁵ In contrast, in the north, while there was great relief that the conflict had ended, hundreds of thousands of Tamils remained displaced and were mourning those killed or missing in the last stages of the fighting.⁶ Capitalizing on the mood of the Sinhala people, President Mahinda Rajapakse called a presidential election in January 2010 and parliamentary elections in May 2010. He and his party won both with large margins,⁷ largely on the vote of the Sinhala population. Minorities, particularly those living outside of Colombo, voted with the opposition.⁸ Since the elections the President and his government have taken measures to further consolidate power and initiate major development projects across the country.⁹ Although the ruling party received overwhelming support from the Sinhala people, even among the majority population there are concerns about aspects of governance and democracy. There have been attacks on opposition politicians and the media, a clampdown on civil society organizations, and growing intolerance of any form of opposition and dissent.¹⁰

While the two main minority groups in Sri Lanka covered in this report, Tamils (Sri Lankan Tamils and Tamils of Indian origin) and Muslims, are affected by these issues, they also face specific problems, including violations of their civil, political, socio-economic and cultural rights, and issues related to political participation, justice, accountability, reconciliation and peace-building.

Most minority politicians, academics, activists, religious leaders and ordinary people interviewed for this

report, particularly those in the north of the country, were disillusioned, disheartened, dejected, afraid and largely hopeless.¹¹ Asked to describe the situation of minorities in Sri Lanka in the post-war context, most gave answers such as: ‘bleak’, ‘hopeless’, ‘we have no future in this country’.¹² Many of those interviewed, particularly minority political leaders, saw the current period in Sri Lanka as one of the worst ever for minorities, for two reasons. First, most of the minority representatives interviewed believe that the ruling elite and many among the majority Sinhalese population see the defeat of the Tamil Tigers as a victory for the Sinhala race over minorities, mainly Tamils. They were of the opinion that the Sri Lankan President and his close allies are Sinhala Buddhist nationalists who want to establish Sinhala Buddhist hegemonic rule in the country.¹³ The second theme that emerged in the interviews is that the voice of minorities, in terms of political and civil society activism, has been suppressed by the present political leadership. This power dynamic of a ‘victorious’, ‘dominant’, ‘strong’ state against a ‘weakened’, ‘crushed’, ‘vulnerable’ minority population resonated through most of the interviews. Both of these themes will be discussed in this report.

Some minority political leaders and community representatives, however, do not agree that the President has an ethnic bias, and see no reason why minorities cannot benefit from wider development that is occurring in the country.¹⁴ Significant numbers of Tamils and Muslims live in the capital city Colombo and in other urban areas outside of the north and east of the country; they have been less affected by the conflict and human rights violations.¹⁵ Many are prominent businessmen, industrialists and professionals. Such groups, and some minorities who are part of the ruling political coalition, do not share the views summarized above.

The report is divided into two sections. Part 1 looks mainly at issues affecting the north and east of Sri Lanka, the traditional homeland of the Tamil and Muslim minorities. The issues facing these communities are largely linked to the post-war situation. Part 2 examines the current status of some of the core minority grievances that contributed to the conflict. It is not possible here to discuss all of the problems affecting minorities in Sri Lanka. Rather, this report attempts to capture some of the current problems and draws attention to the fact that, even after the end of the armed conflict, the underlying causes of the conflict in Sri Lanka remain in place.

Methodology

This report draws on research undertaken by the author and by three researchers from minority communities, who were either based in the north and east of Sri Lanka, or who worked in or frequently travelled to these areas. The local researchers conducted interviews between May and July 2010, while the author travelled extensively in Sri Lanka and conducted research from July 2009 to August 2010 in Vavuniya, Jaffna, Trincomalee and Colombo, and interviewed several Sinhalese, Tamil and Muslim political leaders and civil society activists.

MRG has had to depart from its usual practice in terms of the methodology for this report. A large majority of Tamil, Sinhala and Muslim politicians, activists, academics and other people interviewed for this report did not want their names to be mentioned. Most interviews were carried out under the strictest guarantees

of confidentiality. This extended even to parliamentarians and political leaders, who spoke freely and openly only on condition that they would not be identified.¹⁶ The same guarantees were given to people who were interviewed on the streets, in forums, in markets. The researchers also specifically requested that they should not be named.

MRG has therefore taken a policy decision not to name anyone in this report, including the author. The sources for the quotes in the report refer to the title or position of those quoted, but the names of the individuals or groups have been omitted.¹⁷ This is necessary because of the threat to people in Sri Lanka who are seen to be critical of the government, especially on human rights issues.¹⁸ The threat is exacerbated when people in Sri Lanka provide information to international organizations.

Part 1: The post-war situation for minorities in the north and east

Minority concerns regarding the state's agenda

Tamils and Muslims in the north and east interviewed for this report cited two major policies of the present political leadership that are of serious concern. The first is seen as detrimental to minorities; the second could be unfavourable to them.

According to many interviewees – representatives of minority political parties, civil society and religious groups – the agenda of President Mahinda Rajapaksa and his government is to create a Sinhala Buddhist hegemonic state.¹⁹ This was repeated over and over again by those interviewed. The evidence, they argue, can be found in government policy and practices discussed below,²⁰ including attempts to change the demographic patterns of Tamil and Muslim areas through various land redistribution schemes, the proliferation of Buddhist religious symbols in minority-populated areas, the weakening of Tamil and Muslim political parties, and the clampdown on minority politics and civil society.

The second government policy that gives cause for concern is development in the former war-torn areas. Although details of development plans and proposals are hardly known publicly,²¹ major infrastructure projects such as the building of highways, roads, bridges, power plants and ports, are taking place across the country.²² Land is being demarcated and sold for tourism projects, such as hotels, national parks and golf courses. Those interviewed for the report mentioned allegations of wide-scale corruption and nepotism in the awarding of contracts to developers, but that little is being done to investigate these claims.²³

The development agenda has divided minority representatives. Some Tamil and Muslim interviewees believe that their communities have much to gain from this process. They argue that the government is keen to ensure that Tamil and Muslim communities gain from development to the same extent as Sinhalese communities.²⁴ However, political leaders and sections of civil society interviewed for this report, particularly in the north and east, are concerned at the way development is taking place, arguing that it is not benefiting all levels of society and that minorities are being isolated. Another major concern is that the government presents

development as one of the main resolutions to the conflict, a position that both undermines and neglects serious minority grievances. As one Muslim parliamentarian said:

*'The entire project of the government is driven by the philosophy of development. They believe that with development everything will come. For them, whatever ethnic problem existed, it was primarily due to lack of development. They think if you address this there will be no problem.'*²⁵

A government policy document prepared by the Department of National Planning states:

*'Economic development can promote peace. The conflict in the North and the East has taken a heavy toll on the resources of the country and has also weakened investor confidence. Therefore, promotion of a regionally balanced economic growth becomes necessary to secure peace and prosperity. As part of the regional development strategy of the Government, a substantial investment on infrastructure development in the North and the East will be reflected in the national growth strategy to promote lasting peace through economic progress and equal opportunities.'*²⁶

What appears to be missing from the state agenda is: an acknowledgement of legitimate minority grievances that led to the conflict; the promotion and protection of minority rights and freedoms; a serious and credible effort towards justice, accountability and reconciliation; and a genuine attempt to present a political solution that would satisfy minorities.²⁷ The armed conflict was fought and won using the rhetoric of it being a 'war on terror'.²⁸ Since its victory, the government has done little to credibly identify and address the root causes of the conflict, despite calls by local minority political parties and many foreign governments for a political settlement acceptable to Tamils and Muslims.²⁹ This, together with restrictions on freedoms and minority rights, and the lack of an impartial effort to work towards justice, accountability and reconciliation, is seen by most minority representatives interviewed for this report as part of the agenda to suppress them. A former Tamil MP explains:

*'The government's attitude is that this is a Sinhala Buddhist country, all others can live here but can't ask for rights. They believe that we don't have the right to ask for anything. It is not to destroy us but we don't have the right to freedom or to be treated equally. Before the war ended they had to show the world they were not discriminatory, now they have nothing to prove. They won the war.'*³⁰

Displacement, return and resettlement

The north and east of Sri Lanka are predominantly populated by minorities, and were affected throughout the conflict. It is the area the Tamil Tigers wanted as a separate homeland so it is particularly pertinent to consider the conditions here post-conflict. In the Eastern Province about one-third of the population are Sinhalese, while Tamils and Muslims make up the majority;³¹ in the Northern Province just over 1 per cent of the population is Sinhala.³² The Northern Province consists of the electoral districts of Jaffna (which includes the administrative districts of Jaffna and Mannar) and the Vanni (which includes the Kilinochchi, Mulaitivu and Vavuniya districts). The Eastern Province consists of the administrative districts of Ampara, Batticaloa and Trincomalee.

At the end of the armed conflict, Sri Lanka was faced with a serious humanitarian crisis in the Vanni, with 284,400 people displaced from their homes and in temporary accommodation at the end of May 2009.³³ Most of them were in the notorious Menik Farm camp, living in squalid conditions and facing government-imposed internment.³⁴ Following strong national and international pressure, in November 2009 the government opened up the camps, granting limited freedom of movement and releasing some people to join their families or to move to other camps in Vavuniya and Jaffna.³⁵ In late 2009, the government began to 'return' and 'resettle' families in the Vavuniya, Jaffna, Kilinochchi, Mannar and Mulaitivu districts.³⁶ According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), by September 2010 230,000 internally displaced persons (IDPs) had been sent from the camps, to other camps, to rejoin their families or to their homes.³⁷ The government and international agencies claim that nearly 90 per cent of people have been resettled.³⁸ This may reflect the number of people sent out of the camps but it does not mean they have been returned or resettled. In September 2010, in Menik Farm, some 25,050 people remain:³⁹ these are individuals who either do not want to return to their homes because of the trauma they have suffered, have no relatives to be released to, or have no access to their homes due to the de-mining process.⁴⁰

The return and resettlement process attracted international media and political attention and was seen as a positive step taken by the Sri Lankan government.⁴¹ Yet, while the government succeeded in a very difficult task of releasing large numbers of people within a one-year period, the process did not meet international standards.⁴² Under UN Guiding Principles 28–30 on internal displacement, the state has the primary duty and responsibility to establish conditions and provide means for IDPs to return safely and voluntarily. Principle 28 also requires full participation of IDPs in planning and management of their return and/or resettlement.⁴³

Poor living conditions

In Sri Lanka, people who were allowed to return to their homes were provided with the bare minimum financial and material support. Many found their properties inaccessible due to destruction, de-mining, secondary occupation or occupation by the military. Those being resettled were promised 25,000 Sri Lankan rupees (SLR); 5000 in cash and the rest to be deposited in their bank accounts.⁴⁴ However, some more recent returnees stated that they did not receive this money.⁴⁵ They were also given some plastic sheets, sticks to hold up plastic covers as roofs and a few household items. One local activist said:

*'The plastic sheets are meant to be put on the floor ... but because they have no roof ... they are using the sheets as roofs. In some cases they were given sticks, in other cases they were allowed to go to the jungles and cut the wood. This is all they have as shelter. If there are big rains it will be disaster.'*⁴⁶

There are virtually no permanent structures in the resettled areas in the Kilinochchi, Mannar and Mullaitivu districts; every house has been damaged or demolished by shelling and aerial bombardment during the fighting.⁴⁷ Respondents interviewed for this report, both activists and returnees, stated that families living in these broken-down structures are exposed to the weather and to the risk of theft and physical and sexual abuse.⁴⁸ The government returned people to these areas without providing for even the most basic shelter and sanitary facilities.⁴⁹ Projects by the government, international agencies and international non-governmental organizations (INGOs), to repair homes and construct permanent houses were only getting under way as of September 2010.⁵⁰ There are serious issues of transparency regarding the reconstruction plans, and returnees' access to international agencies and NGOs supporting the process.⁵¹ This is in contravention of UN Guiding Principle 30 on internal displacement. A 28-year-old Muslim returnee in Mannar said:

*'The limited assistance from the government as well as organizations has resulted in people fighting among each other to receive the relief assistance first.... Women and children are the most affected in such practices. The way the compensation given by the government to all returnees is also unfair. Some people received, both Muslims and Tamils, only sheets and stones without cement or any other essential material to build even a temporary shelter for people to be safe in resettled areas. Different amounts of money have been given to different people. Nobody knows on what basis. ... Some people also receive goods by giving false information.'*⁵²

Poverty in the resettlement areas

Families that have been returned and resettled have very limited income and livelihood support.⁵³ There are few employment opportunities. Most of the people in these areas were either farmers or fishermen, but they are unable to return to cultivation or to access the sea front in most areas for security reasons and because of landmines.⁵⁴ In Mannar, in some areas, cultivation occurred for one season, but some people either have no access to their land or are in the process of clearing the land. Fishing in Mannar has also started but the boats and nets are not in good condition.⁵⁵ A Muslim fisherman who is back in Puttalam after having attempted to live in Jaffna, his place of origin says:

*'We cannot fish in the presence of the navy. During the LTTE problem period, navy earned quite a lot by fishing sea leeches and squid in this particular part of the Jaffna sea. They still want to earn like that. Therefore they are not lifting the restriction for us to fish. It is very saddening to see the situation there. They threaten us if we go for fishing in the night. I have told about this problem to many officers and many different places. Nothing happens. A Tamil elderly man who went to the sea to fish in the night was badly beaten up by the navy. He cannot walk now. They even took his money. He didn't have money to return home. I lent him Rs50 for him to go back home. How can we live in such conditions?'*⁵⁶

As a result of the lack of income-generating opportunities, poverty levels are high. Families earn on average 6000 LKR a month, which barely covers the cost of food.⁵⁷ Some families receive money from their relatives in Western Europe or North America.

