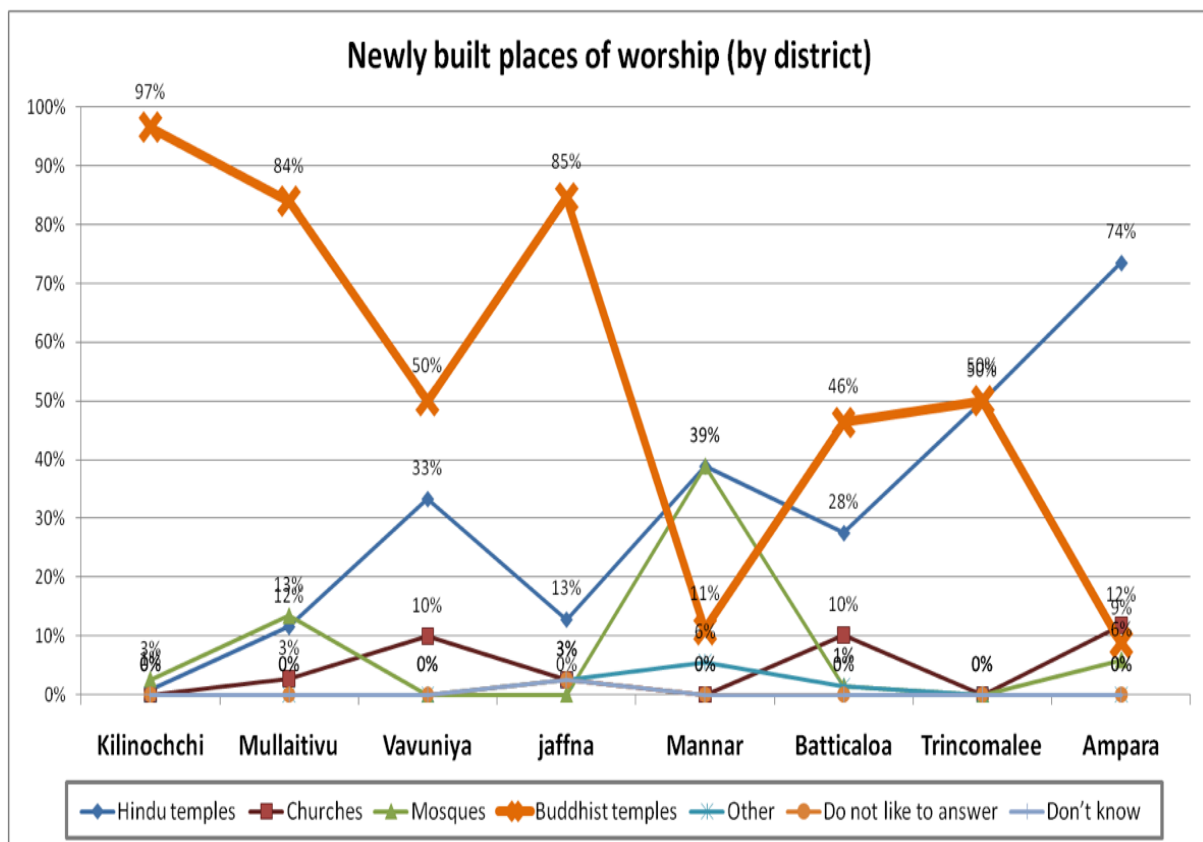


The Numbers Never Lie: A Comprehensive Assessment of Sri Lanka's LLRC Progress



By The Social Architects

(March 2013)

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Executive Summary

Nearly four years since the end of the country's civil war, Sri Lanka remains a divided, post-war society, as the ethnic conflict burns on. It has been fifteen months since the Final Report of the Lessons Learnt and Reconciliation Commission (LLRC) was made public. In July 2012, the GoSL released an Action Plan to implement the LLRC recommendations, yet little progress has been made on this front. Instead, a host of problems related to the judiciary, governance and militarization, among other issues continue to plague the island nation.

TSA's third report, *The Numbers Never Lie: A Comprehensive Assessment of Sri Lanka's LLRC Progress*, provides a detailed look at the Government of Sri Lanka's LLRC progress that includes both quantitative and qualitative analysis. TSA surveyed 1,786 households across 208 GN divisions in nine districts throughout the North, East and Hill Country. In virtually all crucial areas, the GoSL has failed to implement the recommendations outlined in its own presidentially appointed commission. From questions related to disappearance, arbitrary detention and the rule of law to political rights, language policy, land, compensation and militarization, the GoSL continues to fall short of expectations. And, disappointingly, a proper recounting of the war's final phases – a *sine qua non* of reconciliation – has not taken place. Sri Lanka's grip on reconciliation is more tenuous than ever and significant changes are urgently needed in order to ensure that the island does not fall into a more pronounced period of ethnic strife.

Accordingly, TSA calls on members of the international community to pass a strong resolution at the 22nd session of the United Nations Human Rights Council (HRC) – including an independent Commission of Inquiry (CoI) to examine wartime atrocities committed by both government forces and the Liberation Tigers of Tamil Eelam (LTTE). According to TSA's survey, 118,036 people perished from September 2008 – May 2009 as a result of the fighting. Like many of the other survey findings, this number is impossible to ignore.

Last year's United Nations Human Rights Council (HRC) resolution on Sri Lanka was significant – as Sri Lanka was placed on the formal agenda of the HRC for the first time. As tensions rise in Geneva, it seems likely that Sri Lanka will remain on the Council's agenda for the foreseeable future. Sri Lanka needs help from outside because the country's domestic institutions are in a state of utter decay. Nonetheless, there are still many reasons to be skeptical about what can be accomplished at the Council.

The LLRC recommendations are clear. But – in spite of a few positive achievements – the benchmarks have not been met. The present administration has had more than enough time to prove that it is serious about human rights, institutional reform, devolution and genuine reconciliation. It was not long ago that the international community found itself on the wrong side of history. The results were disastrous, as tens of thousands were slaughtered in the Vanni. With an eye towards a lasting peace, TSA sincerely hopes that the international community will not make the same mistake twice.

1 Introduction

15 months after its release, the final report of the Lessons Learnt and Reconciliation Commission (LLRC) has largely failed to move from paper to practice, perpetuating Sri Lanka's poor record of implementing the findings of its own commissions of inquiry. Initial hopes that the US sponsored resolution passed last March at the HRC would generate new momentum have been dashed. Despite the Commission's many positive recommendations, the Government of Sri Lanka (GoSL) continues to ignore matters related to human rights, the rule of law and reconciliation. The GoSL's Action Plan to implement the LLRC recommendations is a deeply flawed document, and government progress reports on LLRC implementation have continued a tradition of vague statements and empty promises before every HRC session. This holds particularly true for the most critical recommendations, including those dealing with human rights, land rights and accountability for serious violations of international humanitarian law during the final months of the war.

There have been a few positive elements: the resettlement process, albeit inadequate in several respects, did result in the closure of the majority of IDP camps opened in the last year of the war within a relatively quick timeframe. While overall trends on Sri Lanka's language policy are very poor, the Government of Sri Lanka (GoSL) is however allowing the national anthem to be sung in one's native language more frequently than during the war, particularly in the Northern Province. Despite continued illegal occupation of land and the confusion surrounding land rights post-war, there has been some progress in the release of occupied lands, particularly in High Security Zones. However, for communities still reeling from 30 years of war, the critical steps to be taken to heal deep wounds and give genuine reconciliation a chance should not be glossed over. Ignoring long-standing grievances will only foment new ones. The government's current stance towards reconciliation, dominated by the reconstruction of physical infrastructure and token steps to please the international community, is nothing but a short-term strategy that could have disastrous consequences. Equally concerning has been the steady erosion of the rule of law, the violent repression of dissent and the indisputable climate of fear and insecurity that permeates the conflict-affected areas. The dearth of psychosocial assistance, restrictions on fundamental freedoms and the unclear fate of thousands of disappeared are just a few additional ground realities which contradict the government's claims of progress on the reconciliation front.

As the end of the HRC's 22nd session draws near, TSA's third report offers timely quantitative data substantiating what observers have argued for months: despite government claims to the contrary, the situation for the Tamil population in the North, East and Hill Country has far from improved. Furthermore, little progress has been made in implementing the LLRC recommendations. This report follows a series of TSA reports on the subject of the LLRC and steps towards reconciliation. This report does not claim to be representative of the Sri Lankan population at large—rather, it illustrates the situation of the Tamil community, which bore the brunt of the conflict and its aftermath and –consequently – has the most to gain from the forthright (and complete) implementation of the LLRC recommendations.

1.1 Methodology

1.1.1 Sample population and locations

This survey was developed to provide a clear, quantitative overview of the GoSL's current progress on the implementation of several dozen selected LLRC recommendations in key areas – including compensatory relief, militarization and land rights, among other topics. These recommendations were selected on the basis of their urgency and relevance for bringing about genuine reconciliation, institutional reform and a lasting peace – through an extensive consultative process already undertaken for the preparation of TSA's *LLRC Shadow Action Plan*. In addition to numerous discussions amongst members of TSA, consultations were held with a range of individuals at the grassroots level in conflict-affected areas of the North, East and Hill Country. This consultative process ensured the selected recommendations and the questionnaire itself reflect the most pressing issues standing in the way of reconciliation and the search for truth, in the eyes of those most directly affected by the implementation of the LLRC recommendations (or lack thereof). The questions for the survey's eleven sections were developed based on the feedback from these discussions. The choice of questions draws on an analysis of the requirements and actions needed for the proper implementation of the recommendations linked to each section, in addition to the background information and contextual factors which inform their level of implementation. As mentioned above, TSA chose to concentrate its survey on the Tamil community. As such, the findings of the survey are only representative of the Tamil population the country's predominantly Tamil areas.

Initially, 76 villages/estates were selected in each of the following 9 districts: Jaffna, Kilinochchi, Mullaitivu, Mannar, Vavuniya districts in the Northern Province; Trincomalee, Batticaloa and Ampara districts in the Eastern Province; and Nuwara Eliya district in the Central Province.

Between 26 and 80 households were identified through snowball sampling (described below) in each of the sample villages. The researchers surveyed a total of 1,786 households across 208 GN divisions for this survey (210 households were disqualified). The number of communities increased from the 76 villages initially selected, as on several occasions respondents identified potential respondents outside their villages through their social networks. At the outset, the researchers intended to collect 275 questionnaires in each of the nine districts. However, due to security issues and other concerns, this was not feasible. Instead, various numbers of surveys were conducted across the nine districts. In addition, focus group discussions were conducted in all districts survived to qualify some of the quantitative data.

Conducting research in Nuwara Eliya district was especially difficult. Since the estates where the survey was to be implemented are privately owned, the researchers had trouble entering these locations without permission. TSA had requested for permission and, during the finalization of this report, it managed to secure permission to undertake the survey on selected estates in that district. Consequently, as of the writing of this report, TSA had just completed its surveys in Nuwara Eliya district. Due to the time-sensitive nature of this report,

TSA was unable to incorporate that data into this document. However, TSA plans to release a forthcoming report which encapsulates its findings from the Hill Country. (Again, this delay is directly related to the fact that estates in the Hill Country are privately owned – which had prevented the researchers from gaining access to their intended network of contacts during the preliminary round of research).

1.1.2 Choice of methodology

High levels of military surveillance and the presence of informants at the community level (particularly in the North) would have made random sampling a risky and potentially dangerous undertaking, as much for the respondents as the interviewers. Given the circumstances, snowball sampling was therefore considered the most suitable methodology to conduct the survey in the safest possible conditions.

Snowball sampling relies on social networks that exist within a given population, using a small group of initial respondents tasked with nominating other participants meeting the criteria. The survey was conducted in villages in which TSA’s partners/contacts have a presence and an existing wide network of trusted grassroots level contacts. TSA acknowledges the potential for community bias resulting from the use of this methodology. In order to minimize the likelihood of bias, TSA randomly selected two members from these existing (and trusted) grassroots networks comprised of 15 to 20 individuals, including members of community-based organizations (Rural Development Societies, Women’s Rural Development Societies, women’s groups and non-governmental CBOs) as initial respondents. Those 2 respondents each identified 5 individuals within their social network, 6 of whom were randomly selected as respondents by TSA and asked to identify a further 5 individuals each (for a total of 30). Amongst this last group of 30 people, TSA randomly selected 18 individuals as respondents, for a total of 26 respondents. In some villages, depending on the availability of a wider social network and security conditions to access it, these 18 individuals were asked to identify up to 5 individuals each (for a maximum of 90). Out of these, TSA randomly chose up to 54 as respondents. As such, the number of respondents per village ranged from 26 to a maximum of 80 depending on the conditions, as indicated in the diagram below:

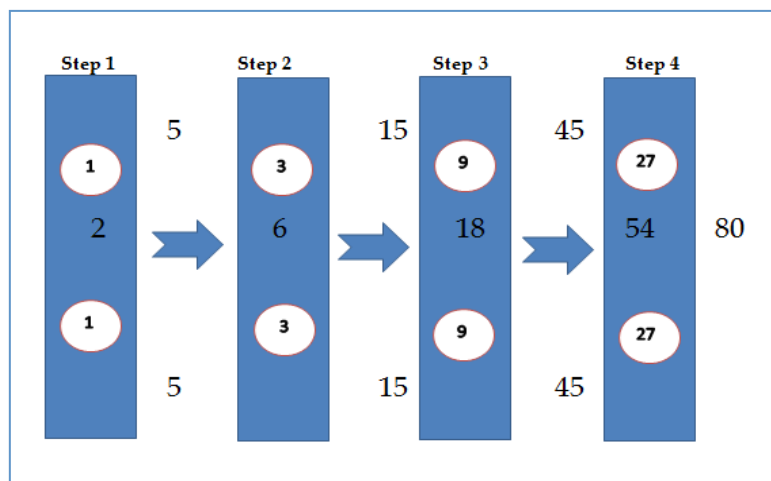


Figure 1: Snowball Sampling Process

1.1.3 Survey Implementation

Data collection was conducted over a period of 20 days in all 9 districts. 127 researchers (39 male and 88 female) were selected and appointed by TSA and its partners to conduct the survey. The majority were university students, together with a small number of members of community groups (CGs). To avoid bias, CG members conducting the data collection were sent to other areas. All researchers received a one-day training on data collection techniques and interview methods and a one-day follow-up training prior to starting the survey. The survey was piloted on 40 households in two villages – one both the East and the Hill Country. Researchers were explicitly instructed not to give advice on solving issues discussed to fill out the questionnaire and guided on conducting interviews in a neutral manner. Feedback received from researchers on the questionnaire during the pilot phase was incorporated into the final questionnaire (included as an annex). In each district, one supervisor from TSA observed the data collection process in all villages to ensure it was conducted in an independent and neutral fashion.

Once data collection was completed, researchers submitted the questionnaires to TSA for data entry and analysis.

1.1.4 Content of the questionnaire

The questionnaire, originally drafted in Tamil and later translated into English, consists of 325 core questions grouped under 12 distinct section headings, organized around the issue areas addressed by the selected recommendations: respondent background; basic needs; action taken for arrested people and the relief process; deaths due to war, relief concerning deaths and records; compensation regarding wounded and physically challenged; activities regarding disappearances and relief/compensation; political and language rights; people's freedom of movement, job opportunities and other permits; rehabilitation activities for former child soldiers; complaints against illegal armed groups; resettlement, return, relocation and lands and displacement, and land rights; land and women.

2 Characteristics of respondents

Of the 1,576 households surveyed, composed of 8,328 individuals, 939 came from the Northern Province, 565 from the Eastern Province and 72 from the Central Province. The respondent population is 70% female and 30% male, with ages of the main respondents spanning a spectrum of 18 to 90 years old. 29% of respondents (463) are female-headed households. Of the respondents, 88% of men are working as opposed to 31% of women. The majority work as day laborers (27%), followed by agriculture (15%), fishing (8%) and skilled labor (5%). This indicates that a significant number of respondents rely on unstable and irregular sources of income (in the informal sector) to support their families, in a context in which day labor is becoming increasingly difficult to find due to mechanization of agriculture and competition from laborers coming from other parts of the country. Other occupations include private and public sector jobs, (international) migrant work and cottage industries. The median household income per month for the majority (36%) of respondents is between

Rs 5,000 and Rs 10,000¹, while 33% earn less than Rs 5,000. This shows a stark contrast to a national median household income for rural areas of Rs 23,641²³. However, this should be moderated insofar as this survey's income calculation only considers cash income (wages, salaries, produce sales, etc), and not a household's in-kind income, such as produce from paddy land or home gardens.

The majority of respondents (82%) identify their religion as Hindu, while 1% identify as Muslim, 1% identify as Buddhist and 16% as Christian.

2.1 Household characteristics

This section determines the living conditions of respondent households. Most respondents (78%) live in their own dwelling, 3% in a rented dwelling, while 12 % live in a relative's house, suggesting that a considerable number of the population still has no home of their own. Only 52% of respondents live in a permanent building, while 19% live in semi-permanent buildings. 9% live in temporary shelters, and 15% in huts. 63% of households have access to water. However, access to safe drinking water remains a challenge for many households as 12.5% accessed it through unprotected wells, and 9% relied on neighbors or relatives to get it. Only 11% had piped water facilities, while 46% pumped water from protected wells. 40% have access to electricity and 69% to latrines. 23% of female-headed households having responded to the survey declared they did not have access to basic facilities upon resettlement. Out of these, 10% indicated having returned to fully destructed and 11.5% to partially destructed properties and land. The precarious socio-economic situation of female-headed households makes this statistic particularly concerning, given the investments needed to rehabilitate land and housing combined with the gaps and delays in the provision of housing assistance⁴.

In terms of health, 55% of respondents have access to health facilities near their homes. However, only 36% have ambulance facilities in their area. 92% of respondents across the North and East indicated having basic documents for their family members in their possession, as indicated in the chart below. The percentages indicated give an overview of the situation of the household as a whole, bearing in mind that the figures below also reflect that access to certain documents is dependent on the age of the person. It is noteworthy to highlight the number of documents individuals in conflict-affected areas need to access services, enjoy basic rights but also go about their daily lives – including army identity cards, army registration documents and fishing permits.

¹ Between 38 and 77 American Dollars

² 182 American Dollars

³ "Household Income and Expenditure Survey- 2009/10", Final Report, Department of Census and Statistics/Ministry of Finance and Planning, August 2011

⁴ "Sri Lanka's North II: Rebuilding Under the Military", Asia Report 220, International Crisis Group, 16 March 2012

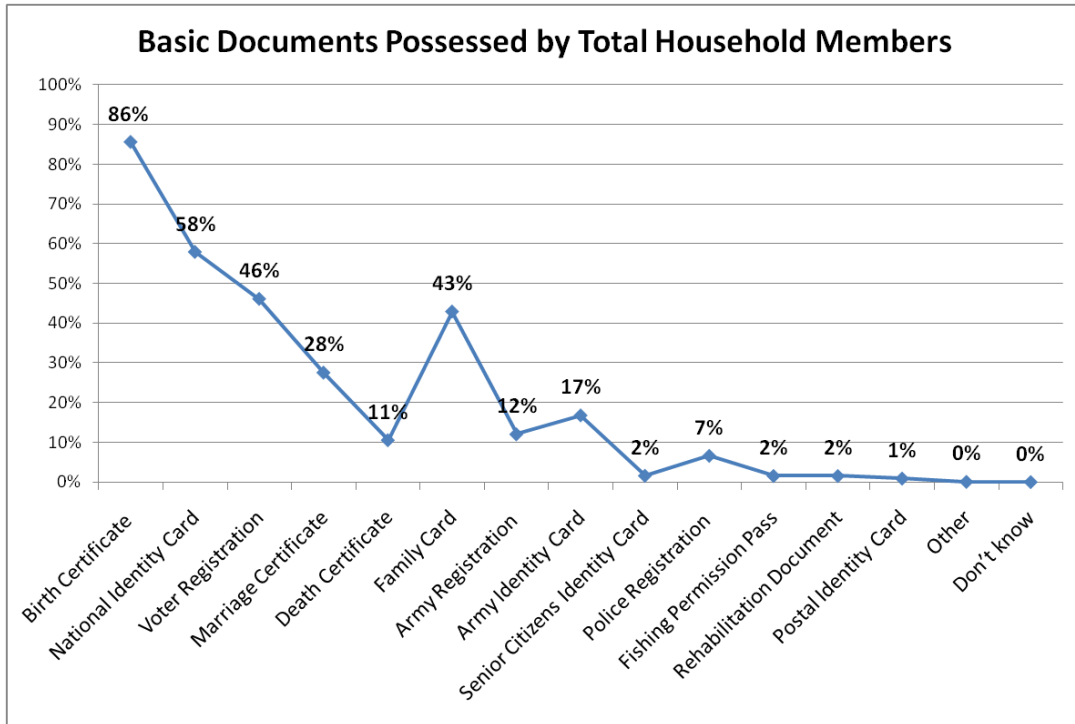


Figure 2: Basic Documents Possessed by Families in the North and East

With regard to educational facilities, 50% of respondents specified having government school facilities in their areas. Where there is no access to a school nearby, 14% of respondents indicated their children had to travel 2 to 5 km to get to school, while 30% could access a school within 2 km. However, 37% of respondents indicate not having access to transportation facilities. Further, 23% of respondents indicated that their school had a shortage of teachers. A breakdown by province reveals that the situation is worse in the Northern Province, where 52% of respondents had access to health facilities and 46% to educational facilities in their area, against 58% and 57% in the East.