Development projects

It is clear that the government has only recently begun development programmes in the area, but people had

concerns regarding the prioritization of projects and the marginalization of locals. Most skilled and unskilled labourers cannot find jobs because the infrastructure is not in place and the local economy has not recovered. Some people grow vegetables in their gardens and sell them, others try to open small shops but these are dwarfed by the big shops on the main roads that are run by the army.⁵⁸ Skilled workers find it particularly difficult to find employment with the lack of infrastructure for local businesses and manufacturers, and also because many workers are brought in from other parts of the country to work on large-scale projects such as building roads.⁵⁹ Schools, hospitals, markets, and shops have not been properly built and are not fully operational.⁶⁰ In the main towns schools and hospitals are being built, but adults and children who live in the villages have to walk miles to access them. In many cases classes are conducted under the trees.⁶¹

The situation of women IDPs

A large number of households – some estimate nearly two-thirds – are now headed by women, as men were either killed in fighting or have been taken into custody by the military.⁶² This is an issue in all of the north and east but is most acute in the Vanni. According to a recent study there are over 89,000 war widows in the entire north and east and around 20,000 female-headed households in Jaffna alone.⁶³

The situation for these households is extremely difficult. Most of these women have little or no employment opportunities, livelihood or income generation support. A 25-year-old Tamil woman in one of the resettlement areas in Mannar explains:

'Only about 25 families have returned in our area. There were more than 100 families before. We don't know what happened to the others. Most returned families do not have the male members of their families. Either they have died in the war or they are kept in surrendee's [sic.] camps. A few kept in surrendee's camps are often transported to another location. As a result we do not even know where they are currently kept. Women find it very difficult to take care of the family. There is no job that you can do. All are in the same position. No one has the money to give to one another. Our houses are mostly damaged. Living in the remaining parts of the houses is very unsafe. No water. No toilet. We all share the resources that we have now. But for how long? Ration is given. But that is not enough. Mines have not properly been cleared. We still find small bullets. There are girls in the age of 15–20 who have more than two children. They themselves are children. A few organizations do what they can. But they are also not free to help us. The government doesn't do it. At

the same time they do not allow organizations to do it either. We lost everything in the war. Now we wish that all of us should have died with the rest.'⁶⁴

There are serious concerns expressed by women activists interviewed over reports of sexual abuse and harassment in the resettled areas.⁶⁵ There have been reports of rape. In one case in the Visvadamu area (one of the resettlement zones), on 6 June 2010, a group of men reportedly went to the houses of two women – a 28 year-old mother of two and a 38 year-old mother of five – and raped them. The women made a complaint to the nearby army camp and to the police station, subsequent to which six soldiers were arrested by the police. At the time of writing this report, a case against four of the army personnel allegedly involved in the attack was being heard in Kilinochchi magistrate court.⁶⁶ Activists and women interviewed for this report mentioned cases of women being coerced into sexual activity, or in some situations doing so voluntarily in return for favours from military personnel or to ensure their protection.⁶⁷ As a result of the large military presence in the Vanni in particular, there are military sentry points adjoining households, some where women live alone. Soldiers have free access to these houses. Cases of harassment have occurred, where army personnel call up women and ask them to come to the camps at late hours or abuse them over the phone.⁶⁸

Women have also complained about harassment at security checkpoints.⁶⁹ They fear travelling alone, without male support. A 24-year-old Tamil woman said:

*'We are not used to the army. We are always threatened by them. We don't have good memories of the army. Now it is very difficult to live under their control. We fear to do anything. We don't have proper houses to safeguard us from outside threats. No one is giving us any support to at least put a door with a lock and repair the windows, so that we are at least safe inside our homes. ... Anyone can come inside anytime they want. It is even worse for women who don't even have the leftover of their houses and living in tents. A few months back, a 52-year-old woman was gang raped. Nobody revealed who raped her. They won't tell even if they know. Everyone is scared. The truth will never come out. This is our plight.'*⁷⁰

Because the media and NGOs have limited access to the resettlement villages, monitoring and reporting on issues of sexual harassment, abuse and violence is extremely poor.⁷¹ Many families are afraid to report cases because the perpetrators remain in such close proximity to the victim. With the large military presence and power imbalance between soldiers and civilians,⁷² families fear that if they

complain on such issues, others within the family could be arrested, detained or disappeared.⁷³

'Old' IDPs

While there is some international political and media interest and scrutiny of the return and resettlement process, there are groups of displaced who remain neglected in Sri Lanka. In addition to the 25,050 who remained in Menik Farm in September 2010,⁷⁴ these include: the estimated 84,000 displaced due to the creation of military High Security Zones (HSZs), and over 65,000 Muslims displaced in Puttalam, as reported in July 2010,⁷⁵ (altogether, a total of around 300,000 people, as of October 2010).⁷⁶

The situation of all three groups is uncertain. Those remaining in Menik Farm now have some freedom of movement but these displaced people receive very little assistance and hardly any pressure is being put on the government to resettle them, as the attention of international donors has shifted to the resettlement process.⁷⁷ Across the north and east over 60,000 people are displaced because their homes have been taken over by the military to create official and unofficial HSZs.⁷⁸ The conditions in the temporary camps where people live are extremely poor and they have been in these temporary shelters in some cases since the 1980s.⁷⁹ The 65,000 Muslims in Puttalam (now by some estimates as many as 150,000) were forcibly evicted by the Tamil Tigers in 1990 in an attempt to ethnically cleanse the north.⁸⁰ Their situation is unique and problematic: they were excluded from resettlement plans by the government and are not considered for funds and assistance for resettlement by most international donors.⁸¹

With the focus on the recently displaced, there have been instances where the state authorities declare the IDP crisis as nearly resolved without considering the situation of the 'old' IDPs.⁸² The treatment of these groups is not in keeping with the UN Guiding Principles. By neglecting the situation of Muslims and other 'old' IDPs, the government and UN agencies run the risk of significantly underestimating the long-term efforts necessary to accommodate the entire IDP population, as well as outstanding social and economic issues which need to be addressed. As a displaced Muslim man in Puttalam said:

*'The government does not even care for us in the same way it does for the people in Menik Farm. It is not that people in Menik Farm are not suffering. They suffer in the absence of water, sanitation and electricity. I have seen what they suffer. This is new. Menik Farm is new. But our suffering is old and never ending. The government does not seem to have any proper plan or policy on resettlement.'*⁸³

When the conflict ended in 2009, some of the Muslim families wanted to return to their homes. Despite much pressure exerted by Muslim political groups and civil society, the government did not take the situation of this community into consideration.⁸⁴ They were told by government officials they could return to their homes, if they wished, but were not included in the main resettlement programme and did not receive the same support and assistance as the 'new' IDPs.⁸⁵ Families who have chosen to return to Jaffna and a similar number to Mannar face similar problems to the Tamil returnees over issues of land, destruction of their homes, and livelihood and income generation, but have the added issue of re-integration with Tamils as the two communities have not lived together for over two decades.⁸⁶ An entire generation of Tamils in Jaffna have grown up without a Muslim presence and are unfamiliar with Muslim cultural and religious practices such as the head-scarf for women, halal methods of slaughtering animals and the call to prayer from mosques.⁸⁷

The issue of the displacement of Muslim communities requires special attention from both the government and the donor community. The situation of the displaced Muslims has not been part of the state or international agenda, which is a major grievance for northern Muslims.⁸⁸ They feel they have been neglected and marginalized. They face specific problems because of the prolonged period of displacement. Children from families that were forcibly evicted in 1990 are now grown up and have their own families. The one family house that was left behind now has to be divided between 4–6 siblings in some cases, and their wives and families.⁸⁹ There are also problems of registration, which affect voting rights, preventing Muslims from voting in either their original homelands or their host areas.⁹⁰ While many of the displaced Muslims consider the north as their 'birth place' and 'homeland', not all want to return, particularly the younger generation who have grown up, been educated and are now establishing themselves in Puttalam.⁹¹ There is a World Bank project to build homes for those displaced Muslims who want to stay in Puttalam but not all will benefit from this project.⁹² Muslim activists are demanding that the Muslim displaced be considered for the same aid and assistance as Tamils.⁹³ They warn that the continuing neglect of this group is already provoking communal anger and could lead to further conflict in the future.⁹⁴

Problems of documentation

The issue of not having proper documentation was repeatedly mentioned as a problem affecting people in the north and east. Most 'new' IDPs lost much of their documentation in the multiple displacements they faced before reaching government-controlled areas.⁹⁵ Documents

such as land titles, birth, marriage and death certificates are basic necessities and particularly important in the context of post-war reconstruction and development. For example, people need land titles to make a claim for permanent homes or toilets.

Women are specially affected by the lack of documentation such as marriage and death certificates. A 36-year-old woman currently residing in one of the camps in Jaffna said.

*'There was that a lot happened in the camp that we were in for more than a year. Many of those cannot be spoken. I fear to share those experiences with anyone, but myself. My husband married another woman when we were in the camp. I do not have a marriage certificate to prove our marriage. We are from Kilinochchi. We were brought here from Vavuniya. This place is also called a resettlement area. But it is not resettlement for my family. We have yet not gone to our original place that is Kilinochchi. I do not know what am I going to do if I go back to Kilinochchi without a husband. How am I going to take care of my children?'*⁹⁶

The lack of death certificates is a major problem in the north of Sri Lanka and in parts of the east. For the large number of female-headed households, death certificates proving that their husbands have died are essential to be able to claim compensation, to claim benefits, in some cases to put children into school, and to remarry.⁹⁷ The government has begun a process to expedite the granting of death certificates, but activists interviewed for this report expressed fears that the fact that the authorities continue to dispute the numbers of those killed in the last stages of fighting may limit the number of death certificates they are willing to issue.⁹⁸

A 26-year-old Tamil woman from Vaharai, Batticaloa commented:

'We were displaced in 2006; went through many things before we returned to Vaharai in 2008. ... The feeling of insecurity has not left us yet. Actually it is worse now. We do not know whom to trust. ... The sense of community is lost. ... Even the people from the same village and the ones with whom we lived together before in unity do not trust each other. ... Everyone is looked at as potential competitors. Because, all do not receive what is given by the government or organizations. ... The documents play a crucial role in this. For example we will not receive any assistance from the government for the death of a family member, especially if the family member was the breadwinner of the family, until the time we

produce the death certificate. It is really a problem, especially for women. Women do not know where their husbands or fathers are, for more than five years now. Even they have done rituals without finding the dead body and accept that the missing person is dead. But the government will not accept it without seeing a dead body to give the death certificate. There are many such cases in Vaharai. Also even in the event of a death where the body was found, yet the process of obtaining the death certificate is delayed, indefinitely.'

Militarization

Militarization has been a problem in the north and east of Sri Lanka and in Colombo throughout the conflict, but the level of military presence and influence in the former war-torn areas is exceptionally high. In the Jaffna peninsula there are some 40,000 army officers, a ratio of approximately 1:11 of military personnel to civilians.⁹⁹ On nearly every major road there are military checkpoints or the presence of a soldier. The situation in the Vanni is much worse. The ratio of military personnel to civilians there is believed to be 1:3 or 4.¹⁰⁰

It is not just the military presence that is an issue but the fact that civilian authority in the north and east has nearly been replaced by military authority. Key civilian administrative positions have been given to retired military personnel, including Major General G.A. Chandrasiri (Governor of the Northern Province) and Rear Admiral Mohan Wijewickrama (Governor of the Eastern Province). The Government Agents (GA), which is the top district-level civil authority, is held by former military personnel in Trincomalee district. Local-government-level civil positions such as the Grama Seveka Niladari (village heads), District Secretary and Urban Authorities now have little control over everyday decisions, which are largely determined by the military. A lawyer based in northern Sri Lanka states:

*'Why should we coexist with the military? The police, I can understand, they are trained to work with civilians, but why the military?'*¹⁰¹

According to community-based organizations and NGOs that have access to villages in the Vanni, no civil activity can take place without military scrutiny and permission. Respondents reported that any basic civil or social activity, reconstruction work, and livelihood projects require military permission.¹⁰² Any movement of people in or out of the area also requires military permission. 'You can't move, everywhere you turn there is a soldier,' said one activist working in the Vanni.¹⁰³ A Tamil woman from Kilinochchi stated:

*'The military people must move out of the villages into camps. It is ok to have one big camp in each area but why should there be so much army personnel all over the village? If this continues it will be a grave problem for women in the area.'*¹⁰⁴

In addition, government relief operations in the north and some development projects remain under military control, thereby increasing military involvement in the everyday life of civilians. The military is increasingly involved in a host of projects in the north, including building houses and agriculture.¹⁰⁵

Limits on freedom of expression and association

Across Sri Lanka democratic norms and human rights have suffered tremendously, throughout the conflict and continuing into the post-conflict period. There has been a clampdown on civil space and civil society leaders and journalists have come under threat or even been killed.¹⁰⁶ Representatives of opposition political parties have been harassed and the space for dissent continues to be restrained. There is an unprecedented climate of fear evident in most parts of the country. Human rights violations such as extra-judicial killings, disappearances, torture, arbitrary arrest and detention are widely reported but are denied by the government.¹⁰⁷ There is a general climate of impunity for perpetrators of human rights violations and there have been no effective and impartial attempts to investigate incidents of violations.¹⁰⁸

In previous publications and statements MRG has made the point that in these cases of human rights violations and attacks on freedom of expression, minorities have been most affected.¹⁰⁹ In Jaffna, in the north of Sri Lanka, these problems are acute. Civil society activists and academics from Jaffna University interviewed for this research reported being monitored, and felt that their every move was scrutinized.¹¹⁰ Jaffna University, historically a space for academic and analytical debate and discussion on contemporary issues, has curtailed its public activities.