3 Impunity and Reparations

3.1 Surrendees and Arrests

- **9.54a** – “*The GoSL should bring arrested people before a Magistrate to be dealt with properly.*”

4% of survey respondents noted that they have surrendees in their family. Out of those, 86% of surrendees were apprehended from September 2008 to May 2009. Nearly all people surrendered to state security personnel.

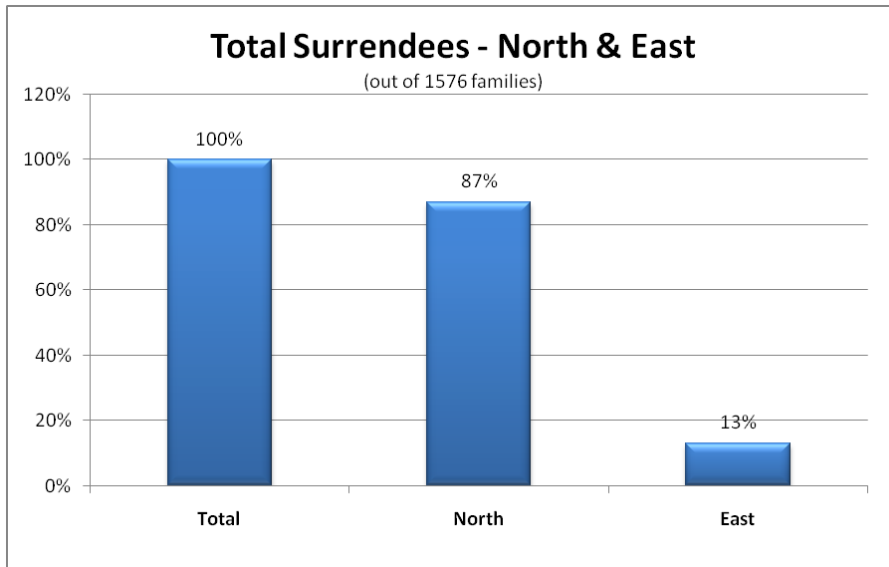


Figure 3: Total surrendeers (North and East)

After surrendeers were taken in, family members received information regarding the whereabouts of their loved ones 57% of the time – though the time it took for family members to receive this response varied considerably.

Out of TSA’s sample, 361 people had a family member who had surrendered, of that 86% of them surrendered between September 2008 and May 2009. In addition 64% of surrendeers were subsequently detained.

Of those who were detained, 84.4% were sent to Protective Accommodation and Rehabilitation Centres (PARCs) and 15.6% were sent to detention facilities (both authorized and unauthorized).

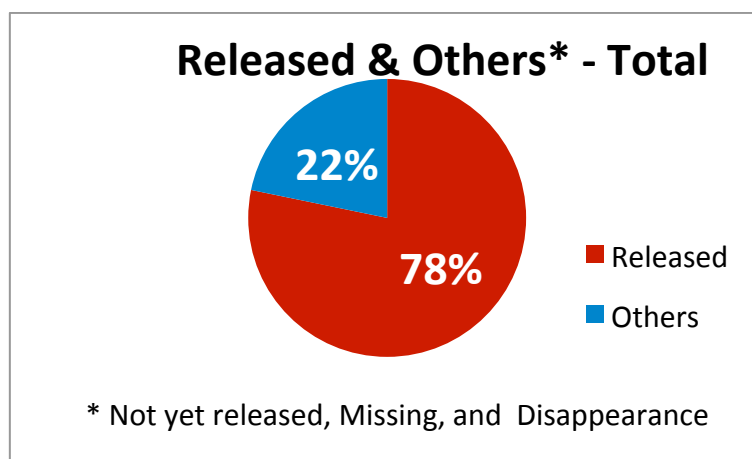


Figure 4: Released and others (not yet released, missing and disappeared)

According to GoSL statistics 12,000 LTTE cadres surrendered at the end of the war. Out of those, 11,500 have been rehabilitated. 500 have not been released. Of those who have not been released, 180 are expected “to face legal action for their direct involvement in crimes of

grave nature.”⁵ According to TSA’s survey, more than 22% of surrendees have not been released are missing or disappeared. This would suggest that the GoSL’s stated number of surrendered LTTE cadres is considerably lower than the actual figure. The survey findings suggest that approximately 13,200 ex-LTTE cadres surrendered at the end of the war. Consequently, it is possible that more than 1,000 surrendees remain unaccounted for. (Those statistics roughly coincide with the number of cadres the LTTE was estimated to have had at the end of the war).

In light of the previously mentioned statistics, it is important to highlight a relatively new trend which has been taking place in Sri Lanka. Recently, many rearrests of former surrendees have been taking place. These rearrests are composed mostly of people who surrendered during the end of the war and were subsequently let go by state security personnel. Now, however, these same people are being rearrested – though they have not necessarily done anything wrong. Nonetheless, these individuals do not have arrest receipts or any documentation to prove that the military had let them go in 2009. The unwarranted arrest of University of Jaffna students in late 2012 further underscores this negative development.

Upon being released, 78% of surrendees have been interrogated by state security personnel. 24.5% of surrendees have been threatened by state security personnel. 13.5% of surrendees have been rearrested. What is more, 9.7% of surrendees went missing after having been arrested; these are disconcerting findings.

3.2 Arrest and Detention

According to TSA’s findings, 385 respondents have had a member of their family arrested. Perhaps more revealingly, an official arrest receipt – the vast majority of which (71%) were written in Sinhala – was given just over 9% of the time.

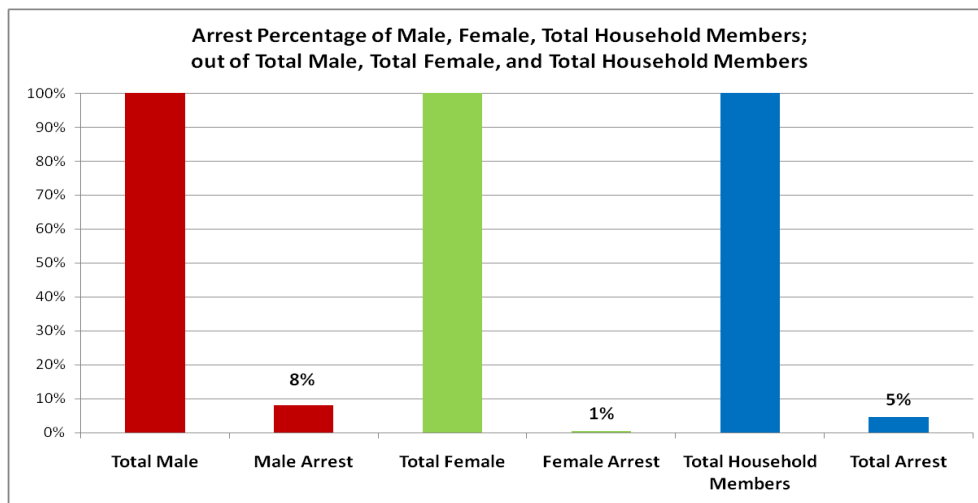


Figure 5: Arrested (male and female, out of total household members)

⁵ Policy Research & Information Unit of the Presidential Secretariat of Sri Lanka, “Only 500 ex-LTTE cadres remain in custody,” 26 September 2012 <http://www.priu.gov.lk/news_update/Current_Affairs/ca201209/20120926only_500_ex_ltte_cadres_remain_custody.htm>.

- 5% of survey population in North and East have been arrested
- 8% of males, 1% of females (amongst survey population)

Of those respondents who had family members who were arrested, 65% of arrestees had been the principal income earners of their respective families – which would have placed tremendous strains on an already (socially and economically) marginalized population. Regarding compensation for that arrest, only 5% of arrestees were compensated. Amongst the families of the arrestees, 3.5% received livelihood assistance.

43.5% of people who were arrested were forced to give confessions under duress. 53.5% people did not get legal assistance. For the family members, 50% were unable to receive financial assistance for transportation (to visit their arrested family member). 38% of those arrested have not been indicted. Further, 16% of arrestees are not aware of the status of their indictment. And 7% of these people have not been indicted for more than three years.

3.3 Detention

- **9.54 b** – “*A change in a person’s place of detention should be conveyed promptly to family members of the arrested person and to Sri Lanka’s Human Rights Commission*”.
- **9.65** – “*The next of kin have the right of access to detainees. Therefore, any practices that violate this principle should be removed....*”
- **9.68** – “*Give particular attention to young detainees, especially “those whose education has been disrupted due to forced conscription by the LTTE...”*”
- **9.70** – “*Either charge or release detainees who have been “incarcerated over a long period of time without charges being preferred.”*”

Sri Lanka’s detention processes are still shrouded in ambiguity and riddled with inconsistencies which violate widely accepted international norms and basic democratic principles. 84% of survey respondents have a family member who was detained after having been arrested. Yet, out of those cases, 7% of respondents still have not been informed as to the place that their family member was detained family member – implying that these individuals have either disappeared or are currently being detained in unauthorized detention centers.

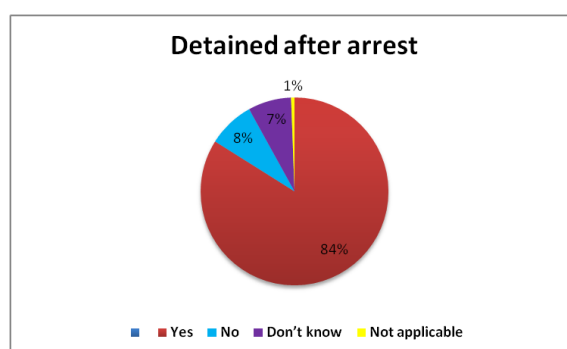


Figure 6: Detained after arrest

Unfortunately, these laws prove that the impartial application of the rule of law is still very questionable. Of those individuals being held under the Prevention of Terrorism Act (PTA) or the Emergency Regulations (ER) – 26% were detained by the state for more than 21 months.

When asked if the arrest had a negative effect on the children, 30% of survey respondents revealed that their children had had their education disrupted because of the arrest. So these pervasive arrests are not only affecting arrestees; there is a strong perception that they negatively affect future generations too. This makes sense, as – in some instances – children would be compelled to leave their studies and get jobs to earn additional income.

These statistics are extremely worrisome.

Questionable and arbitrary detention policies – an issue which the LLRC’s Final Report sought to address directly – have been closely connected to the perpetuation of Sri Lanka’s Emergency Regulations, the Public Security Ordinance (PSO) and the PTA. The Emergency Regulations lapsed at the end of August 2011, yet TSA’s survey findings reveal that draconian policies regarding arrest and detention are still having an extremely negative effect on the Tamil community.⁶

It is also worth noting that a Presidential Order of 6 Aug. 2011 called on the armed forces to maintain law and order and extend the application of certain regulations that were under the state of emergency.