There was an exceptional level of fear and distrust among activists interviewed for this study. Activists seen talking to foreigners fear being questioned and threatened, so meetings between local activists and INGOs or researchers are now rarely granted unless the individual comes recommended or is previously known, and are held clandestinely. Meetings challenging the government or Tamil political parties allied to the government cannot be held openly.¹¹¹ Interviewees referred constantly to 'informants' – former paramilitaries or military personnel who go undercover in civilian clothing to follow what is going on.¹¹² Officials at public events have been

questioned or challenged by members of the audience, but this is rare and is usually on issues that are not politically controversial. Activists interviewed also told MRG that when they or others working for community-based organizations implement projects or meet people in the Vanni, their discussions and activities are filmed by unknown individuals in civilian clothes.¹¹³ 'You don't have to fire the bullet [for people] to fear the gun', said an activist from Jaffna.¹¹⁴

As in Colombo and other major towns, in Jaffna too, it is not uncommon for the Criminal Investigation Department (CID), the Terrorist Investigation Department (TID), the Civil Protection Force (CPC) or other military and police officials to enter the offices of NGOs, question workers about their activities and demand reports.¹¹⁵ The situation in Jaffna is of more concern than that in Colombo, however, because of the recent history of killings and the higher military presence.¹¹⁶

In Colombo and other major cities, working on issues of human and minority rights is extremely difficult. Independent NGOs rarely publicize the work they do on human rights, such as, trainings, workshops, etc. The country's most prominent human rights activists have been arrested, detained, and threatened on a number of occasions.¹¹⁷ They are also constantly targeted for attack by senior government officials, in the media and at forums.¹¹⁸ Much of the criticism against these individuals and groups is over their championing of minority rights, including exposing extra-judicial killings, arrests, torture, disappearances and war crimes. In some towns, the offices of Tamil or Muslim NGOs, or NGOs known to be working with minority communities, are routinely visited by police and CID.¹¹⁹ Sometimes they are asked to hand over information on their projects, their donors and their activities. Sometimes police or CID attend events and question the organizers on the issues being raised.¹²⁰

In the Vanni, local and international NGOs working in the resettlement areas face numerous restrictions.¹²¹ The National Secretariat for NGOs (the NGO Secretariat), which monitors and approves the work of NGOs, under Gazette No. 1651/20 of 30 April 2010, has been brought under the control of the Ministry of Defence. In a circular to NGOs and INGOs on 16 July 2010, the Ministry of Defence set new guidelines for the granting of approval for projects in the Northern Province: all NGO/INGOs operating projects in the Northern Province must register with the Presidential Task Force (PTF), which will forward its recommendations to the Director General of the NGO Secretariat, who will then refer the list to the Military Liaison Officer (MLO) for 'further clearance and final approval'.¹²²

The same problems occur in the east. Permission from the GA is required for projects, and permission is often

restricted on human rights, reconciliation and peace projects.¹²³ A manager of a local NGO in Trincomalee stated:

'It is very difficult to do projects for minorities. The GA has said that if you are building toilets for Tamils or Muslims you have to build the same amount for Sinhalese.'

This applies even if the Sinhala community may be less affected than the minorities in the area where the work is being done.¹²⁴

In the Vanni, people who are being resettled have almost no freedom to move in and out of the area without military permission.¹²⁵ They also have to inform the military if anyone from outside of the area comes to visit them or if they want to organize an event. There are severe restrictions on freedom of assembly.¹²⁶ The military may attend the event, even if it is a personal one, and it is not uncommon for them to take photographs and film the gathering for intelligence.¹²⁷

One of the concerns of the Sri Lankan government is that civilian mobilization or assembly could allow the resurgence of a separatist movement. This is one reason why there are such severe restrictions on civil space. But this strategy could be counterproductive. In the Vanni people suffered for decades under the LTTE's restrictive rules. It is in the interest of the Sri Lankan state to help the people to realize what freedom entails.

Sinhalization

A new feature of post-war Sri Lanka is the influx of Sinhalese as visitors to the north, and the proliferation of Sinhala Buddhist religious symbols in traditionally minority areas. This has upset many Tamils and Muslims in the north and east.¹²⁸

In all of the main towns on the north-south A9 highway, busloads of Sinhalese tourists are seen stopping for food.¹²⁹ Most are pilgrims visiting Buddhist religious sites in the north that they did not have access to during the conflict, or tourists visiting military monuments. At the end of the conflict, the military destroyed all the LTTE monuments; within months, massive monuments dedicated to the military victory were erected on the main road.¹³⁰ There are also stopping points where the military scored a major victory against the Tigers or where the LTTE perpetrated a civilian attack.¹³¹ There is no mention of attacks, killings or human rights violations by the military.¹³² Because of language barriers and the way in which the tours are conducted, the tourists have limited interaction with local Tamil people. While these tourist activities are helpful to some shopkeepers and local market

traders, generally the Tamils in the north do not welcome the influx of such groups.¹³³ An activist in Jaffna says:

'Tourists come in busloads and it is not appreciated. Jaffna is reviving, we have limited resources here. It is a kind of exploitation, when our water, land and environment, which we need to develop, is used up by so many of these tourists. They don't respect our culture, they cook on the streets, pollute the road by throwing polythene bags all over. With the victory, they have this attitude, as if they can do anything; they think "It's our land." They come and go but we don't even look at them.'

There also is concern among Muslims and Tamils in both the north and east about the emergence of Buddhist religious symbols in the area. People in these areas, in the east of Sri Lanka in particular, say that statues of the Buddha and Buddhist shrines are appearing in places where previously they did not exist. In both the north and east it is now common that, wherever a Bo tree is found, a Buddhist shrine is erected. MRG received reports that sometimes these trees are planted by state agents and shrines are built subsequently.¹³⁴ There are also reports of cases where areas in eastern Sri Lanka have been demarcated as Buddhist religious sites because Buddhist artefacts have been found there. In Trincomalee, several people interviewed for this report stated that they had evidence that artefacts were planted in the area. They say people came at night, on motorcycles, with sacks full of items which they planted in the area.¹³⁵ Those interviewed for this report were insistent that state officials are involved in these incidents. According to villagers, police have been seen assisting in such incidents; they also accuse the police of partiality towards Sinhalese when Tamils or Muslims report such cases.¹³⁶

Another issue for Tamils in the north is the practice of replacing Tamil place names with Sinhalese names. This often occurs after an area has been linked to a Buddhist religious event and turned into a site of pilgrimage. For example, Thiruvadinalai in Jaffna, has now been renamed Jambukolapatune. Buddhists in Sri Lanka believe that this is where Prince Ashoka's daughter, the first female Buddhist missionary, first set foot in Sri Lanka. A shrine was built in 2005 and a temple in 2009, which was opened by the President's wife, Shiranthi Rajapaksa, and her son, Namal Rajapaksa, in 2010.¹³⁷ Another recent name change in Jaffna is Kathirimalai to Kadurugaoda. An activist in northern Sri Lanka said:

*'In Sri Lanka there has always been Tamil Buddhism. Tamils also believe in aspects of Buddhism and respect it. Now they are trying to Sinhalize all of this and they don't acknowledge Tamil Buddhism.'*¹³⁸

The concerns raised by minorities interviewed for this report are not about challenging the right of Sinhalese people to move, travel, assemble, practise their religion and enjoy their culture across the country. It is to do with the politicization of religion and race. Many of those interviewed were concerned by state involvement in the promotion and encroachment of Sinhala Buddhist culture and influence in minority areas. The state does not prevent Tamils and Muslims from practising their religion and culture; yet the activities described above challenge international human and minority rights guarantees relating to the promotion and protection of minority cultural and religious rights, particularly in minority-dominated areas.

Development

Development is an important priority for the government of Sri Lanka in the post-conflict period. Development in the north and east is taking place under two main schemes: in the north 'Vadakkinn Vasantham' (Northern Spring), in the east 'Nagenahira Udanaya' (Eastern Awakening).¹³⁹ Large-scale development projects can be seen across the north and east, particularly the building of roads and bridges. Most Tamils and Muslims interviewed in these areas are impressed with the scale of the development and see potential benefits for themselves and their communities. However, some individuals and activists are concerned by the lack of consultation and participation of local people in the projects, the undermining of local indigenous knowledge, and the politicization and ethnicization of the process.

The Vadakkinn Vasantham programme was announced by President Rajapaksa and plans were drafted by his brother and senior adviser Basil Rajapaksa.¹⁴⁰ Interviewees in the north and east expressed concerns that these plans were prepared without consulting local-level officials or people living in these areas.¹⁴¹ Activists interviewed say the way development is taking place appears to ignore indigenous knowledge and undermines local culture and traditions. For example, during road-building, several Palmyra trees have been cut down. These trees are integral to the northern Tamil culture and every part of the tree is used by local women for their daily activities and livelihood.¹⁴²

Activists who have access to the villages in the resettled areas say that while major highways are being built in the north, nothing is being done to develop the small roads in the villages.¹⁴³ As a result, villagers have to travel long distances, sometimes on foot, in arduous conditions to access basic facilities. Little is being done to develop village markets while plans are under way to create commercial hubs.¹⁴⁴ The main points raised by activists here are not to

criticize the development that is taking place but to challenge the priorities and question who the actual beneficiaries will be. A Tamil activist in Jaffna said:

'What development is this? Money is not rotating, money is moving out of these areas. People are being excluded.'

There are concerns about the politicization of development work and the role of the military in these projects.¹⁴⁵ In 2009 the President appointed a task force on northern development.¹⁴⁶ There was only one Tamil and one Muslim out of the 19 members implementing development in an area where nearly 100 per cent of the population are from minority groups.¹⁴⁷ In the resettlement areas in the Vanni, everything is controlled by the PTF. Large-scale development projects are planned and implemented under the purview of Basil Rajapaksa, who is also the Minister for Economic Development, and the Urban Development Authority (UDA). In a reshuffle in 2010 of government departments and ministries, in an unprecedented move, the UDA was brought under the Defence Ministry.¹⁴⁸ The Defence Secretary is another of the President's brothers, Gotabhaya Rajapaksa. The President's son, MP Namal Rajapaksa, is also involved in development projects in the north.¹⁴⁹ A Tamil man in Batticaloa stated:

*'Development is happening. But the needs of the people in resettled areas have not been met. People are not consulted.... Issues seem to be identified and decided by the people in power (mostly political) and do not attempt to hear the voices of the people. The increasing number of Muslims and Sinhalese traders in Tamil villages has become a major concern among Tamils. Their livelihood opportunities are taken. ... The presence of other ethnicities troubles and worries Tamils to a great extent. Tamils fear that they will continue to be discriminated and ethnic divisions will further damage their everyday lives. Unfortunately that is what looks like going to happen. With land grabbing Tamils lose their livelihood and a place to live. Sinhalese and Muslims get support from the police and the military. Tamils do not relate much to the police and the military. Therefore they lose their negotiating power. There is no one to speak for them. Once again people are suppressing their emotions and hardships. Soon it is going to burst into another struggle or fight.'*¹⁵⁰

Central government influence in rural development is not uncommon in Sri Lanka, but here the situation is different. First, in development projects in the north and

east, government involvement is at the highest level; second, the development projects are planned and implemented mostly by leaders from the majority community in a largely minority area. Many civil society activists in the north and east interviewed for this report expressed their frustration, saying they felt powerless to challenge any projects because of the close involvement of the President, and his advisers and the military, in the planning and implementation. Some Tamil and Muslim political leaders are seen to play an active role in the north and east. They include: Douglas Devananda, leader of the Eelam People's Democratic Party (EPDP) and a government minister; Rishard Badiudeen, Minister of Industries and former Minister of Resettlement; National list MP Vinayagamoorthy Muralitharan (also known as Col. Karuna – the former LTTE commander of the Eastern Province); and the Chief Minister of the Eastern Province, S. Chandrakanthan (known as Piliyan, a former LTTE child soldier and later senior leader).¹⁵¹ However, those interviewed for this report stated that the minority politicians were mostly involved in the publicity element of the projects, and not in the planning and implementation.

Many activists viewed the development as an infringement of their right to self-determination and to develop their own areas. The right to participation in development (UNDM Article 5) is an integral aspect of minority rights and one guaranteed in international law, to which the Sri Lankan government should pay more serious attention.

Justice, accountability and reconciliation

Tamils caught up in the last stages of fighting who were interviewed for this report rejected government claims that civilians were not targeted.¹⁵² Those interviewed gave detailed accounts of witnessing dozens of people being killed around them on a daily basis.¹⁵³ They referred to incidents where entire families died due to the shelling of their bunkers. They gave accounts of how, when they were escaping into military custody, they saw dead bodies strewn all over the roads. One woman said she had to cross a water bunt to get to the government-controlled areas, and all along she could feel she was stepping on dead bodies. In a majority of these cases the people interviewed insisted that those killed were civilians, not rebels. Everyone interviewed for this report who was caught up in the last stages of the conflict had lost a family member. The interviewees were also firm about being targets of military shelling. They said in the last few days of the fighting they were shelled from every front.¹⁵⁴ A Tamil woman from Kilinochchi said:

*'Of course they were targeting civilians. If they wanted to kill the rebels, they were in the frontlines fighting. They did not need to launch long-distance artillery and shells. It was only civilians who were in the core areas, who were targeted by this shelling, while the Tigers were in the periphery fighting the army.'*¹⁵⁵

Since the end of the war there have been several calls, particularly from within the international community, for an international war crimes investigation into the civilian killings in the last stages of the fighting.¹⁵⁶ The Sri Lankan government has resisted these calls and it remains an explosive issue, for the government and its supporters and for many ordinary Sri Lankans. Within the country there has been very limited discussion and debate, and there remains no space where this can be done in an open and acceptable manner. Some in Sri Lanka argue that it is wrong for the US and UK to put pressure on small countries like Sri Lanka when they have not been investigated for crimes committed in Iraq and Afghanistan.¹⁵⁷

One of the earliest allegations of war crimes came when the UK's Channel 4 news aired footage of Sri Lankan army personnel executing Tamil-speaking civilians, which was reportedly filmed in the last stages of the war. A government-appointed group of specialists found the video to be fabricated.¹⁵⁸ In January 2010, the UN Special Rapporteur on extra-judicial, summary and arbitrary execution, Philip Alston, said that an expert group he had appointed to investigate found the footage authentic. Alston called for impartial inquiry into allegations of war crimes in the final stages of the conflict in Sri Lanka.¹⁵⁹

International pressure for an independent and impartial investigation into war crimes has led to two outcomes. In June 2010, the UN Secretary-General appointed a three-member committee to look into human rights abuses in the final stages of the war.¹⁶⁰ The Sri Lankan government has been highly critical of the proposed investigations by the UN and accused the organization of succumbing to pressure from NGOs and the Tamil diaspora.¹⁶¹ Protests against the proposed panel were held in Colombo and Geneva when the announcement was made.¹⁶² The UN panel, chaired by former Indonesian Attorney General Marzuki Darusman, started a four-month evaluation in September 2010 for which it has invited submissions from individuals and groups.¹⁶³ To date, however, it remains unclear what the full mandate of the panel is, how it will take testimonies, and what provisions there will be for witness protection.