3.4 Missing and Disappearances

- **9.46** – *“Investigate allegations of abductions, enforced or involuntary disappearance; bring perpetrators to justice”*
- **9.48** – *“Establish “a special mechanism” to address the issue of missing persons/disappearances.”*
- **9.51** – *“[...] The Commission recommends that a **Special Commissioner of Investigation** be appointed to **investigate alleged disappearances** and provide material to the Attorney General to initiate criminal proceedings where appropriate.”*
- **9.58:** *“The families need to be assisted to deal with the trauma of not knowing the whereabouts of their family members [...]. They could also be assisted financially in situations where the missing persons had been breadwinners. **Legal aid** should be provided where necessary.”*
- **9.59** – *“Frame domestic legislation to specifically **criminalize enforced or involuntary disappearances.**”*

To begin, there is a difference between people who have gone “missing and those who have been subjected to enforced or involuntary disappearance. Missing typically refers to people whose whereabouts cannot be determined as a result of violent conflict or internal strife.

⁶ This coincides with the fact that many of the laws and regulations which lapsed under the Emergency Regulations are now enforced under the penumbra of the Prevention of Terrorism Act.

According to the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPEd), enforced disappearance is “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Hence, some of those in the Vanni during the war’s final phases – and whose whereabouts remain unknown – would likely be classified as missing, as opposed to disappeared.

A shocking 23% of survey respondents have had a member of their immediate family disappear. The district of Ampara had the highest number of disappearances – the peak period occurred from 1987-1995.

Out of those respondents who have had a family member disappear, an incredible 45.5% of respondents had a relative disappear between September 2008 and May 2009, during the war’s final phases.

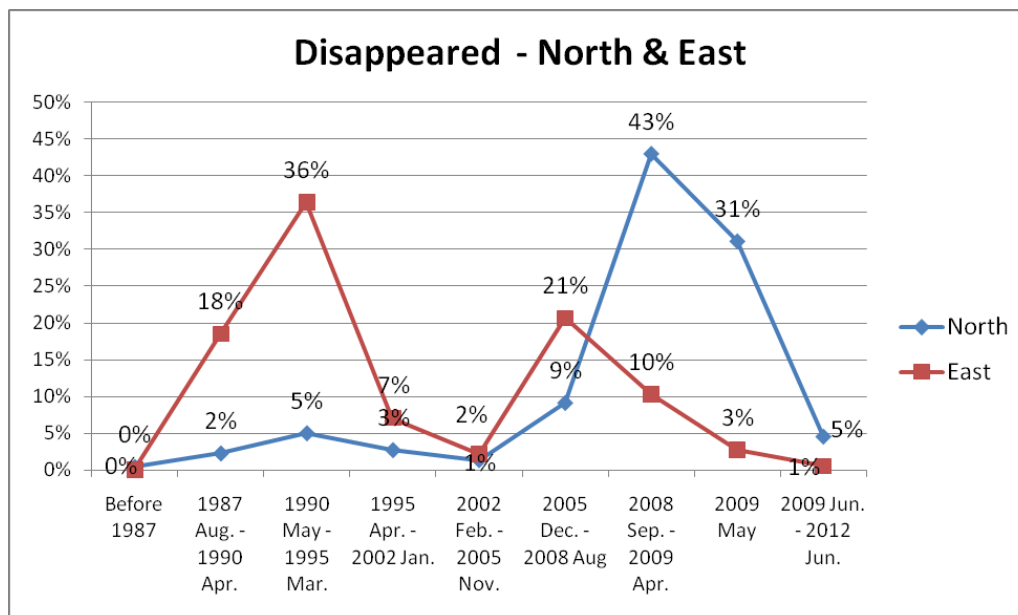


Figure 7: Disappeared (North and East)

In 30% of those cases, survey respondents had a family member disappear after having been arrested. Moreover, state security personnel are perceived to be responsible for 77% of disappearances, but the accused were investigated a mere 2% of the time. The IPKF is perceived to be responsible for 1% of disappearances. The Karuna group is alleged to have been responsible for 4% of the disappearances and the TMVP and EPDP are each perceived to be responsible for 1% of disappearances. Lastly, survey respondents believe that the LTTE is responsible for 16% of disappearances.

Psychosocial assistance for those who are missing loved ones is of utmost importance and an issue which TSA cited a related publication.⁷ Yet, the GoSL’s performance in this important area is deplorable. Amongst survey respondents, only 7 % in need of psychosocial assistance had received it. As the GoSL maintains a firm grip on the provision of this sort of assistance, the present administration cannot credibly cast blame on anyone else for the lack of psychosocial care being provided to conflict-affected people.

The lack of psychosocial counseling is directly related to the draconian policies prescribed by the government’s Presidential Task Force (PTF). Under the current arrangement, such assistance falls almost entirely under the purview of the Sri Lankan government. Under this onerous project approval system, most NGOs (both national and international) face difficulties in getting these types “software” projects approved by the central government in Colombo. On the other hand, “hardware” projects – such as those which focus on economic development and the rebuilding of infrastructure – regularly receive government approval without difficulty.

When respondents were asked if they had received any information about the Commissions of Inquiry into disappearances, 63% of people didn’t know about any such commission having been set up by the GoSL.

The government and the main opposition party have in various ways either condoned disappearances or been silent spectators while persons disappeared during their respective regimes. Consequently, there is no strong lobby in parliament to press for speedy action against the perpetrators of disappearances; perhaps this is because the practice has been so widespread and that too many of their people are implicated. The country’s Information Centers would be places where people are able to obtain information about their missing loved one(s). Unfortunately, the vast majority of survey respondents are not even aware that such centers exist. This is a missed opportunity for the GoSL and the thousands of conflict affected people who are missing loved ones.

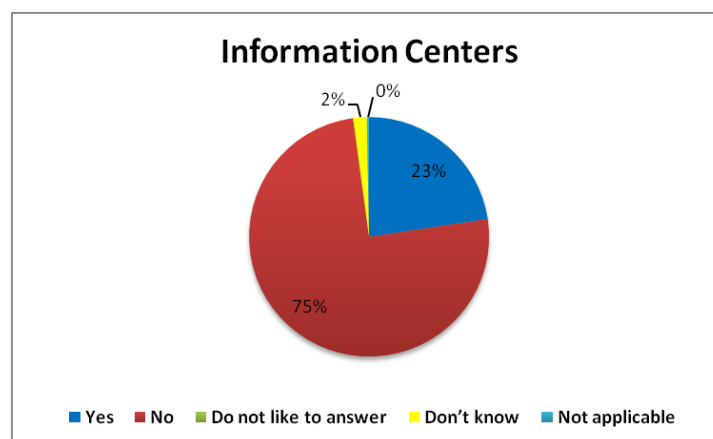


Figure 8: Information Centers

⁷ The Social Architects, “The Numbers Never Lie: A Quick Look at Sri Lanka’s LLRC Progress,” *Groundviews*, 24 Feb. 2013 <<http://groundviews.org/2013/02/24/the-numbers-never-lie-a-quick-look-at-sri-lankas-llrc-progress/>>.

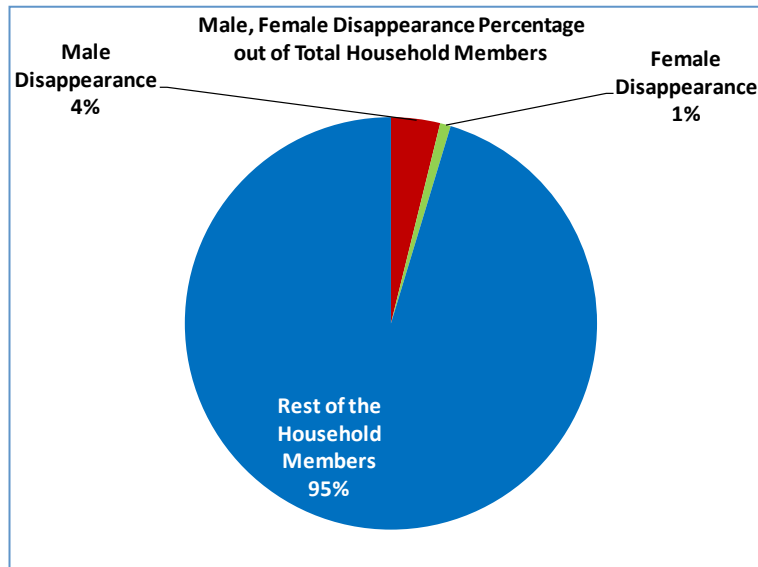


Figure 9: Disappeared (female and male, out of total household members)

3.4.1 Compensation for Disappearances

Compensation for disappearances appears to be a problem as well. Amongst the relevant survey respondents, 13% said that they had received financial compensation for their disappeared family member.

Of survey respondents who are still missing loved ones, 80% have not applied for death certificates. A large number of people are still waiting for their loved one(s) to come back – making the need for adequate psychosocial assistance that much more important

The conspicuous lack of legal aid being provided – a priority for marginalized people – is also worrisome. Of the relevant survey respondents, 65% had not even taken any legal action. The disappeared person was the principal income-earner 63% of time. When the relevant survey respondents were asked whether they had approached any government establishment to inquire about the missing or disappeared, 54% of respondents answered in the negative. These statistics indicate that many community members have simply lost faith in the system.

Perhaps most disturbingly, the GoSL has clearly failed to undertake legitimate and impartial investigations to deal with any of the abovementioned issues.

When it comes to disappearances, cases are simply not being investigated And, in 44% of disappearance cases, survey respondents know who the offender is.

Yet only 4% of disappearance cases have been filed.

The abovementioned numbers indicate the profound erosion of the rule of law under the watch of the present administration. In its most recent progress report,⁸ the GoSL mentions that “steps are being taken” to install a Special Commissioner of Investigation, but meaningful progress on this recommendation has not been made. More recently, a Vavuniya prison attack in June 2012 resulted in the death of two inmates and the assault and torture of several more. Furthermore, the November 2012 riot in Welikada Prison resulted in the death of more than two dozen inmates. Yet impartial investigations into these tragic incidents have not been made; accountability remains illusory.

In the previously mentioned progress report, for recommendation 9.59, the GoSL notes that “legislation is being drafted” in order to criminalize enforced or involuntary disappearances. Nonetheless, the GoSL has already had more than enough time to comply with this recommendation – especially considering the fact that many pieces of legislation are now rushed through parliament as Urgent Bills, such as the controversial 18th Amendment and the Divineguma Bill. Why was this needed reform to promote accountability and justice not met with similar alacrity? Here again, the GoSL’s claims of progress lack merit and should not be taken seriously.