In a second development, in anticipation of the establishment of an international independent investigation, the Sri Lankan government appointed a

domestic eight-member 'Lessons Learnt and Reconciliation Commission' (LLRC) to investigate events in the period February 2002 to May 2009.¹⁶⁴ Its mandate concentrates on the failure of the 2002 ceasefire facilitated by the Norwegian government and the sequence of events from then until the end of the fighting. National and international NGOs have voiced concerns about the independence, impartiality and effectiveness of this commission. Its mandate, especially in considering factors that caused the failure of the ceasefire, diverts attention from the investigation of war crimes and crimes against humanity. Its members have all been appointed by the President and some, for example, the former Attorney-General C.R. de Silva, played an influential role in defending the military onslaught at the international level.¹⁶⁵ The only Muslim member in the commission, Mohamed Jiffry, died in September 2010 and no replacement has been appointed.¹⁶⁶

The Commission is the latest in a string of failed commissions appointed to investigate human rights violations in Sri Lanka.¹⁶⁷ Key international human rights organizations invited to give testimony decided not to participate.¹⁶⁸ Some senior national civil society activists have also decided to boycott the commission. Other civil society groups and activists, however, have used the commission to draw attention to human rights violations, including those affecting minorities. Many Tamil individuals and families have also made submissions to the commission, which has helped bring to light some of the atrocities committed in the last stages of the conflict, and some that are ongoing, such as disappearances and the detention of suspected LTTE members.¹⁶⁹

Tamil civil society activists, academics and political leaders in Colombo and the north strongly asserted the need for justice and accountability for civilian killings and human rights violations during the conflict.¹⁷⁰ They also demanded an international war crimes investigation, as those affected are in no position to consider being involved in such an investigation within Sri Lanka. When asked about a local-level process of justice and accountability, however, views were mixed. Some activists felt the time was not right – the people were not ready for it and the government's opposition to such issues being raised would mean that people involved in the process could be at risk. Others felt the process should begin, but slowly.

Several different positions were articulated by Tamil people caught up in the last stages of the war when they were asked a similar question during interviews for this research. Most were angry with the LTTE for attacking civilians and for forcible recruitment in the latter stages.¹⁷¹ All of those interviewed held the view that civilians were targeted by the government in the last stages of the war. Most blamed the senior leaders, including the President,

while they were less critical of the military. Some civilians were clearly still traumatized when discussing the events; others were able to explain the situation but were afraid to discuss accountability. Some could not imagine the possibility. Some had a clear demand for it. None was able to explain what form of justice they wanted. One Tamil activist said:

‘Those who have lost a family member want to save those who are remaining. Those who saw the dead are not demanding justice. It is those who have a family member in custody or disappeared that want justice.’

Activists interviewed say there are various reasons why people feel unable to demand justice at this point.¹⁷² One is that people fear that if they discuss or act on this issue, their remaining family members could be targeted – arrested or killed.¹⁷³ Also, there is no civil space in which to hold conversations on these issues or to organize public meetings. Military permission is required for any movement or assembly of people in the north, and it would be impossible to discuss this matter with the military. Those interviewed

for this report talked of how the military prevented the holding of several religious and community events to mark the first year of the end of the war by mourning for loved ones.¹⁷⁴ Local NGOs have been dissuaded or prevented from carrying out psycho-social work.¹⁷⁵

The issue of justice and accountability has a strong ethnic and historical dimension. While a war crimes investigation is needed to look into the events of the last stages of the war, there is also a need for justice and accountability for those who suffered through the war. Muslims in the north and east interviewed for this report also strongly assert this view in regard to their eviction from the north, massacres in the east and other violations.¹⁷⁶ Sinhalese in the east and in villages bordering the conflict zone were also considerably affected.

These issues are of crucial importance to minorities, both in terms of reconciling their suffering and to help bridge the gap between the majority and minority communities. The government should allow civil society to play a role in beginning community-level discussions while a national level plan of justice and reconciliation is developed and implemented.

Case Study – Tamils of Indian Origin living in the plantation sector

Tamils of Indian origin, also known as plantation Tamils or up-country Tamils, comprise about 5.4 per cent of the Sri Lankan population.¹⁷⁷ They were originally brought to work as bonded labourers in the tea, coffee and rubber plantations in Sri Lanka by the British, during the colonial period, around 1820.¹⁷⁸ Some Tamils of Indian origin came to Sri Lanka as traders and settled in Colombo and other urban areas. A large part of the Indian Tamil population remains in the central, plantation areas of Sri Lanka, while some 6 per cent have moved to other parts of the country.¹⁷⁹

The situation of plantation Tamils is exceptional and requires specific attention. The community has been marginalized and sidelined for decades, and faces major political, economic and social rights violations. As Sri Lanka charts its post-conflict future, it is crucial that this community does not continue to be neglected.

Although plantation Tamils were not directly involved in the conflict, because of their Tamil name and identity they have faced similar human rights violations to northern Tamils, such as arbitrary arrest and detention under the Prevention of Terrorism Act (PTA).

Historically, the civil and political rights of plantation Tamils in Sri Lanka have been violated. Many of them were stateless and faced problems of citizenship through successive post-independence governments, only receiving Sri Lankan citizenship in 2003, under the Citizenship Act 35.¹⁸⁰ Over 200,000 people in this community still have problems of documentation however, many having lost their citizenship documents in ethnic riots in 1983.¹⁸¹ Several thousand do not have national identity cards (NICs), which has led to arrests and detentions. The lack of basic documentation affects their ability to seek proper employment, own property, benefit from social security, vote and open a bank account.

Plantation Tamils are the most neglected and under-privileged ethnic minority community in Sri Lanka. Poverty levels among them are 7 per cent higher than the national average,¹⁸² 30 per cent of those in the plantation

sector live in poverty, and 13 per cent receive welfare assistance from the state.¹⁸³ Most are employed picking tea, and receive extremely low wages, despite the fact that the tea industry is one of the top contributors to the economy. Work in the plantation sector is labour-intensive and conditions are poor; many plantations are now being managed by the corporate sector of Sri Lanka.

The living conditions of the plantation workers are also very poor. 63 per cent of people living in the plantation sector live in 'line homes' – tiny shanty dwellings attached to each other in a line across the plantations. The houses are often made of wood, inadequate to withstand the cold and rainy weather in the mountainous areas. Sanitary facilities are poor. There is high rate of sexual attacks, including incest. Cramped living conditions mean children, parents and extended families share the same sleeping space. Other social problems in the plantation sector include high rates of domestic violence, alcoholism and caste-based attacks.¹⁸⁴

Male literacy in the plantation sector is 88.3 per cent compared to the national rate of 94.7 per cent, while the female literacy rate is 74.7 per cent against a national average of 91.1 per cent. The community's children often drop out of primary school to work, and the education that they are provided is of poor quality due to inadequate facilities and a lack of qualified teachers. Some 37 per cent of children in the plantation sector are engaged in child labour, which is uncommon in the rest of Sri Lanka. Only some 0.2 per cent of workers in the public sector are Tamils of Indian origin while 5.5 per cent are Sri Lankan Tamils, 2.2 per cent Muslims, and 92 per cent Sinhalese.¹⁸⁵

The right to health is another serious issue among the plantation community: 30 per cent of the children have low birth-weight and 40 per cent of children are stunted and under-weight.¹⁸⁶

The issues highlighted here, though briefly, paint a clear picture of a minority group that has been sidelined and neglected, and whose rights have not been protected by the Sri Lankan state since independence.

Part 2: Key minority grievances

Land seizure

Land has been a highly politicized and ethnicized issue in Sri Lanka since independence, and is also a factor that contributed to the conflict. State-sponsored colonization schemes, moving Sinhalese into Tamil- and Muslim-dominated areas in the early 1960s, caused much concern at the time.¹⁸⁷ During the conflict the LTTE engaged in continuous and systematic land-grabbing in both in the north and east of Sri Lanka.¹⁸⁸ This section presents some of the concerns raised by representatives of Tamil and Muslim communities in the north and east over the state's involvement in land issues, but does not deal with land issues and minorities comprehensively, as these were addressed in a recent report by the Centre for Policy Alternatives (CPA).¹⁸⁹

Throughout the conflict, people from all three communities lost their land, mainly through the establishment of HSZs; land-grabbing by the LTTE or other militant groups and civilians; and encroachment and displacement.¹⁹⁰ Following the end of the conflict, issues over land remain. Specific ways in which the state appears to be involved in land issues highlighted by minority representatives were: taking over land for security purposes or under various ministries; and supporting, assisting and, in some cases, sponsoring people from the Sinhalese community to settle in the north and east.¹⁹¹ In the opinions of those interviewed for this research, these actions represent an attempt by the Sri Lankan government to alter the demographic make-up of the north and east.¹⁹²

Land ownership systems in Sri Lanka are complex.¹⁹³ This section refers mainly to state land, where people can live and cultivate based on a permit for a given period of time, and privately owned land. Distribution of lands that belonged to the LTTE is another issue. During the conflict the LTTE forcibly seized land from Muslims and Tamils, but both in the north and east there have been cases where the state has not returned land seized by the LTTE to its original owners.¹⁹⁴ There are also inter-ethnic land problems between Tamils and Muslims in the east of Sri Lanka.¹⁹⁵ While all of these issues were raised by the people interviewed for this report, the major concern was with state acquisition of land belonging to both communities.

The principal way in which the state has taken over land that either belongs to or is accessed by minorities is through the creation of HSZs.¹⁹⁶ These fall into two types: first, those where large areas of land are taken over, and in some cases gazetted – possibly making the land seizure permanent; second, small areas of land are taken over unofficially, in an ad hoc manner, for military camps or military installations.¹⁹⁷ According to the North East Secretariat for Human Rights (NESOHR), 220 sq. km, or one-third of the total land area of Jaffna district has been taken over for the HSZ, displacing an estimated 70,000 people.¹⁹⁸ Parts of the HSZ are on the coast, which affects fishing, while a large part of the area taken over is arable land that was used for farming. Unlike other major HSZs the Jaffna HSZ has not been gazetted, raising serious questions about its legality.¹⁹⁹ In August 2004, the Supreme Court of Sri Lanka ruled in favour of the right to return for people displaced by the HSZ and asked the army to explain the security need for taking over the land.²⁰⁰ Despite this decision there has been little effort by the government to return people to these areas.

In Trincomalee, in 2006, 102 sq. km of land was taken over for an HSZ in Samboor and Muttur East, displacing some 15,000 people. In a speech to parliament at the time, Trincomalee MP R. Sambandan said that there were 88 water tanks used for agriculture in the area, 19 schools and 18 Hindu temples.²⁰¹ On 30 October 2008, the Samboor HSZ was officially reduced in Extraordinary Gazette notification 1573/19 to 37 sq. km. The return policy is, however, obscure. Some families have been allowed to return and fishing is permitted in some coastal areas that were part of the HSZ, but a number of families are being denied access to areas that were removed from the HSZ.²⁰² A displaced Tamil women in Batticaloa stated:

'We lived a good life before all these problems and fighting started. We didn't have many facilities like the electricity. But the life was good. The eastern war ended in 2007. We were displaced multiple times, over a period of two years and finally came to Batticaloa town in 2007. It has been three years since the government finished the war with the LTTE. But we are still in camps. Most people from Vaharai have returned. But people from Samboor and southern parts of Muthur have not returned. We are not permitted to

*go back. Our lands have been taken by the government and given to India. We hear that they are building something huge there. We fear that our lives are going to end here, without even seeing our place again. Our children suffer a lot. How can this happen? We own the land. We have proper documentation to prove our ownership. Yet, we were not even told that the land was going to be taken. Such enforcement and discrimination only led to the war. It will happen again. There is nothing that can bring justice to us. Nobody can speak with this current government. Everyone is scared. Something happens to my body when I think about what is happening to us. We were happy before, even when we were shelled and bombed. We lived in our land. We did things on our own. But now we have to be dependent for everything. This is not life. It is not that we want. We want to return to our place. Just let us go.'*²⁰³

Several Tamils and Muslims have also lost their land to ad hoc, undeclared, HSZs in different places. In Mannar a large area of coastal land has been taken over, encompassing the Muslim and Tamil villages of Silvathurai and Mullikulam, to which displaced people have been returning. In Silvathurai, a Muslim village, 220 families were unable to return to their homes because of the HSZ.²⁰⁴ Several people interviewed for this report also referred to cases where small areas of land are being taken over in the Vanni districts of Kilinochchi and Mulaitivu, affecting the return and resettlement process. In the area adjoining the Murikandy Pillaiyar temple in Kilinochchi, land has been claimed by the military, preventing ten families from returning.²⁰⁵ Because of limited access to these villages in the Vanni, it was difficult to verify this information or gain further information on other cases.

There are also concerns among minority activists about the military permanently settling soldiers and their families in the north. Construction of houses for military personnel can already be seen when travelling on the A9 highway in Kilinochchi.²⁰⁶ The constructions appear to be of pre-fabricated materials and not permanent in nature, but the project appears to be large-scale. The larger concern among minority communities is over statements made by senior military personnel in reference to permanent settlements. For example, at the opening of an army complex in Sugandirapuram, Puthukudiyiruppu, Sri Lankan Army Commander, Lieutenant General Jagath Jayasuriya said:

'These types of permanent buildings were made possible due to pre-fabricated technology, donated by China. The government wants us to vacate all buildings belonging to the civil sector, so that owners of those buildings could reclaim them and help bring

*normalcy to the area. Civil life should be restored and facilitated in the area. In the future, once married quarters of the officers and the other ranks are set up in respective areas, they would be able to live with their families as well while serving the areas.'*²⁰⁷

A Tamil politician commented: 'The government has no money to build homes for the displaced people but they have enough to hurriedly construct houses for soldiers in the north.'²⁰⁸

During the conflict thousands of acres of land were abandoned and not cultivated; in some cases the lands were occupied by the LTTE. According to several people interviewed for this report, in eastern Sri Lanka, at the end of the conflict when they attempted to access their land to start cultivation, they were told that the land has been taken over by government ministries or departments. They include the Ministry of Environment, Ministry of Tourism, Department of Forestry, Department of Archaeology, Department of Tourism, Department of Coast Conservation, Department of Wildlife and the Mahaweli Authority (the government body that oversees development and agriculture projects linked to the Mahaweli, which is the longest river in Sri Lanka). Most of the land is state-owned, 'permit land' but some is privately owned. A local farmer said:

*'There is no question who the land belongs to. If for instance my father owned the land, I, as his son, will go now to clear it from the bushes that have grown through the years because the land was neglected. Everyone in the village knows the land is mine. But when I am clearing it some government officer comes and tells me that this land does not belong to me it has been taken over by a ministry.'*²⁰⁹

Across the Eastern Province numerous cases were brought to MRG's attention by interviewees. In a number of instances in Trincomalee, Muslim and Tamil farmers who were not allowed access to their land said they later found that the land was being cultivated by Sinhalese farmers. One Muslim farmer said:

*'When we ask them where they are from, they told us they are from Gampaha or Matara, they are not even Sinhalese from Trincomalee, they are being brought from the South to cultivate in our land. We went and made a complaint to the police, but they didn't do anything. They are siding with the Sinhalese.'*²¹⁰

Community and religious activists at the grassroots level in the Eastern Province say that there is evidence of state involvement, ranging from state-sponsored buses

transporting people to the area, to state authorities such as Grama Sevikas and Divisional Secretariats (DS) enabling and supporting the settlements, to police assisting and protecting the settlements. In October 2010, the Kucheveli DS was instructed by officials of the Mahaweli authority to demarcate large areas of land in Pulmudai and Tennamaravady to come under Mahaweli Zone L. In the early 1980s, some 280 Sinhalese families lived in the area, but later left during the conflict. The Kucheveli DS has now been informed that up to 800 Sinhalese families are to be settled in this area.²¹¹

There is no evidence at present of permanent settlements of Sinhalese in Muslim and Tamil areas, but local people fear that this will happen. They are asking the government to explain why they are told that their land is taken over by government ministries or other authorities, and then discover that Sinhalese farmers from the south are being allowed to cultivate the land. An activist in Trincomalee said:

'As Sri Lankans everyone can live anywhere in the country, but people in the area must have a special right. If people from other areas come to live here, and are given our land, where do we live? And this is not voluntary. This is government sponsored.'

Some of the lands belonging to minorities are being taken over by ministries and departments for development projects. In Trincomalee district some 675 sq. km was declared a special economic zone by gazette notification in 2006. This encompasses part of the HSZ. Part of this zone is for local investment and part for international investment. One of the most prominent projects already commissioned within this zone is an Indian government-funded coal-power plant.²¹² Reports to MRG of land taken over for different development projects include: 650 acres in Kumburupitiya (near Trincomalee town) for a hotel project, 50 acres in the same area for a golf course and 25 acres by the sea front in Pulmudai, also for a hotel.²¹³

Because of the protracted nature of the conflict and displacement, in some areas there is no evidence of people having lived there. For years, up until the late 1970s, Muslims and Tamils lived along the Wilpattu road that runs through Wilpattu national park between Puttalam and Mannar districts. After more than 25 years, the road is now accessible once again for public use but there is an ongoing court case between environmentalists, who want the road closed except for eco-tourism, and IDPs, who say that they lived there before the conflict began and need the road to be open to commute to the nearby villages.²¹⁴ One village, Potkerny, was previously inhabited by Muslims and Tamils, but now only houses military camps. Everything else was destroyed, and there is now no trace of people having lived there. An elderly woman in Puttalam stated:

'I recently travelled through Wilpattu road to Mannar. I couldn't see anything in our village Potkerny. We cannot step inside the village. But there is nothing to see. Everything is gone. I could remember my school and the mosque. I do not think that we can go back there to live. Nothing is there,' an elderly woman from Puttalam stated.

Political representation

In the last two decades, following a change in the electoral system to a proportional representation system, minority political parties have played an influential role in Sri Lankan politics. The Sri Lanka Muslim Congress (SLMC), which is the largest Muslim political party, and the Ceylon Workers Congress (CWC), representing Tamils of Indian origin, have been in a position to make and break governments.²¹⁵ Because these parties held sufficient seats to enable the formation of coalition governments, the party leadership was able to negotiate with the ruling party and win several key ministerial portfolios. Though the success of these political parties did not necessarily benefit the communities that they represent, it did result in some level of development for them, and employment and other opportunities for party members and workers. Political parties were also formed by northern and eastern Tamils, but their situation was complicated as their main constituency was under LTTE control for so many years.²¹⁶ The end of the conflict should have offered new opportunities to both this group of Tamil parties and the SLMC, but instead most minority parties have become considerably weaker.

For the SLMC, the major issue has been internal divisions, including a break-away faction (the National Unity Alliance – NUA), and pressure from the government for SLMC MPs to join the government side in parliament.²¹⁷ The party has the support of Muslim voters in most parts of the country, particularly the Eastern and Central Provinces, and in the 2010 parliamentary elections, the party won eight seats, and.²¹⁸ The NUA, meanwhile, suffered a blow when its leader - Ferial Ashraff, the widow of the founder of the Muslim Congress, lost her seat following a racist campaign, where Sinhalese voters (who previously had accounted for about a third of her support base), were told publicly to vote for any Sinhalese candidate rather than for her.²¹⁹

At the time of writing, SLMC MPs had all crossed over to the government after coming under serious pressure from both the government and their local party leadership.²²⁰ Some senior SLMC leaders were unhappy with the situation, but felt they were left with little choice as party members felt they were losing out by being in the opposition, particularly on development projects in the

east. The CWC has its origins in the trade union movement and its strongest support in the Nuwara Eliya district in the central highlands. For many years its leader, Savumiamorthy Thondaman, was the sole representative of Tamils of Indian origin in parliament. Since 1994, like the SLMC, the CWC has been able to play an influential role in forming coalition governments, but more recently, it has faced criticism for its alliance with the government. In the 2010 elections the CWC's seats in parliament dropped from eight to four.²²¹

The situation of the remaining Tamil political parties is also problematic. In the 2010 election the Tamil National Alliance (TNA) won 14 out of 31 seats in the north and east of the country.²²² The Eelam People's Democratic Party (EPDP), which is a government ally, won three seats. The EPDP and TNA are the only serious political parties to represent Tamils, but few Tamil political analysts and commentators in the north of the country interviewed for this report found either party a strong option for the future political development of the Tamils.²²³ EPDP former members have been responsible for a spate of recent extra-judicial killings, disappearances and abductions. Some are still armed, even if they do not carry weapons publicly. They also work closely with the military as informants.²²⁴

The EPDP appears to be losing its political clout, especially with the government of Sri Lanka. The government sometimes undermines the EPDP, for example through its close affinity to Selverasa Pathmandan or KP, a former senior LTTE key player and arms dealer for the movement.²²⁵ The EPDP was formerly the main opposition to the LTTE – as the northern Tamil party that was in the democratic mainstream. Now, without the LTTE, their political relevance and importance is much reduced.

Meanwhile, the TNA is currently the most popular Tamil political party in the north but – as the former political arm of the LTTE – it has struggled to recreate itself since the end of the conflict in 2009. It remains critical of the Sri Lankan government and raises the more controversial problems faced by Tamil people, more than any other Tamil political party.²²⁶ Its most identifiable stance is on political autonomy, where its demands are on the lines of a federal model.²²⁷ This leaves the party somewhat isolated as, in the current political context, their demand appears unrealistic.

Three serious problems affect all of the minority parties and threaten the future of minority politics in Sri Lanka. The first is disunity and division within and between the parties, affecting both Tamil and Muslim parties.²²⁸

The second problem facing minority political parties is attempts to change the electoral system in ways that could disadvantage them. Following the 2010 election, the

government presented the Local Authorities Amendment Bill, which would introduce a hybrid election system of direct and proportional representation, and new electoral boundaries. A major concern of minority parties regarding this bill is the combining of first-past-the-post and proportional representation.²²⁹ Until now, minority parties have been able to secure larger numbers of seats because of the proportional representation system. The new bill also has a cut-off point, meaning that each party would need a minimum of 5 per cent of votes within a particular polling division before seats are allocated.²³⁰ This would exclude small parties at a very early stage.

Finally, the bill also proposes a change to current electoral divisions. The Minister of Local Government will establish a commission to draw the boundaries of electoral divisions²³¹ – an unchecked power which could significantly weaken minority parties by altering the demographics of their core constituencies. The parties likely to be most affected by this bill are the CWC and SLMC, whose electoral constituencies are scattered across geographical areas. The bill is under review by provincial councils and appears at the time of writing to lack the necessary support to be passed.²³²

In the run-up to the 2010 elections and the drafting of the Parliamentary Elections (Amendment) Bill, the government included clauses to prohibit parties from using religious or ethnic references in their name. Following a petition by MPs of the SLMC, TNA and Lanka Sama Samaha Party, the Supreme Court ruled that provisions against the names of these parties violate the Sri Lankan Constitution. Even if unsuccessful, this demonstrates clearly attempts to undermine minority parties.²³³

Political autonomy

Self determination and self government have been critical demands of minority groups for over half a century in Sri Lanka. They were also central to the conflict and were the basis upon which Tamil nationalism, and later Tamil militancy, were founded. Sri Lankan governments since independence have held different ideological positions and given different practical responses to these demands.²³⁴ During the conflict there were attempts by successive Sri Lankan governments to discuss some form of political autonomy for minorities, mainly for Tamils.²³⁵ These were made during peace negotiations with the Tamil Tigers and, in some cases, with other Tamil parties that were in the democratic mainstream. This report argues there is a need for constitutional reform providing for political autonomy for minorities by examining the limitations of the existing legislative framework and analysing the most recent attempts by the government to address these issues.

The 13th Amendment

Under the current legislative framework, the 13th Amendment to the Constitution, the Provincial Councils Act, No. 42 of 1987 and enabling legislation (the brainchild of India that was introduced as part of the Indo-Lanka peace pact in 1987), provides for some level of devolution of powers to provinces.²³⁶ But the 13th Amendment is limited both on paper and in practice.

The accord established provincial councils for each of the nine provinces and the north and east were merged into one unit. Members of the council and the Chief Minister who heads the council are elected by the people in the province. The council has legislative powers over certain subjects or issues (those itemized on the 'provincial list' and the 'concurrent list').²³⁷ Subjects or issues that remain with the centre are on the 'reserved' list.²³⁸ Executive powers in the province lie with the provincial ministers and the Governor, who is a presidential appointee. The Governor has significant powers over appointments to public service, and in signing off the budget and calling for it to be debated by the council. In theory, the Governor is a figurehead, but this is not the case in practice (see below). Leaving executive powers with the Governor is a major limitation of the 13th Amendment.²³⁹

Based on a Supreme Court decision in October 2006, the Northern and Eastern Provinces were de-merged (see below).²⁴⁰ In 2008, after the military captured the Eastern Province from the LTTE, the government declared Eastern Provincial Council (EPC) elections. S. Chandrakanthan, known as Pillayan, a former LTTE child soldier, was elected Chief Minister of the province.²⁴¹ This was the first functioning provincial council in the former conflict areas and was used by the government as a show-case of successful political autonomy for minorities.²⁴² The council, though, has been far from autonomous, crippled by a powerful Governor and weaknesses in the system. The current Chief Minister has faced difficulties in making public service appointments. A senior official of the EPC said:

*'In Colombo, the President has executive powers but he is elected. Here you find the Governor who is not elected having more powers than the elected Chief Minister. He can override the Chief Minister whenever he wants. The Chief Minister can't even appoint secretaries to the provincial ministries.'*²⁴³

In one case in 2008, the Indian ambassador had to intervene over the appointment of five bus drivers, as the Governor refused to approve the Chief Minister's appointees to drive buses donated to the province by the Indian government.²⁴⁴ To date, the EPC has also not been able to pass a financial bill.²⁴⁵ Land is listed as one of the

subjects of the province, and is under the control of the provincial administration. However, in many instances the Chief Minister has tried to intervene on issues where provincial land has been claimed by the state and/or where complaints have been made to him of individuals' land taken over by various authorities, and he has failed to have his views considered.²⁴⁶ Police powers have been devolved to the province, but officials in the EPC say that the police undermine the Chief Minister and don't always take orders from him.²⁴⁷ In 2009 the Chief Minister wanted to create a fund, to be known as the Chief Minister's Fund, with the aim of raising money to develop and build minority religious places of worship. The bill to create the fund was passed by the council, but when it was sent to the Governor for assent, he reportedly asked for amendments to be made enabling him to have greater control over the funds. The EPC passed the bill a second time, after which, according to the law, it has to be sent to the President to get an opinion from the Supreme Court as to whether it is unconstitutional. If the bill is not found to be unconstitutional, it will become law. The bill has been sent to the President, who has yet to take any action.²⁴⁸ One official said:

*'This is a case where the President himself is violating the Constitution, He has no business to keep the bill with him, he should send it to the Supreme Court. We have a Governor who is not friendly towards devolution of powers for minorities and a President agreeing with it.'*²⁴⁹

The fact that the 13th Amendment functions in a unitary state itself poses limitations, as the central government has the power to take over subjects/issues that have been devolved to the province.

Full implementation of the 13th Amendment is now being promoted as a possible political settlement for minorities. Some political analysts in Sri Lanka say that in the current political climate it is the furthest this government is likely to go. The proposal of full implementation of the 13th Amendment has India's blessing. However, as the above section explains, the 13th Amendment is far from adequate to fulfil minority aspirations to self-rule in the north and east.