3.5 General Trends

Enforced and involuntary disappearances are a problem that has plagued Sri Lanka for decades, yet the (highly relevant) LLRC recommendations pertaining to disappearances have not been implemented. The GoSL’s disregard for the rule of law has meant that widespread human rights violations have continued post-war. In fact, statistical information on arrests, detention and disappearance – and the violations that occur concurrently with them – are extremely problematic if the country’s institutions are to remain at all relevant. Further, the nexus between arrests or arbitrary detention and enforced disappearances is well-known, but – again – the GoSL has not made meaningful progress in these pivotal areas.

In post-war Sri Lanka, the institutionalization of impunity has become irrefutable. Past human rights violations and transgressions have fomented ongoing violations, which remain widespread throughout the country – particularly in the war-torn North and East.

The present administration consistently talks about the need for domestic solutions to the country’s most serious problems, but the data obtained from TSA’s survey indicates that the country’s domestic institutions are in a state of utter decay. If thoughtful and comprehensive changes are not made, there is little to think that all the previously mentioned negative trends will discontinue. On the contrary, the longer the GoSL ignores the meaningful LLRC recommendations pertaining to governance, institutional reform and the rule of law, the more likely the consolidation of authoritarianism becomes.

⁸ “National Plan of Action for the Implementation of LLRC Recommendations,” GoSL progress report, 26 February 2006 <http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20-%20Feb%2026,%202013.pdf>.

3.6 Deaths Due to War

- **9.37a** – “The Commission therefore recommends that action be taken to; a. Investigate the specific instances referred to in observation 4.359 vi. (a) and (b) and any reported cases of deliberate attacks on civilians. If investigations disclose the commission of any offenses, appropriate legal action should be taken to prosecute/punish the offenders.”
- **9.52** – “Issue death certificates and monetary compensation where appropriate.”

A proper examination of what transpired during the war’s final phases has not happened. However, there’s no question that tens of thousands of civilians perished during that time. A thorough accounting of the past is a *sine qua non* of reconciliation. The UN Panel of Experts report indicated that approximately 40,000 were killed during the final stages of the conflict. However, others have voiced suspicions that the figure is much higher than that – perhaps as high as 146,679 casualties.⁹ Since May 2009, an enormous amount of information – ranging from documentaries to articles to books and reports – has been released which suggests that civilians were deliberately targeted during the end of the war.

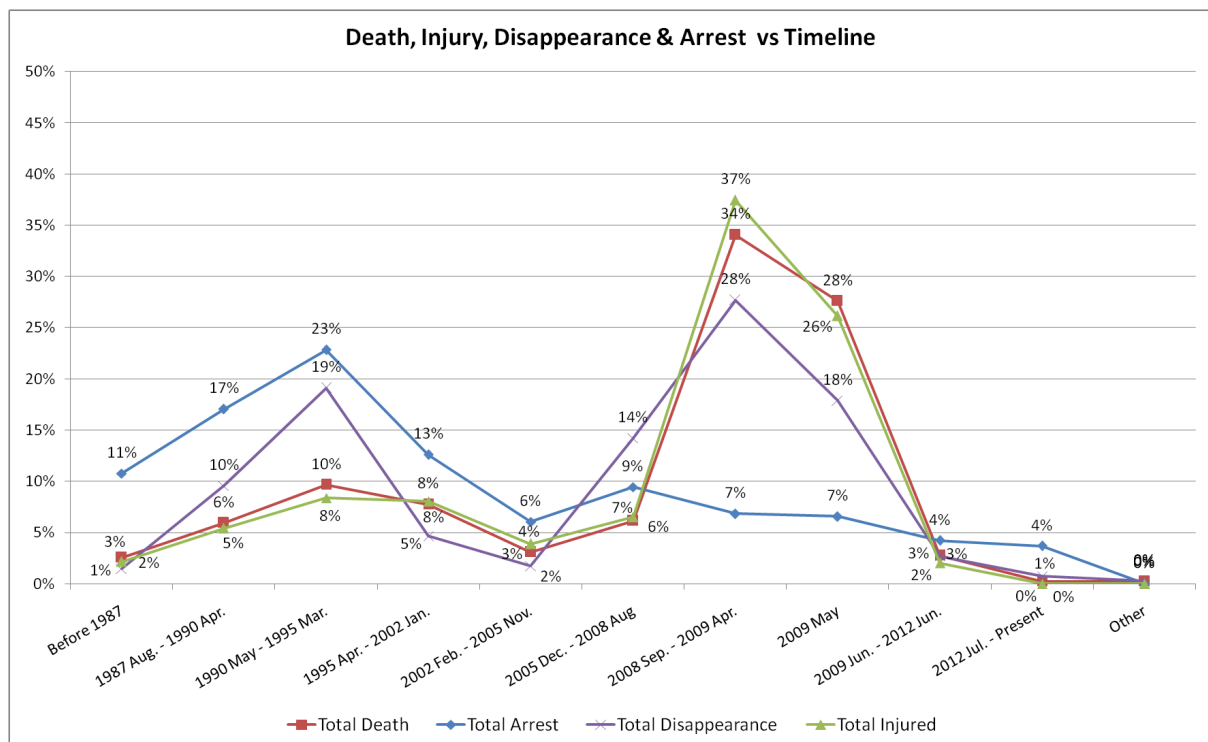
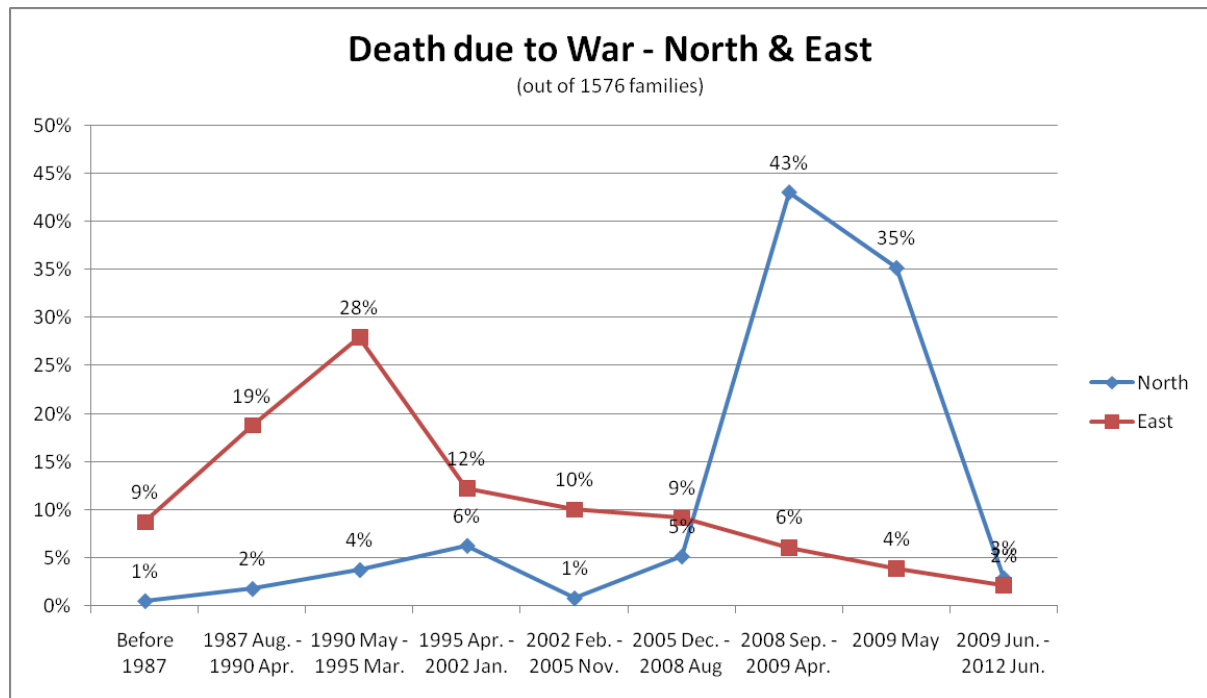


Figure 10: War-related deaths, injured, disappeared and arrested

3.6.1 End of War

⁹ Brian Senewiratne, “The Life of a Sri Lankan Tamil Bishop (and others) in Danger,” *Salem-News.com*, 7 April, 2012 <<http://www.salem-news.com/articles/april072012/sri-lanka-priests-bs.php>>.

TSA findings about deaths between September 2008 and May 2009 are revealing and disconcerting.



To be clear, TSA’s death toll of **118036 people** for the final phase¹⁰ of fighting probably underestimates the actual casualty figure because TSA has aggregated deaths from all eight districts in the North and East during that time. (This figure could also include LTTE cadres killed in battle).

For 75% of deaths, state security personnel are perceived to be responsible for the death. According to TSA’s survey, the LTTE is perceived to be responsible for 22.5% of deaths. The Indian Peace Keeping Force is perceived to be responsible for .4% of deaths. And the Karuna Group is perceived to be responsible for .2% of deaths.

Of the survey respondents who engaged with the survey question on complaining about the death(s) of a family member, 28.5% of respondents complained to the police. Out of those people, 28% had their complaint acknowledged by the police. Also, 2% of respondents complained to the *Grama Sevaka*. And 13.5% complained to state security forces (other than the police). Only 2% of respondents said that police initiated an inquiry into the deaths which they had complained about.

Here, the same amount of people had received acknowledgment for their complaint from the police. The police were responsive on death certificates; this is a positive thing But why would police be giving quick responses for death and not for other matters? Once someone is issued a death certificate, they are no longer able to make inquiries into the matter. This could explain why government officials are more amenable to requests for a death certificates compared to other requests. In addition, during TSA’s focus group discussions, many

¹⁰ The final phase of war refers to September 2008-May 2009.

community members that they were encouraged to give a different (inaccurate) date on which their loved one died.

When survey respondents were asked whether they had approached any state institutions for judicial remedy, only 8.5% of respondents said that approach such institutions – in spite of the fact that the majority knew who the perpetrators were. Out of the respondents who did approach state institutions seeking judicial remedy, 1% of people had their cases filed. The country's domestic complaint mechanism is inadequate. Sri Lanka's institutions, its "homegrown" solutions are failing. These statistics are another sign that a Commission of Inquiry (CoI) – one that is impartial and independent from the executive – is needed.¹¹

Moreover, the lack of legal aid is again an issue, as only 3% of those people were could have received legal aid (for the death of a family member) actually got it.

And, in only 2% of cases was respondents' evidence used in the investigation of the accused. In other areas, GoSL behavior during the end of the war was – to say the least – highly questionable. According to the MoD, between 75-100,000 people were trapped in the LTTE-controlled Vanni in January 2009.¹² Yet other sources have placed the figure as much higher. Some have argued that GoSL deliberately underestimated these numbers in order deny adequate food and medical supplies to (at least tens of thousands), while also glossing over the massive civilian casualties which occurred during the war's final months.