The APRC

In 2007, President Mahinda Rajapaksa appointed an All Party Representative Committee (APRC), formed of representatives from all of the political parties elected to parliament, to provide recommendations on a new Constitution.²⁵⁰ The President appointed a group of experts to be part of an advisory body to the APRC. The group of experts could not reach a consensus and

eventually provided two reports to the APRC: the majority and the minority report.²⁵¹ At the time the APRC was appointed, the government had begun its military onslaught against the Tamil Tigers and was under international pressure to offer minorities a political solution. From its inception the credibility of the APRC was challenged because of Presidential interference and criticisms from different political parties. The TNA, the largest Tamil political party in parliament, was not invited to join the APRC.²⁵² The main opposition, the United National Party (UNP), left the APRC early on.²⁵³ Two major Sinhala nationalist parties also pulled out in the middle of the process. In 2008, just prior to the EPC elections, the President requested that the APRC provide an interim report. According to members of the APRC interviewed for this report, the President at the time was under pressure from India to fully implement the 13th Amendment in the Eastern Province.²⁵⁴ Members of the committee say that, as it was only an interim measure, they recommended what became known as '13+', which in summary meant full implementation of 13th Amendment with limitations on the centre's intervention in the provinces.²⁵⁵

*Just two days before handing over this report, pressure was put on us to change from 13+ to 13- as the President was supposedly under pressure from Sinhala nationalist allies. Finally we agreed to the bare minimum, implementation of the 13th Amendment. We felt it had to be done to keep the APRC process alive and the one consolation was that it was a transitional arrangement.'*²⁵⁶

After three years and 126 meetings the APRC was wound up. It was not officially disbanded, but the Sri Lanka government's Secretariat for Coordinating the Peace Process (SCOPP), which funded and hosted the APRC process, was disbanded in July 2009.²⁵⁷ The APRC, though depleted in numbers, reached consensus on a report. The chair of the APRC, Professor Tissa Vitharana, reportedly handed it to the President, but he has not acknowledged it or mentioned it since.²⁵⁸ Ahead of the last presidential elections the President publicized a document as being part of the report which members of the APRC say did not reflect their final conclusions. In July 2010, two members of the APRC, Nizam Kariyappa of the SLMC and Mr Yogarajan, formerly of the CWC, published a report based on the full proceedings of the APRC.²⁶⁰

The APRC reached consensus on several key steps towards political autonomy for minorities, including an effective system of devolution of powers to the provinces, giving them greater autonomy than under the 13th

Amendment. This was modelled on the system in Northern Ireland. The APRC recommended the creation of community councils in minority-dominated non-contiguous areas, such as the plantation sector, and the creation of a second chamber consisting of representatives from the provinces and the community councils. Constitutional amendments would require a two-thirds majority of both the House of Parliament and the Senate, in separate sittings.²⁶¹

The APRC tried to achieve a balance between minority demands and the criticisms of Sinhala nationalists. In order to achieve this, the APRC compromised on some issues, including the term used to describe the political system. The expert group recommended three options: to keep the current term (unitary state); to describe it as a federal state; and not to classify the nature of the state. The APRC decided to settle for the latter.²⁶²

A second area of compromise was in avoiding the issue of the merger of the north and east, as this is a matter of contention between Tamil and Muslim parties. As mentioned above, the 13th Amendment created one north-east provincial council, which was de-merged after a Supreme Court decision in 2006. Tamil nationalist groups considered the north and east as the traditional homeland of Tamil-speaking people, but Muslims prefer the de-merger as they are the majority in the east but a minority in the merged province.²⁶³ Achieving agreement on this issue is important for minorities to be able to press ahead with demands for political autonomy.

Since the end of the war, the President appears to have shelved the APRC report and has made scant mention of a comprehensive political solution for minorities or of a new constitution. In September 2010, the President hastily put to parliament the 18th Amendment to the Constitution, which removed the two-term limit on the presidency, enabling the current President to contest a third term. He gained a two-thirds majority in parliament to pass the bill, largely with the support of the SLMC and the leftist parties.²⁶⁴ He has hinted that there are other constitutional amendments to come, including some which offer minority protection, but little is known about this.²⁶⁵ One member of the APRC summed up the situation:

*'Let the record bear once again, as the Tamils always said, the Sinhalese government will cheat them the moment terrorism is defeated. Even though we hated terrorism, once it was defeated, it is clear that the political will is not there to offer minorities anything.'*²⁶⁶

The narrative of this process is important as it shows the government's lack of commitment to offering a political solution to minorities.

Human rights

Sri Lanka has had a poor human rights record for at least the last four decades. The country had two major insurrections in the south in the early 1970s and the late 1980s, when tens of thousands of university students, academics, media personnel, activists and politicians were killed, disappeared and tortured by the state.²⁶⁷ Also, several thousand Tamil civilians have been killed by military attacks, while hundreds have been disappeared, arbitrarily arrested and detained, abducted and tortured on suspicion of involvement with the Tamil Tigers.²⁶⁸

The Tamil Tigers were also responsible for large-scale human rights violations, attacks on civilians in places of religious worship and suicide bombings in Colombo.²⁶⁹ They were responsible for the eviction of northern Muslims.²⁷⁰ They were reported to have abducted and forcibly recruited over 1000 children during the war.²⁷¹ In the last stages of the war the Tigers also forcibly recruited many adults. The Tigers were intolerant of political opposition and were responsible for the killings of many moderate Tamil political leaders, journalists and activists.²⁷²

In the last few years, human rights violations have been targeted mainly on minorities, or minorities have been disproportionately affected by the violations. Violations against Tamils were conducted by state organs such as the military and the police; also, Tamil paramilitary groups close to the government were given a free hand to perpetrate violence.²⁷³ Between 2005 and 2009, there was a significant increase in extra-judicial killings, abductions, arrests and detentions under the PTA, and disappearances.²⁷⁴

The PTA originally came into effect for a three-year period in 1979 and has been in place ever since.²⁷⁵ It gives the state extensive powers to arrest and detain individuals for up to 18 months without trial. While arrests under the PTA take place constantly, there are no official records of the numbers and due process is not maintained in the conduct of the arrests, which can be carried out by different actors, including the police, army, CID and TID.²⁷⁶ Torture has been common police practice against PTA detainees and many who have been detained under the PTA for over a decade are considered 'disappeared' by civil society organizations, as they are held in undisclosed locations and have no contact with their families or legal counsel.²⁷⁷ The law remains in place over a year after the end of the war.²⁷⁸

The PTA remains a tool for large-scale human rights violations against the Tamil civil population in the Northern Province.²⁷⁹ Sri Lankan anti-terror legislation does not comply with international standards, leaving the minority community exposed to continuous human rights violations.²⁸⁰ This situation is further exacerbated by the weakness of both the judiciary and the government

institution for the protection of human rights,²⁸¹ the National Human Rights Commission.²⁸²

In Jaffna, extensive human rights violations are believed to have occurred between 2006 and 2009. According to interviewees, a person was shot dead every day during this period.²⁸³ There are no records of those killed during this period, but estimates by civil society activists range from 700 to over 1000.²⁸⁴ In a joint report, the Civil Monitoring Commission, Free Media Movement and the Law and Society Trust, recorded 662 killings and 540 disappearances, in the period January–August 2007.²⁸⁵ 83 per cent of the victims were Tamil; more than half the disappearances and 28 per cent of the killings took place in Jaffna. Those targeted included politicians and activists. Different methods were employed; sometimes people were asked to come to the Civil Defence Office in Jaffna and then were killed on their way home. As a lawyer working on PTA cases in the north described: 'Being asked to come to the Civil Defence Office was a definite sign that they were going to be targeted.'²⁸⁶

Often the perpetrators would appear on motor cycles and shoot people dead at the roadside, at their workplace or at their home. The killings were conducted in daylight and in public. A human rights lawyer in north Sri Lanka said:

*'Everyone knew who the perpetrators were but people were so afraid they would not identify them, many of the perpetrators are still moving among us.'*²⁸⁷

Similar killings, though fewer, also occurred in eastern towns and in Colombo; in nearly all cases those targeted were Tamils.²⁸⁸ During this same period minorities in the north, east and in Colombo were terrorized by *white van syndrome*. People were abducted in white vans, and many would later disappear. Some were kidnapped for ransom.²⁸⁹

After the war ended in 2009, human rights violations continued in the north of the country, intensifying around the elections in 2010. Several hundred cases of intimidation and harassment by paramilitary groups, and an increase in detentions, were recorded in the run-up to the elections. In the aftermath, critics of successful candidates were also attacked or detained.²⁹⁰

Since 2010, there has been a notable decrease in reports of extra-judicial killings, disappearances, abductions and arrests.²⁹¹ One reason for this is the elimination of the LTTE, who had been responsible for such violations for years. According to activists interviewed for this report, incidents of state-perpetrated violations have also decreased. Some attribute this to the fact that the state has succeeded in eliminating all of its 'enemies'; others say this is a temporary lull and the situation may change as tens of thousands of Tamils return to their homes.²⁹²

Although there has been a decrease in some types of violations, the human rights situation for minorities remains of concern. Among the major issues are: detention of ‘surrendeeds’, arrests and detention under the PTA, the continuation of a state of emergency that enables the PTA to be used, restrictions on freedoms, and the general state of impunity in Sri Lanka.²⁹³

Surrendeeds

At the end of the war, when Tamils who were trapped by the fighting began to enter government-controlled areas, the military asked people who had had any involvement with the LTTE to surrender. ‘They made announcements that even if you had worked for the LTTE for one day you should surrender’, according to one Tamil woman.²⁹⁴

Of the several thousand who surrendered, many had had only marginal involvement with the rebels, such as building bunkers in the last stages of the war, cooking, nursing the wounded, etc. Some were forcibly recruited by the rebels in the last stages and some were members of the movement. All of them – some 11,000 people – are or were held in custody. It is not known where or under what conditions they are held.²⁹⁵ Even the International Committee of the Red Cross (ICRC) has no access to some of the detention centres, although in some cases, family members have been informed of arrests and have managed to visit their relatives.²⁹⁶

In early 2010, the government began to release some of the detainees. A few hundred have been released to date,²⁹⁷ although on what basis is unclear. The general view among people living and working in the Vanni is that a large number of those being detained are not members of the movement. Those interviewed for this report expressed anger that the government maintains close ties with higher-level LTTE leaders, while those at the lower level and Tamil civilians are being detained.²⁹⁸

Language

Tamil is the ‘mother tongue’ of Tamils and Muslims (excluding Malays) and is spoken by one in four Sri Lankans. The north and east is the only contiguous region of the island where Tamil is widely used; the Nuwara Eliya district in the central highlands is the only other part of the country where Tamil-speakers comprise the majority of the local population.²⁹⁹ There are concentrations of Tamil-speakers in urban centres such as Colombo (where they comprise 56 per cent of all residents within municipal limits) and Kandy, and in far-flung districts such as Badulla, Puttalam, Kalutara, Kegalle, Matale and Ratnapura, where they comprise around 20 per cent of the population.³⁰⁰

Legislative framework

Language is one of the leading causes of the conflict in Sri Lanka. The language problem has its roots in the 1956 Official Language Act, which substituted Sinhala alone for English as the official language.³⁰¹ The 1978 Constitution (before amendment) retained Sinhala as the official language but conferred the status of ‘national language’ on both Tamil and Sinhala. The fundamental rights chapter in the 1978 Constitution was a distinct advance on its predecessor (the 1972 Constitution). The equality clause prohibited discrimination on the grounds, *inter alia*, of language.³⁰²

The current legal and policy framework for Tamil language rights is to be found in Chapter IV of the 1978 Constitution – as modified by the 13th and 16th Amendments in 1987 and 1988 respectively, and supplemented by the Official Languages Commission Act (No. 18) of 1991, as well as government directives through gazette notifications and public administration circulars. Since 1987, Tamil has been an official language in Sri Lanka.³⁰³ However, the elaboration of this constitutional provision was deferred to future legislation, which was the 16th Amendment in 1988.³⁰⁴

Current legislative guarantees on language rights include:

- that the medium of examination for selection to the public service, judicial service, provincial public service, local government service or any public institution may be Tamil or Sinhala or a ‘language of [the person’s] choice’ (presumably English). However admission may be conditional on that person acquiring ‘a sufficient knowledge of Tamil or Sinhala, as the case may be, within a reasonable time ... where such knowledge is reasonably necessary for the discharge of his duties’.
- All laws and subordinate legislation are to be enacted and published in Tamil in addition to Sinhala, together with an English translation.
- Provincial councils and local authorities are permitted to issue orders, proclamations, and so on in the language of administration with a translation in English. Thus Tamil-speakers with no knowledge of English are disadvantaged in dealings with these institutions in areas where Sinhala is the *de facto* language of administration.
- Tamil is also raised to the language of the courts – the record and proceedings being in the language of the court – throughout Sri Lanka in addition to Sinhala. However, Sinhala is asserted to be the language of the court in areas where Sinhala is the language of administration.

The Official Languages Commission (OLC) was created in 1991, to advise government on matters of language

policy; monitor compliance, especially of public authorities, with the constitutional provisions on language; educate state officials, the private sector and the general public on the status and use of Sinhala, Tamil and English; and, finally, investigate complaints arising from alleged violations of the law. The OLC is poorly known: a 2006 survey found that over 70 per cent of respondents were unaware of its existence and mandate.³⁰⁵ The Commission's funding from government has averaged around Rs 10.5 million, and is nowhere near adequate for performance of its statutory role. Unlike the Human Rights Commission, which has 10 regional offices, it has offices only in Colombo. It has not been able to fill its approved staff cadre of 28, and in 2007 there were 12 vacancies. There is only one language officer with a staff of two coordinating assistants to implement the programme of the commission.

Discrimination against Tamil speakers

Over 20 years since constitutional recognition of Tamil as an official language, Tamil-speakers continue to experience discrimination in their access to public services and institutions. Particularly outside of the north and east, the government officers with whom Tamil-speakers interact are largely mono-lingual Sinhala-speakers.³⁰⁶ Common difficulties include the lack of Tamil-speaking public officers or official interpreters in state institutions, so that communication can only take place in Sinhala or with the assistance of a bi-lingual third party. This is particularly pronounced in local government secretariats, police stations, electricity and water boards, and the health service. A recent survey of 40 selected state institutions outside of the north and east showed that only 9.5 per cent of officers claimed some proficiency in Tamil.³⁰⁷ The survey 'revealed that the majority of officials in the target offices did not have an adequate knowledge of the language policy to carry out their responsibilities properly'.³⁰⁸

Over the past few years there has been marked improvement in the translation into Tamil and production of official forms by government institutions. However, Tamil-language forms are often in short supply, or are not reprinted. The state bureaucracy continues to issue birth, death and marriage certificates only in Sinhala.

In districts outside of the north and east where there are a substantial number of Tamil-speakers, the Constitution allows for divisional secretariats to be declared bi-lingual.³⁰⁹ This provision was not implemented until 1999. In the four years up to 2003, the government declared 29 divisional secretariats in six districts to be bi-lingual for the purposes of language of administration. However, audits by the OLC have confirmed that these divisional secretariats are unable to offer basic services in Tamil. In a recent survey of 19 institutions in bi-lingual

administrative areas, only 15 had the required typewriters or computers and language software to produce documents in Tamil.³¹⁰

In the largely Tamil-speaking north and east, Tamil-speaking public officers continue to receive circulars and letters from their respective ministries in Colombo in Sinhala.³¹¹ In some districts, particularly in the Eastern Province, the Divisional Secretaries (formerly Assistant Government Agents) and Government Agents, who represent the central government in the administrative system and wield considerable authority, are generally of Sinhala ethnicity with no or poor knowledge of Tamil. Also, makeshift signs and notices erected by the security forces – who are based in that region in large numbers and involved on grounds of 'national security' in matters of civilian administration – are generally only in Sinhala.

The explanation generally given for the poor implementation of the official languages law is the lack of human resources, that is, the low numbers of Tamil-speaking public officers; and the lack of financial or material resources to facilitate the provision of bi-lingual services. Both are true. The virtually mono-ethnic public service is largely mono-lingual too. Historically, one of the manifestations of state bias against minorities has been a lack of interest in allocation of state resources for their needs, including the adequate resourcing of government institutions to provide access to Tamil-speakers.

Greater political will to address linguistic discrimination?

Since coming into power in 2005, the government of Mahinda Rajapaksa has been more willing to acknowledge linguistic discrimination than other kinds of discrimination, and to initiate administrative measures to eliminate it. In its 2005 Memorandum of Recommendations, the OLC proposed the bi-lingualization of the entire public service within 15 years, with the aim of achieving bi-lingualism among one-third of relevant state officials within five years.³¹² The mechanisms proposed were financial incentives. The Public Administration Ministry through Circulars No. 3 and 7 of 2007 has sought to give effect to this recommendation.³¹³

Another measure is to create a focal point in all local, provincial and central government institutions designated as the 'Official Language Implementation Officer' among senior-level administrators. The role of the focal person is to raise awareness among staff on the official languages law, and to develop strategies and take action for its implementation

There are now numerous Tamil-language training programmes for public officers, particularly the state security forces, for whom knowledge of Tamil in peace-

time has other uses, including its 'hearts and minds' strategy of legitimizing its permanent presence in the north and east. However, very few of the thousands of public officers trained in Tamil are able to use the language in the course of their duties. There is simply no incentive, beyond the modest financial increments on offer, for Sinhala-speakers to learn Tamil. In terms of social status, mobility in employment, work and travel opportunities abroad, it is the acquisition of English, not Tamil, that is prized.

It is anticipated that the post-war LLRC – appointed by the President and comprising former senior public officers – will emphasize the importance of full implementation of the official languages law and policy as a mechanism for ethnic reconciliation in its final report. In its interim report in mid-September 2010, the LLRC recommended 'ensuring facilities to members of the public to use their own language in official transactions with government departments',³¹⁴ which, of course, is already their constitutional entitlement.³¹⁵

Conclusion

Minorities in Sri Lanka have a long history and have both contributed to the development of the country and gained from it. They also have historical grievances against successive governments over human rights violations and obstacles to development and political autonomy. Though minorities in Sri Lanka share a common language, the two main communities – Tamils and Muslims – are ethnically and religiously different. They have different and sometimes competing needs and problems. Minority rights protection in Sri Lanka is complex and requires will and commitment on the part of the government.

The end of the armed conflict offered an ideal opportunity for the present government to take up this challenge. But 18 months after having achieved what was unthinkable for many Sri Lankans in ending the armed conflict, the government is showing few signs of tackling the underlying causes, i.e. minority grievances.

This report has examined some of the dominant concerns and fears of minorities regarding the agenda of this government, their policies and practices, which in many cases appear to undermine and exclude minorities. While large-scale development is occurring in minority areas, the people are not properly involved in it nor are they being consulted. Minority areas are being heavily militarized and civilian structures taken over by the military. Concerns were expressed by those interviewed for this report about minority lands being taken over and attempts to change the demographic pattern in these areas. Return and resettlement is not occurring in accordance with international standards, while over 300,000 Tamils

and Muslims, some recently displaced but most classified as ‘old IDPs’, remain in temporary camps.

For the last 18 months the general view of foreign governments involved in Sri Lankan politics, such as the US, India, the UK and others within the EU, and of the United Nations, has been that the Sri Lankan government should be given time. But a significant amount of time has now passed and the Sri Lankan government has shown little inclination to resolve long-standing issues such as the language problem. Nor has there been an attempt to negotiate a political autonomy package. Human rights violations against Tamils continue in a climate of impunity, and efforts towards achieving justice, accountability and post-conflict reconciliation for all communities are neither credible nor impartial. This contributes to a sense of dejection, fear, defeat and hopelessness among minorities, particularly those living in the north and east. While some sections of both the Tamil and Muslim communities are enjoying the dividends of peace, many are not.

While the factors that caused the conflict remain, the situation for minorities augurs only further insecurity, fears and concerns that could see a return to conflict. There have been many lost opportunities in Sri Lankan history to resolve these issues. If Sri Lanka is to have a lasting peace, dealing with historic injustices towards minorities and showing a serious commitment to improving the current situation of Tamils and Muslims is imperative. This should not become another wasted opportunity in Sri Lankan history.

Recommendations to the Sri Lankan government

- The President should clearly outline his government's policy and position on minorities. The policy document should present the government's position on historical minority grievances and current problems and outline ways to address them.
- The president should create a mechanism to consult widely with minority representatives across the country on a regular basis, and ensure that recommendations from this consultation feed into policy.
- The government should ensure that return and resettlement programmes conform to international standards. All IDPs should be included in this process, including 'old' IDPs.
- All development plans for the north and east should be opened up for a full and informed consultative process with representatives of minority communities from the area. Tamils and Muslims should make up the larger part of government bodies and mechanisms, such as the Presidential Task Force, overlooking development in these areas.
- The government must take concrete steps to demilitarize the north and east. Civil administrative structures should be restored. Military officials should be removed from key administrative positions such as positions of the Governor of the provinces and the Government Agents post.
- The government should appoint a commission to study the land issues faced by minority communities in the north and east. Recommendations made by the commission to address land problems should be implemented within a fixed period of time. Legislative changes needed to redress land issues should be identified and implemented.
- Existing laws guaranteeing language rights should be fully implemented.
- The government should conduct a fully consultative study on the political, economic and social problems of plantation Tamils and immediate measures should be taken to address their problems, including positive discrimination measures.
- The President should make public the APRC report and make clear his position on the report. He should recall the APRC, inviting the TNA, UNP, JHU and JVP to participate, and provide the committee with a new mandate to develop the report in the post-conflict context. The APRC should be given a specific time frame in which to achieve this.
- In the interim the government must fully implement the 13th Amendment. The President should call on the Governors of all provinces to function with minimal interference in the running of the councils.
- The government should remove all restrictions on freedom of expression, movement and assembly in the north and other parts of the country. The government should also remove restrictions imposed on NGOs and civil society operating and working in the north and east, and other parts of the country.
- The government should negotiate with the UN Office of the High Commissioner for Human Rights (OHCHR) to increase its presence in Sri Lanka, to work together to look at concrete means of addressing human rights violations.
- The government should request assistance from the OHCHR to develop an independent human rights monitoring and reporting mechanism.
- The UN Independent Expert on Minority Issues should be granted an invitation by the government to visit the country in order to report to the United Nations Human Rights Council on the situation of minorities in Sri Lanka.
- The government should immediately suspend emergency regulations and repeal the PTA. The government should provide a list of all LTTE surrendees in their custody. A list should be provided of all government and military, official and unofficial detention centres. The ICRC should have access to these detention centres.
- The government should work together with civil society to develop an independent, impartial and credible justice and reconciliation mechanism to investigate and account for serious human rights violations committed by both sides in the conflict, i.e. successive Sri Lankan governments and the Liberation Tigers for Tamil Eelam (LTTE).

Relevant international instruments

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

Article 4

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

International Covenant on Civil and Political Rights (ICCPR)

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 19

1. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

UN Guiding Principles on Internal Displacement,

Principle 20

1. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

UN Security Council Resolution 1325

8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction[.]

Declaration on the Right to Development

Article 2

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they

should therefore promote and protect an appropriate political, social and economic order for development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.

Notes

- 1 Sri Lanka gained independence from Britain in 1949. The majority Sinhala Buddhist community took control of state power structures, leaving the Tamils marginalized. Sri Lankan governments favoured the majority community, making Sinhalese the official language in 1956 and giving Buddhism the foremost position in the Constitution in 1972. There were campaigns against Tamils, some state-sponsored, others where the state was slow to take action to stop them (the 1959 and 1977 ethnic riots, the 1981 burning of the main library in Jaffna). In the late 1970s Tamil groups began to arm themselves to fight for a separate homeland. In 1983, a turning point in the history of Sri Lanka, crowds of Sinhalese in Colombo and other key towns looted and burned Tamil properties; hundreds were killed, thousands injured and several thousand made homeless. The state response was slow. The insurgency in the north and east of the country then became a full-blown armed conflict. In 1987, following the intervention of India, all the Tamil armed groups apart from the Liberation Tigers of Tamil Eelam (LTTE), gave up their arms and joined the democratic mainstream, under an agreement that devolved state power to the people in the north and east of the country. The LTTE continued to fight until they were defeated in May 2009. In the last stages of the fighting, over 20,000 civilians are believed to have been killed, mainly by military shelling, as the LTTE prevented people from fleeing the area. See reports by the International Crisis Group (listed at <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka.aspx>). University Teachers for Human Rights Jaffna (UTHRJ) also provides detailed accounts of human rights violations during the conflict (<http://www.uthr.org/index.html>).
- 2 'Sri Lanka declares end to war with Tamil Tigers', *The Guardian*, 19 May 2009, <http://www.guardian.co.uk> (retrieved on 15 December 2010); 'War's end in Sri Lanka: bloody family triumph', *New York Times*, 19 May 2009, <http://www.nytimes.com> (retrieved on 15 December 2010).
- 3 See UTHRJ reports and Human Rights Watch (HRW), 'Sir Lanka: Tamil Tigers forcibly recruit child services', New York, HRW, 11 November 2004, <http://www.hrw.org> (retrieved on 15 December 2010).
- 4 These were some of the commonest occurrences during the decades of armed conflict. See IRIN, 'Sri Lanka: conflict timeline', 28 April 2009 <http://www.irinnews.org> (retrieved on 15 December 2010).
- 5 'Post-war Sri Lanka searches for "just peace"', BBC News, 19 May 2010, <http://news.bbc.co.uk/1/hi/8690408.stm> (retrieved on 15 December 2010). The parade is repeated annually on Remembrance Day; see BBC News, 'Sri Lanka President condemns critics in victory pageant', 18 June 2010, <http://www.bbc.co.uk/news/10347595> (retrieved on 15 December 2010).
- 6 'Sri Lanka on brink of catastrophe as UN aid blocked', *The Times*, 20 May 2009, <http://www.timesonline.co.uk> (retrieved on 15 December 2010); 'In Sri Lanka, anger over detainees' fate', *Washington Post*, 11 November 2009, <http://www.washingtonpost.com> (retrieved on 15 December 2010); 'Tamils now languish in Sri Lanka camps', *New York Times*, 12 July 2010, <http://www.nytimes.com> (retrieved on 15 December 2010); 'Sri Lanka continuing detention', Al Jazeera, 19 September 2009, <http://english.aljazeera.net> (retrieved on 15 December 2010); International Crisis Group, *Sri Lanka: A Bitter Peace*, Asia Briefing No. 99, Brussels, International Crisis Group, 11 January 2010, p. 4; Minority Rights Group International (MRG), *State of the World Minorities and Indigenous People 2010*, London, MRG, 2010, p. 12; MRG, *Six months on: end of war brings little hope and no respite for Sri Lankan minorities* (briefing), London, MRG, December 2010.
- 7 President Mahinda Rajapaksa decided to seek a fresh mandate prior to the expiry of his term in 2011, and the election was held on 26 January 2010. Rajapaksa was the candidate of the ruling United People's Freedom Alliance (UPFA). General Sarath Fonseka, a former commander of the Sri Lankan Army, was the main opposition candidate, endorsed by a number of parties, including the United National Party (UNP) and the Janatha Vimukthi Peramuna. President Rajapaksa received over 57 per cent of all votes cast; Fonseka received over 40 per cent, carrying the Northern and Eastern Provinces. Summarized results can be found at: <http://www.slections.gov.lk/presidential2010/province.html> (retrieved on 15 December 2010). The 2010 parliamentary election was held on 20 April 2010, to elect 225 members to Sri Lanka's 14th parliament. The main parties contesting in the election were President Rajapaksa's UPFA, the main opposition the United National Front (UNF) and the Democratic National Alliance (DNA) of Sarath Fonseka. The UPFA won 144 seats, an increase of 39 since the 2004 election. The UNF won 60 seats, a decrease of 22. The minority Tamil party, Tamil National Alliance (TNA), won 14 seats, down from the 22 they won in 2004, and the DNA, contesting for the first time, won 7 seats. The UPFA, however, fell short of obtaining a two-thirds majority in the house, which it would have needed to change the Constitution on its own. Summarized results can be found on at: http://www.slections.gov.lk/parliamentary_elections/province.html (retrieved on 15 December 2010).
- 8 The TNA supported Sarath Fonseka, who defeated the President in nearly all districts of the Eastern and Northern Provinces. While Fonseka had been army commander during the war, he was nonetheless Rajapaksa's only opponent, and he had indicated sympathy for greater autonomy claims for the north and east, thus gaining the support of the Tamil minority. This strong division along ethnic lines between the presidential candidates indicates the need for a political solution to the conflict. However Rajapaksa still received enough support from the minority community to defeat Fonseka. See: 'Where now for post-election Sri Lanka?' BBC News, 29 January 2010, <http://news.bbc.co.uk> (retrieved on 15 December 2010); 'Analysis: Sri Lankan election a last chance for healing', IRIN, 26 January 2010, <http://www.irinnews.org>; 'Tamil to decide Sri Lanka election result', *Daily Telegraph*, 25 January 2010, <http://www.telegraph.co.uk> (retrieved on 15 December 2010). A full breakdown of votes can be found at: <http://www.slections.gov.lk>.
- 9 The President's older brother, Basil Rajapaksa, was elected as an MP in the April 2010 election. He is a senior adviser to the President and heads the Ministry of Economic Development, where he is the chief strategist of economic development plans and the most influential player on development issues in the north and east. Another of the