The GoSL is also falling short of expectations when it comes to the provision of death certificates and compensation. Only 64% of respondents were able to receive death certificates for their loved ones. Of the respondents who noted that someone had been killed in their family, 39% lost more than one family member. In some TSA focus group discussions, it was revealed there were instances when someone applying for a death certificate was asked to predate the date of death.

When survey respondents were asked whether the correct cause of death was listed on their family member's death certificates, 63% or respondents stated that the correct cause of death had been denoted on the death certificate. 20% of the relevant survey respondents said that the real cause of death was not listed on the death certificate.

Regarding redress, 87% of the people chose not to approach the government for any remedy. However, amongst the 8.5% of the people that sought domestic legal remedies, 34% secured legal aid. Only 14% of the accused were subsequently interrogated. Only 10% of cases were actually filed. In this instance, the prosecution rate is 6%. Perpetrators were charged only 4% of the time. Again, the findings from TSA's survey underscore the weaknesses and inefficiencies of the country's institutions. Community members do not believe that the country's institutions – as they exist today – are capable of resolving some of their most pressing concerns.

¹¹ A more extensive justification for a Commission of Inquiry (CoI) will appear in a forthcoming section of this report.

¹² http://www.defence.lk/new.asp?fname=20090130_F01

When respondents were asked if they had been given supportive counseling (if they needed it), only 13% answered positively. And, in 78% of the cases, the deceased was the principal income earner of the family. Yet, when asked about compensation, only 22% of respondents received any. Only 14% of respondents said that the assistance provided was appropriate and on a long-term basis.

These astounding numbers are a clarion call for action.

Without knowing what actually happened during those last months of fighting, true reconciliation will remain beyond Sri Lanka's reach. The GoSL has shown little interest in uncovering all the facts about late 2008 and early 2009. The Army's Court of Inquiry (CoI) cannot be trusted as a truly impartial investigation. After all, it is a body tasked with investigating allegations where military personnel are the alleged offenders. The LLRC's complete exoneration of the military is also unhelpful. Besides, in its most recent progress report, the GoSL mentions that the LLRC recommendation (9.52) pertaining to death certificates and monetary compensation is "ongoing," but this is a misleading oversimplification. Much more needs to be done.

As long as recommendations regarding wartime deaths and accountability remain incomplete, an impartial examination of past events will be urgently needed. As long as accountability is anathema to the present administration, the country's citizens will be unable to move forward and heal as a nation.

3.7 Compensatory Relief

- **9.14** – *“Expeditious grant of appropriate redress to conflict-affected civilians.”*
- **9.155** – *“[...] The state should review the role and capacity of REPPIA with a view to streamlining and augmenting its role [...].”*
- **9.156** – *“Additional funds should be given to REPPIA to provide “relief to affected persons.”*
- **9.164** – *“Provide compensatory relief for those involved with the LTTE.”*

As noted, after decades of war, compensatory relief is vital. In its Final Report, the LLRC rightly sought to pursue such an initiative through an array of recommendations. The LLRC called for wide-ranging and robust recommendations to deal with arrests, arbitrary detention and disappearances vis-à-vis compensatory relief – all of which must be incorporated into any legitimate reconciliation roadmap. Lamentably, TSA's findings in the above sections suggest that – in spite of the dire situation in the North and East – a paucity of relief has been provided by the GoSL. Nearly four years after the war, the GoSL is still disappointing the country's conflict-affected people.

Regarding recommendation 9.155, the GoSL's most recent progress report notes that "the capacity of REPIA¹³ has been reviewed and strengthened." Further, 677 people have been compensated and 1,853 have been given loans. This action is wholly insufficient as there are (at least) tens of thousands who deserve to be compensated and have been given nothing.

3.7.1 Compensation Regarding Wounded and Physically Challenged

- **9.98** – “[...] *Support the disabled people in conflict affected areas....The Government must also, as a matter of priority, address the economic needs of the families with disabled members [...]*”

Like other conflict-affected people, the wounded and physically challenged are not receiving adequate compensation either. Based on TSA's survey findings, it does not appear that GoSL has complied with the LLRC recommendation regarding support and compensation for the wounded and physically challenged.

33% of survey respondents had family members injured during the war. Not surprisingly the greatest numbers of injuries were recorded during the war's final phases, 64% of the people who were injured were injured during September 2008 – May 2009.

In 84% of the cases, respondents know who was responsible for the injury.

33% of people who were injured had their injury result in amputation. Further, 44% of those who were injured had that injury result in disability.

Unfortunately, only 57% of the relevant respondents received medical assistance immediately. And, of those who did receive assistance, only 60% of respondents deemed that the assistance that was received was adequate. 69% of survey respondents said that state security personnel denied access to medical care. 3% of respondents said that the LTTE denied access. For 65% of respondents who answered, the breadwinner was the person in their family who was injured.

Information on compensation is again disappointing, as only 3.5% of respondents have been compensated for their injury and/or disability. Further, 5.5% of respondents were provided with livelihood assistance. Yet again, TSA's survey finding reveal that – when Sri Lankan civilians are in need of assistance – the state's institutions simply are not up to the task.

When describing the GoSL's approach towards compensatory relief, the word "insufficient" may be too generous – as GoSL progress in this crucial area has been virtually nonexistent. The current state of affairs is simply unacceptable and continued inaction will make the achievement of genuine reconciliation even less likely. Some of the LLRC's most valuable

¹³ The LLRC Final Report went some detail about compensation. However, the Commission noted that a major entity spearheading this task – the Rehabilitation of Persons, Properties and Industries Authority (REPIA) – lacks funds. As of the writing of this report, it was not clear that GoSL had taken comprehensive action to remedy this situation.

recommendations pertain to compensatory relief; it is of paramount importance that GoSL make meaningful progress in this area in the near-term.

3.8 Paramilitary Groups

- **9.73** – *“Investigate allegations against illegal armed groups. Prosecute offenders where sufficient evidence can be found.”*

Sri Lankans of all stripes are well aware that paramilitary groups have been operational for decades, though their activity may have lessened in recent years. Past transgressions include the ransom, rape and murder of civilians and the forced conscription of children.

An examination of TSA’s findings reveals the prosecution of offenders virtually nonexistent. If perpetrators are not held accountable for past crimes, they will have little incentive to change their behavior. 27% of survey respondents have been negatively affected by illegal armed groups.

3% of people who responded to the question said that illegal armed groups have subjected them to extortion. 7% said that EPDP was responsible. 5% said PLOTE was responsible. 5% of respondents cited TMVP and 5% of respondents also cited the Karuna group as the alleged offenders. 41% of survey respondents who engaged with the question said that the LTTE was responsible for the extortion. Perhaps tellingly, 35% of people did not want to answer that question. Amongst those who were extorted, only 4.7% of people complained about it.

In fact, for the vast majority of people who have been who have been negatively affected (or had a family member affected) by paramilitary groups chose not to complain about it. Only 6% of people complained.

When asked whether the GoSL made any inquiries concerning their complaint, only 6 % of survey respondents said that GoSL had looked into their complaint(s). Unfortunately, perpetrators are not being punished and victims/survivors are not being compensated. When asked about whether they had received compensation for the complaint that was made concerning illegal paramilitary activity, only 3% mentioned that they had received compensation. As cited in previous sections: TSA’s survey findings show a clear, indisputable pattern: Sri Lanka’s domestic institutions are incapable of dealing with the most pressing issues of the day. Transgressors go unpunished. Victims and survivors are not supported. And – impunity – the law of the land in post-war Sri Lanka, reigns supreme.

According to respondents, offenders were punished a mere 2% of the time.

The bottom line: the GoSL has failed to fully disarm paramilitary groups and has instead decided that prosecuting the offenders is superfluous – as many members are able to operate outside the boundaries of the law.

For example, Vinayagamoorthy Muralitharan, former leader of the Tamil Makkal Viduthalai Pulikal (TMVP) and well-known human rights offender had been rewarded with a top post in the Rajapaksa administration. He is currently the Vice President of the Sri Lanka Freedom

Party (SLFP). The current leader of TMVP, Sivanesathurai Chandrakanthan¹⁴ was the first Chief Minister of the Eastern Province.

EPDP paramilitaries remain operational in the Northern Province, especially Jaffna. The GoSL's disregard for LLRC recommendations related to paramilitary groups has contributed to the overall deterioration of the rule of law and the prevalence of human security problems in the conflict-affected areas. Again, community members residing in Jaffna have been left in an even more vulnerable position. The consistent reports that paramilitary groups operate in tandem with state security personnel are equally disconcerting.

The GoSL claims to have implemented this resolution in fully – stating in its most recent progress report that no paramilitary groups are permanently armed and that military personnel and the police are the only ones allowed to carry weapons. Nevertheless, the data obtained from TSA's survey proves that this assertion is very questionable.

4 Political and Language Rights

4.1 Political Rights and Devolution

- **9.185** – *“Find a **political solution** to address the **root causes of the conflict**”;*
- **9.231** – *“**Devolution** should necessarily be **people-centric in nature**....”*
- **9.235** – *“Establish a **“devolutionary power-sharing mechanism**....”*
- **9.236** – *“Make **“visible progress on the devolution issue.**”*

The LLRC rightly emphasized the importance of community participation in reconstruction, development and reconciliation. Consultation with regard to the design of compensation and relief packages for war-related death and injury, disappearance and arrests has also been minimal, with 71% of respondents in those four categories indicating they had not been informed of government baseline surveys conducted for that purpose.

¹⁴ Sivanesathurai Chandrakanthan is also known as Pillaiyan.

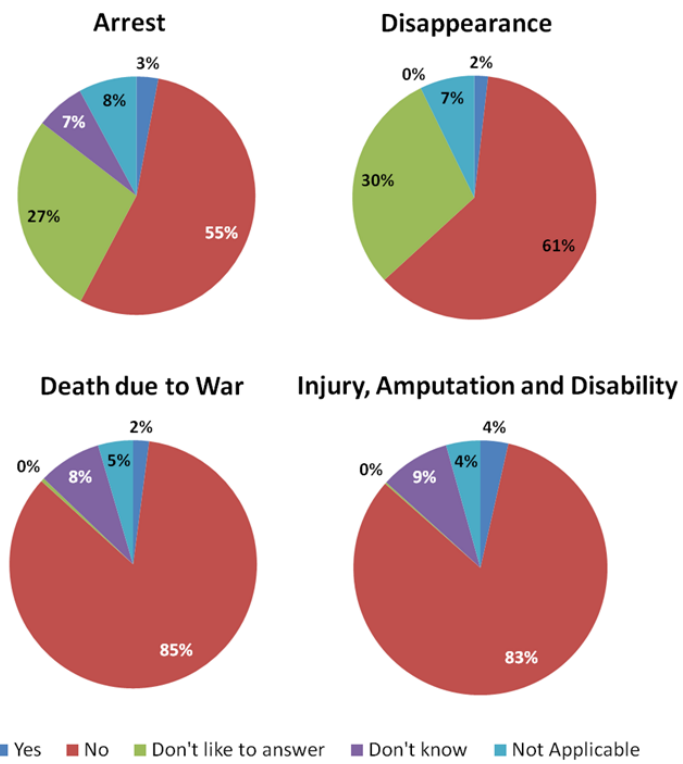


Figure 11: Did you participate in any baseline studies undertaken by government officials to assess the impact of livelihood packages?

In its final report the Commission made numerous recommendations on the need for a political solution and devolution of power – a pivotal component of a lasting peace for Sri Lanka. Regrettably, GoSL – TNA negotiations have gone nowhere. Instead, senior members of the present administration have spoken about the need to repeal the 13th Amendment. There is little to suggest that GoSL intransigence would wane in the near term.

More specifically, 64% of respondents revealed that they are unable to conduct political meetings where they live. Further, TSA's survey results show that not all political parties are treated equally in Sri Lanka.

Indeed, 87% of those surveyed thought that member of the United People's Freedom Alliance (the Sri Lanka Freedom Party – SLFP and its allies) were able to conduct political meetings freely, whereas a mere 10% of opposition parties were able to do so.

Furthermore, when asked whether Tamil representatives not aligned with the UPFA were discriminated against by the security forces, 41% said that they were.

Recommendations 9.236 and 9.237 (on a political solution) are included in the GoSL's most recent progress report. However, the Progress column has been left blank and the GoSL has noted that the Timeframe is "Not Applicable." There is a cursory three-word reference to the Parliamentary Select Committee (PSC). Domestic and international observers are right to be skeptical of the PSC since it looks like another agenda item which focuses more on process than substance.

Many community members are understandably very frustrated with the clear lack of progress on devolution and political rights for Tamils – though it remains to be seen what can be done to break this deadlock. Disappointingly, in the North and East, it does not appear that everyone's political rights are protected. Rather, an already limited space appears to be shrinking.

A protracted stalemate regarding a political solution is inimical to Sri Lanka's long-term prospects for lasting reconciliation. The GoSL's unwillingness to engage in a meaningful dialogue with TNA could portend heightened gridlock, or worse. The consistent attempts toward increased centralization – an overarching strategy of the present administration – only ensures that Sri Lankan society becomes even more polarized.

4.2 Language Rights

- **9.41** – *“The official **bodies for executing language policies and monitoring performance should have adequate representation of Tamil speaking people and Tamil speaking regions. The full implementation of the language policy should include action plans broken down to the community level [...]**”*
- **9.47** – *“It should be made compulsory that **all Government offices have Tamil-speaking officers at all times. In the case of Police Stations they should have bi-***

lingual officers on a 24-hour basis. A complainant should have to the right to have his/her statement taken down in the language of their choice.”

- **9.250** – *“Implement Interim Recommendation regarding language. **Station interpreters at Police Stations** using retired police officers with bilingual fluency.”*

Language rights and a stricter adherence to the country’s existing language policies are core elements of reconciliation.

When asked whether they were able to receive services in Tamil, 30% of survey respondents said that they were not. When asked whether circulars and other notifications were sent in Tamil, 33% of respondents answered that they were not. The graph below highlights the discrepancy between the language a complaint is made in, and the one it is recorded in:

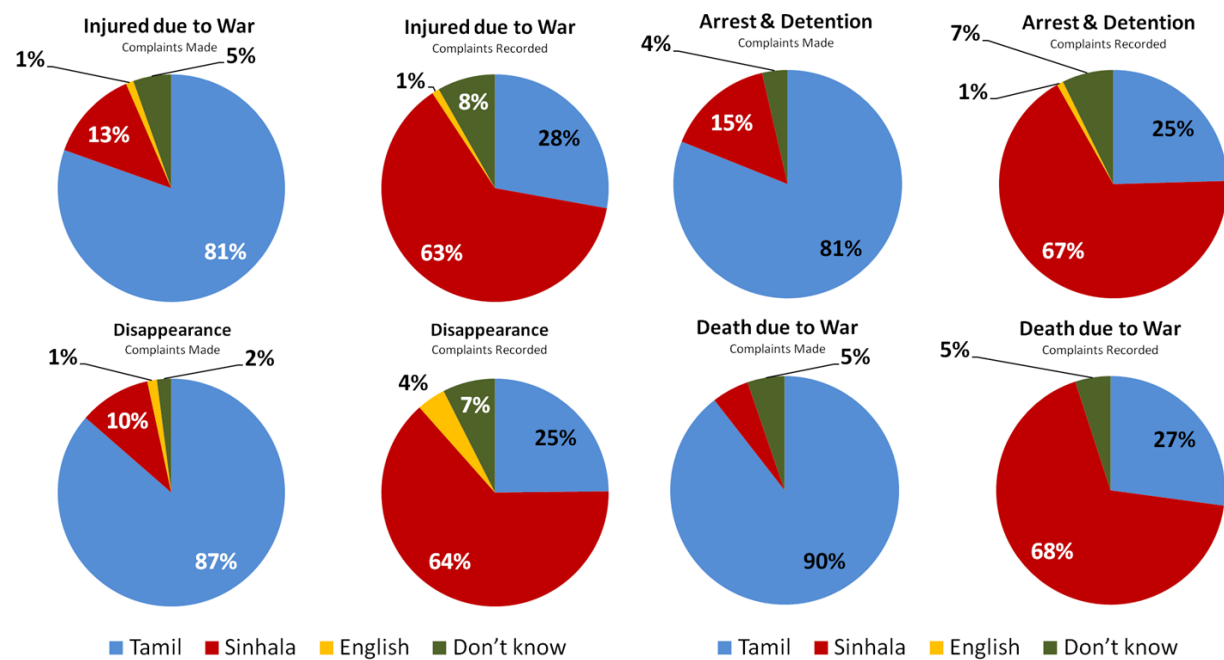


Figure 12: In which language was your complaint made and recorded?

Unfortunately, many Tamil speakers are having trouble receiving government services in their native language. This negative situation is expanded upon in the graph below.

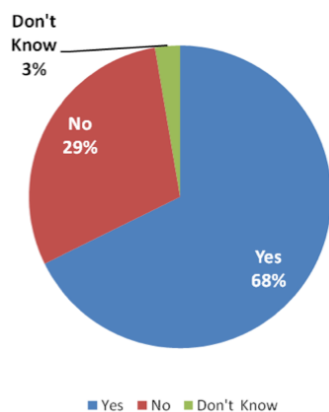


Figure 13: When you approach government department for services are you able to receive help in your native language

Moreover, the graph below clearly indicates that service delivery in the Tamil language is still grossly inadequate. Despite the recommendation above to have Tamil-speaking officers 24/7, police stations rank far above any other service providers in terms of their lack of Tamil-speaking personnel.

The situation in police stations and places that are to provide redress is further reflected in the graphs below, illustrating the difficulties experienced by victims of arrests, detention and disappearances to file a complaint in their own language:

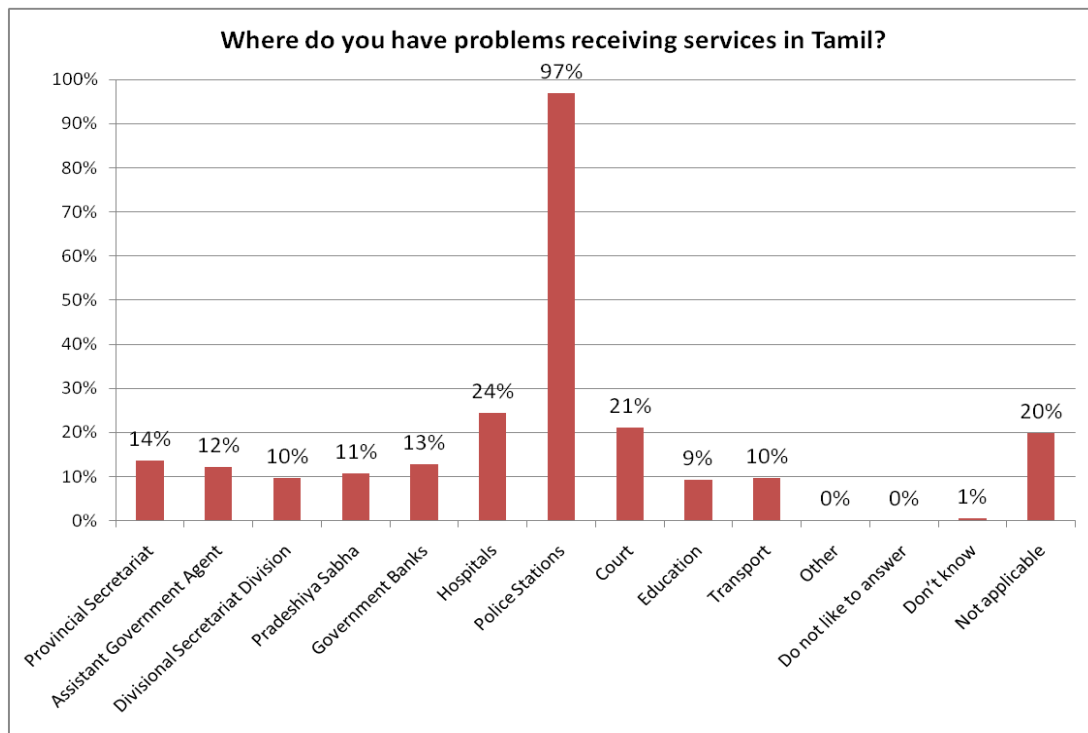


Figure 14 Where do you have problems receiving services in Tamil?

The dearth of Tamil-speaking police offices in the conflict-affected areas is a major impediment to reconciliation, but the GoSL is not making even minimal progress. Sri Lankan citizens deserve to have complaints recorded in the language of their choice – period. This is a fundamental requirement to ensure access to justice.

On a more positive note, 47% of respondents revealed that they are able to sing the national anthem in Tamil. Not surprisingly, this has become much more common since the war ended.

In spite of the abovementioned bright spot regarding the national anthem, overall trends and data regarding language policy in the conflict-affected North and East are extremely negative.

Discriminatory policies surrounding language rights go to the heart of the country's protracted ethnic conflict. Yet the GoSL is not even close to complying with the LLRC recommendations prescribed in this area and language rights for ethnic Tamils are still in question.

In its most recent progress report, the GoSL mentions that the Ministry of National Language and Social Integration is partnering with a “Presidential Task Force on Trilingual Society” to implement some of the recommendations on language rights. That document goes on to ascertain that public officers are working “to provide effective services to the public in their own language.” This sounds good, but the numbers tell another story; the GoSL’s claims of progress on language policy are mostly baseless.