- President's brothers, Gotabhaya Rajapaksa, is Defence Secretary and plays a major role in security and defence issues that continue to affect minorities in the north and east. He is a key figure in return and resettlement policy-making and implementation. The President's younger brother, Chamal Rajapaksa is the speaker of parliament. His son Namal Rajapaksa was recently elected to parliament and is one of the youngest MPs. He has been unofficially given control of development of the Northern Province. Major infrastructure projects such as highways, transport, ports and airports are taking place across the country. See: 'President reviews Hambantota development plan', *Daily News*, 30 January 2008, <http://www.dailynews.lk/2008/01/30/pol10.asp> (retrieved on 15 December 2010); Media Center for National Development, 'Massive development in Hambantota District', 19 January 2010, <http://www.development.lk/news.php?news=165> (retrieved on 15 December 2010); and Center for National Development, 'News stories – projects', <http://www.development.lk/views.php?news=projects> (retrieved on 15 December 2010).
- 10 In the aftermath of the conflict the government clamped down on political opposition and dissent. Political leaders, civil society organizations and the media were seriously affected. The defeated presidential candidate Sarath Fonseka was arrested, court martialled for corruption and engaging in politics during his military career, stripped of his military medals and imprisoned for 30 months. In the period after the end of the conflict, several opposition political leaders were attacked and many were threatened. Civil society leaders were threatened, taken in for questioning by the Criminal Investigations Department (CID), arrested and detained, as were leading media personalities who were seen to be critical of the government. See for example: 'Gang torched Sri Lanka broadcaster's office', Reuters, 30 July 2010, <http://www.alertnet.org/thenews/newsdesk/SGE66T0UO.htm> (retrieved on 15 December 2010); 'Tamil journalist attacked in Mannar', *Lanka Sri News*, 23 July 2010, <http://www.lankasrinews.com> (retrieved on 15 December 2010); Freedom of Expression in Sri Lanka, 'Death threats to journalist's family in Sri Lanka', 22 July 2010, <http://sunanda.deshapriya.wordpress.com> (retrieved on 15 December 2010); 'CID on repeat visit to newspaper office', *Sunday Times SL*, 18 July 2010 http://www.sundaytimes.lk/100718/News/nws_15.html (retrieved on 15 December 2010); 'CID grills Lanka Editor and reporter', *Sri Lanka Guardian*, 17 July 2010, <http://www.srilankaguardian.org> (retrieved on 15 December 2010).
- 11 MRG interviews (July–September 2010). Unless otherwise stated all interviews were carried out by the author or MRG researchers.
- 12 *Ibid.*
- 13 The President's close political allies include Sinhala nationalist parties such as the Jathika Hela Urumaya and Jathika Nidahas Peramuna. The President was first elected with the support of Sinhala nationalists and they represent his core constituency in his second term. See: International Crisis Group, *Sri Lanka: Sinhala nationalism and elusive southern consensus*, Asia Report No. 141, 7 November <http://www.crisisgroup.org> (retrieved 15 December 2010). On the use of the nationalist base in mobilization for support of the government after the war see, 'Sri Lanka's feud with the UN turns acrimonious', BBC News, 7 July 2010, <http://www.bbc.co.uk/news/10536434> (retrieved on 15 December 2010); 'Sri Lanka government hardens position as the war winds down', *Dissent Magazine*, 13 May 2009, <http://www.dissentmagazine.org/online.php?id=240> (retrieved on 15 December 2010).
- 14 Interviews, July 2010. Interviewees included MPs from political parties such as the EPDP and several Tamil and Muslim MPs.
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- 16 Some politicians were happy to be quoted on some issues but not on others. Many spoke with a sense of openness and expressed their views strongly on the guarantee that they would not be identified.
- 17 It is not possible to say what the implications might be for people who gave information or comments critical of the government. We cannot rule out people being arrested or questioned by government authorities in a bid to find out the names of the author, researchers, MRG's partners and other activists in Sri Lanka who support MRG. In 2009, when Sri Lankan activists and NGOs signed a public letter expressing concern over the detention of senior civil society activist Paikiasothy Saravanamuttu, the police traced individuals on the list and some were asked to come in for questioning. In other instances police have got hold of lists of participants at human rights events and several have been questioned.
- 18 In the final months of the war the Sri Lankan government pursued a particularly aggressive policy towards critical journalists and civil society activists. *Sunday Leader* editor Lasantha Wickremetunga, a critic of the government's military campaign against the LTTE, was killed early in 2009. In an article he wrote predicting his death that was published after he was killed, he accused the government of his killing. His death drew international attention to the clampdown on freedom of expression in Sri Lanka. Sri Lanka remains among the top ten high-risk countries for journalists. Executive director of the Centre for Policy Alternatives (CPA) Paikiasothy Saravanamuttu has received death threats and was detained after he delivered a critical account of the human rights situation in Sri Lanka to the European Union for the evaluation of the trading agreement Generalized System of Preferences (GSP) Plus. The government is also proposing tough new laws to monitor NGOs which could severely restrict their work. See: International Bar Association, 'IBAHRI condemns death threat to prominent Sri Lankan human rights activist', London, International Bar Association, 27 August 2009, <http://www.ibanet.org> (retrieved on 15 December 2010); 'Sri Lankan human rights leader receives death threat', *The Guardian* 25 August 2009, <http://www.guardian.co.uk> (retrieved on 15 December 2010); 'Sri Lanka political investigation into supporters of threatened human rights defender, Dr Paikiasothy Saravanamuttu', *Front Line* 23, September 2009, <http://www.frontlinedefenders.org/node/2178> (retrieved on 15 December 2010); HRW, 'Sri Lanka – country summary', New York, HRW, January 2010 <http://www.hrw.org/en/node/87402> (retrieved on 15 December 2010); Amnesty International, *Amnesty International Report 2010 – Sri Lanka*, London, Amnesty International, 28 May 2010; Transparency International, 'Transparency International calls for protection of civil society organizations in Sri Lanka', Berlin, Transparency International, 11 March 2010, <http://www.transparency.org> (retrieved on 15 December 2010); 'Sri Lanka to amend law against NGOs', *The Hindu*, 28 February 2010, <http://beta.thehindu.com/news/international/article123850.ece> (retrieved on 15 December 2010); 'IPI Death Watch June 2010', International Press Institute, July 2010, http://www.freemedia.at/fileadmin/media/Documents/IPI_Death_Watch_Jun_2010.pdf (retrieved

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 - 23 Interviews conducted in June 2010, Puttalam and Batticaloa.
 - 24 Interviews, July 2010, Colombo.
 - 25 Interview, July 2010, Colombo.
 - 26 See: National Council for Economic Development, *Sri Lanka: New Development Strategy*, Colombo, Government of Sri Lanka, no date, <http://www.recoverlanka.net/data/SLDF05/SLNDS.pdf> (retrieved on 15 December 2010).
 - 27 International Crisis Group, *Sri Lanka: after the war*, Brussels, International Crisis Group, 17 February 2010, <http://www.crisisgroup.org> (retrieved on 15 December 2010); MRG, *Six Months On...*, *op. cit.*
 - 28 'Address by President Mahinda Rajapaksa at the Victory Day Parade to pay national tribute to the Security Forces following the defeat of terrorism', Colombo, 3 June 2009, in *The Hindu*, http://www.hindu.com/nic/victory_day_speech_june_03_2009.pdf (retrieved on 15 December 2010).
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 - 37 Not all of these people have been able to go back to their homes, nor have they been provided with homes or resettled in other areas. According to figures from the United Nations Office of the High Commissioner for Refugees (UNHCR) quoted in a recent CPA report *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, Colombo, CPA, 2010, <http://www.cpalanka.org/> (retrieved on 15 December 2010), some 70,949 people are living with host families in Jaffna. In September, UNHCR reported 35,000 IDPs remaining in displaced camps at the end of August 2010 (see OCHA, 'Joint humanitarian update North & East Sri Lanka Report # 28, September 2010', Colombo, OCHA, http://www.humanitarianinfo.org/srilanka_hpsl/ (retrieved on 15 December 2010).
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- 46 Interview, August 2010, Colombo.
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- 52 Interview, May 2010.
- 53 *Ibid.*
- 54 Interviews with aid workers and activists working in the area.
- 55 Interviews with returnees and aid workers who have access to the area, May–August 2010.
- 56 Interview, May 2010, Puttalam.
- 57 Interviews with aid workers and activists in the area, May–August 2010. See also OCHA 'Joint humanitarian update, September 2010, Report #28', *op. cit.*, p. 6,
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- 70 *Ibid.*
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- 72 *Ibid.*
- 73 *Ibid.*
- 74 OCHA, 'Joint Humanitarian Update North & East Sri Lanka Report # 28', *op. cit.*
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- 76 Internal Displacement Monitoring Centre, 'Still almost 300,000 IDPs in Sri Lanka (October 2010)', 22 October 2010, <http://www.internal-displacement.org> (retrieved on 15 December 2010).
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- 78 See section on land in Part 2.
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- 88 'Displaced Muslims to be resettled – Minister Baithudeen' Reliefweb, *op. cit.*; International Crisis Group, *Sri Lanka's Muslims caught in the crossfire*, Asia Report No.134, 29 May 2007 and *Sri Lanka: A Bitter Peace*, *op. cit.*, pp. 11–12, <http://www.crisisgroup.org> (retrieved on 15 December 2010).
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- 91 Interviews with displaced and returnee Muslims, July 2009, July–August 2010, Puttalam and Jaffna.
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- 98 While there had been unconfirmed figures by aid workers of 20,000 civilian deaths during the last months of fighting, the UN estimated the numbers around 7,000; 'Times photographs expose Sri Lanka on civilian deaths at beach', *The Times*, 29 May 2009, <http://www.timesonline.co.uk> (retrieved on 15 December 2010); 'Interview – World may never know Sri Lankan death toll – UN', Reuters, 29 May 2009, <http://www.reuters.com>. Speaking at the Lessons Learned and Reconciliation Commission, Defence Secretary Gotabhaya Rajapaksa accused western media and international organizations of confusing LTTE and civilian casualties, pointing to the fact that many LTTE members were dressed as civilians. He insisted that the President had a zero-casualty policy and the army's foremost concern was the security of civilians. 'Gotabhaya Rajapaksa's testimony to the war commission (live)', *The Sunday Leader*, 17 August 2010, <http://www.thesundayleader.lk> (retrieved on 15 December 2010). In other public statements he also focuses on the number of army casualties (6,000) and offers no figure on civilian deaths; see 'A stunning disclosure', Ministry of Defence news Portal, 22 August 2010, http://www.defence.lk/new.asp?fname=20100822_01 (retrieved on 15 December 2010) and "'6,000 soldiers killed" in war', BBC Sinhala, 17 August 2010, <http://www.bbc.co.uk> (retrieved on 15 December 2010).
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- 103 Interview, July 2010, Colombo.
- 104 Interview, August 2010.
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- 110 Interviews with academics and students.
- 111 Interviews with human rights activists, lawyers and academics in Jaffna, August 2010.
- 112 *Ibid.*
- 113 *Ibid.*
- 114 Interview conducted in Jaffna, August 2010.
- 115 Interviews with human rights activists, lawyers and academics in Jaffna, August 2010.
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No war, no peace: the denial of minority rights and justice in Sri Lanka

With the end of the conflict between Sri Lankan government forces and the Liberation Tigers for Tamil Eelam (LTTE or 'Tamil Tigers') in 2009, normality has returned for much of the population of Sri Lanka. But for members of the country's two main minority groups – Tamils and Muslims – living in the north and east of the country, harsh material conditions, economic marginalization, and militarism remain prevalent. Drawing on interviews with activists, religious and political leaders, and others living in these areas of the country, MRG found a picture very much at odds with the official image of peace and prosperity following the end of armed conflict. Add this to the list of grievances that prompted the conflict in the first place and remain unaddressed – lack of

access to land, lack of political autonomy, and failure to implement existing legislation relating to the use of the Tamil language – and it is easy to see why those interviewed for this report spoke of their despondency, fear, and lack of hope for the future of minority rights in Sri Lanka.

In light of the findings of this report, MRG calls on the government of Sri Lanka to respect the economic, cultural and political rights of minorities living in Sri Lanka, and to ensure that they gain from post-conflict reconstruction and development projects in the areas where they live. Failure to do so may have long-term repercussions for peace and stability in the country.