5 Militarization, Civil Life and Land

5.1 Military presence and civilian affairs

- **9.118** – *“People, community leaders should be free to organize peaceful events and meetings without restrictions.”*
- **9.171** – *“[...] Phasing out of the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces with reasonable time lines being given”*
- **9.223** – *“The Government should ensure that development activities should be carried out in consultation and with the participation of the local people.”*
- **9.227** – *“It is important that the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people, and in particular with regard to matters pertaining to economic activities [...]. The military presence must progressively recede to the background [...].”*

5.1.1 Military presence: general trends

Overall, the survey indicates that the military’s presence remains highest in Mullaitivu and Kilinochchi districts – impeding a return to normal life, as highlighted in the findings below. While the military has reduced its presence slightly in the East, it is still far from being at the minimal level one might expect to maintain peace and security five years after the end of the fighting. Similarly, the withdrawal of a number of security forces from Jaffna may be a positive step, but their presence remains very high in a time of peace.

As such, while the environment has begun to open up in selected areas, the overall situation in conflict-affected areas remains highly restrictive, especially in the Vanni. On the contrary, the findings below suggest that the military’s presence has even increased since July 2012, particularly in Kilinochchi and Mullaitivu, as indicated in the chart in section e) below.

The government’s own Plan of Action for the implementation of the LLRC recommendations stated a plan would be formulated to reduce the involvement of the security forces in civilian affairs, in response to recommendations 9.171 and 9.227. The document already maintained that 95% of security forces had been withdrawn from civilian duties. Based on this highly

dubious assertion, the latest government progress report of 26 February 2013 claims the process is now “complete” with a “fully functional” civilian administration.

TSA’s survey findings clearly demonstrate that this is far from the truth, particularly in the North. The military’s interference in civilian affairs remains widespread, and the government blatantly continues to keep a tight lid on the population through the military interference and the restriction of people’s basic freedoms and rights.

5.1.2 Development planning: interference and community consultation

Nearly four years after the end of the war, one might expect civilian administration structures in conflict-affected areas to have regained full authority in matters of local development planning, and that steps would have been taken to make the process more inclusive. The administration in Colombo has sought to allay international concerns by purportedly advocating for an inclusive approach to development which would inherently bring lasting peace and meaningful reconciliation.

The GoSL’s Plan of Action to implement the LLRC recommendations and its National Action Plan for the Protection and Promotion of Human Rights both cite the importance of community participation, outline in LLRC recommendation 9.223. However, the findings clearly show that community participation in decision-making processes on development is far from ordinary, with 38% of respondents not consulted on planned projects.

In addition, development projects appear to be predominantly contracted out to Sinhalese companies based elsewhere in Sri Lanka (47%) and the military (12%), as opposed to 30% for Tamils and 11% for Muslims. This includes the issuance of permits. As returned populations struggle to find work, even as day laborers, sidelining the local workforce from employment opportunities is not only harmful for local economic recovery, it also nourishes fears and suspicions of deliberate economic marginalization and the state-sponsored Sinhalization of historically Tamil areas.

This survey provides additional evidence of the perception of Sinhalization in the country’s North and East. Out of the respondents having answered that new places of worship had been constructed in their home areas, 67% indicated the new sites were perceived to be Buddhist temples, while only 20% declared new Hindu temples were perceived to have been built. The disproportionate number of Buddhist temples constructed in areas where the majority of the population has historically been Hindu Tamils – particularly in the North – is further highlighted in the charts below, in comparison with the GoSL’s 2012 population census statistics on religious affiliation:

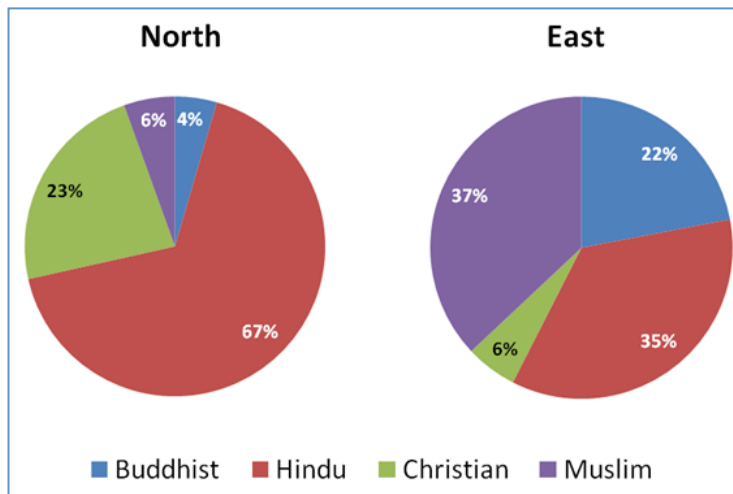


Figure 15: Religious affiliation (North and East)¹⁵

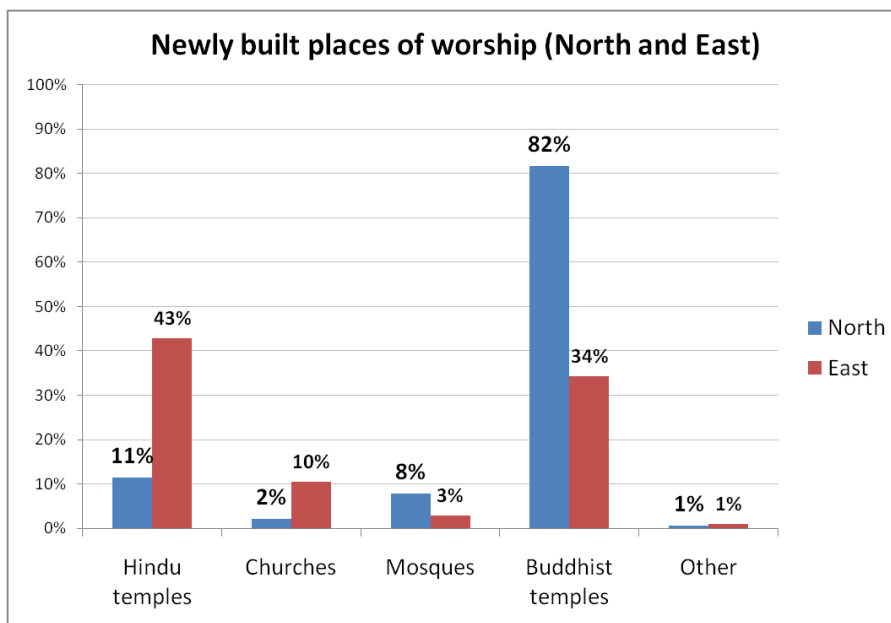


Figure 16: Newly built places of worship (North and East)

¹⁵ Population and Housing Census 2012, Department of Census and Statistics

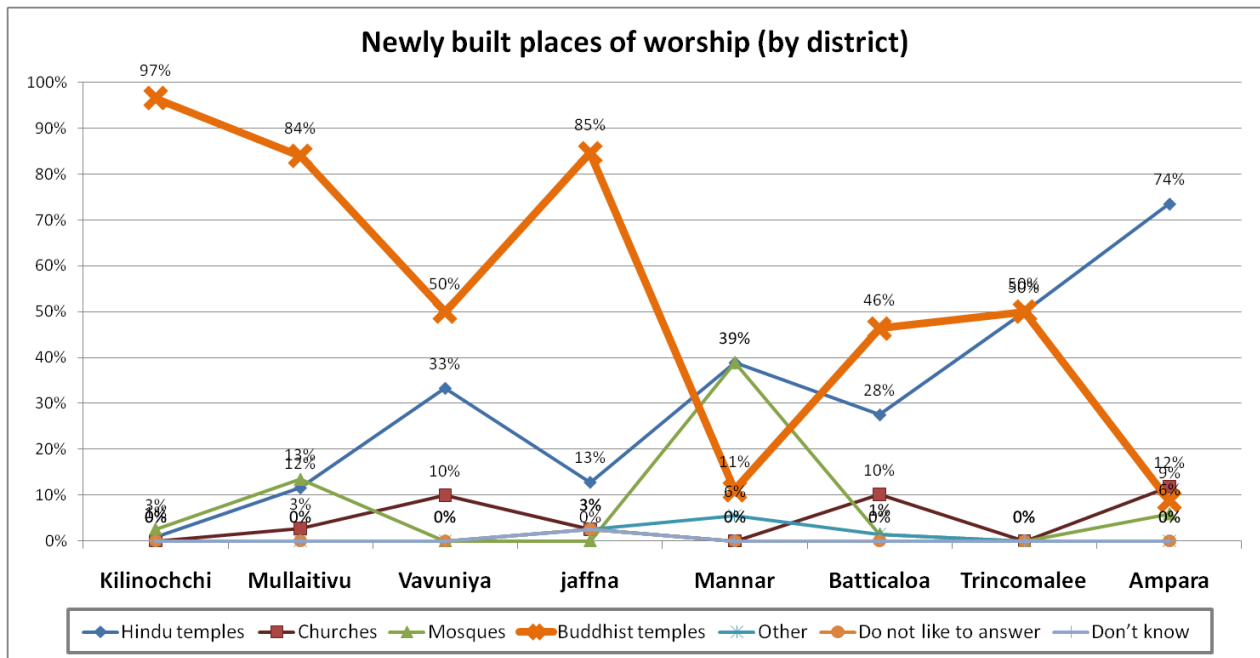


Figure 17: Newly built places of worship (district breakdown)

Furthermore, 67% of respondents specified that new places of worship were perceived to have been built by the military.

In the long term, the continued centralization of local planning, sidelining of the local population in the awarding of development contracts and deliberate attempts to alter the ethno-religious make-up of the North and East bears the risk of exacerbating the sense of alienation and marginalization which lay at the root of the conflict. Control over development processes have also extended to the activities of non-governmental organizations.

Nearly half (43.5%) of respondents indicated that NGO projects had been interfered with. The main interfering actor was, again, the military according to 48% of respondents. As mentioned in Section Two of this report, I/NGOs operating in the North already have to operate under the strict oversight and approval requirements of the centralized Presidential Task Force, essentially composed of retired military personnel. The military's continued interference in development projects is worrisome, as this prevents the civilian administration from fulfilling its legitimate role in spite of the sound LLRC recommendations to reduce the military's presence and involvement in civilian matters (9.227).

It also highlights the influence of the GoSL (and particularly the Ministry of Defence) in deciding on the direction of post-war reconstruction and reconciliation processes from the central to the local level. Out of the respondents indicating interference in NGO activities, 86% stated the implementation of housing schemes was hindered, followed by 49% for livelihood projects.

A further 47% responded legal aid and human rights programming was being obstructed (34% for human rights work and 12.5% for legal aid). This blatantly shows that populations

have suffered – and continue to suffer – from trauma and serious violations of human rights during the final stages of the war. Unfortunately, these people are disproportionately discriminated against regarding their access to judicial redress, psychosocial support and other forms of assistance to enjoy and reclaim their fundamental rights. The graphs below highlight the situation in the North and East in terms of the interference NGOs are subjected to:

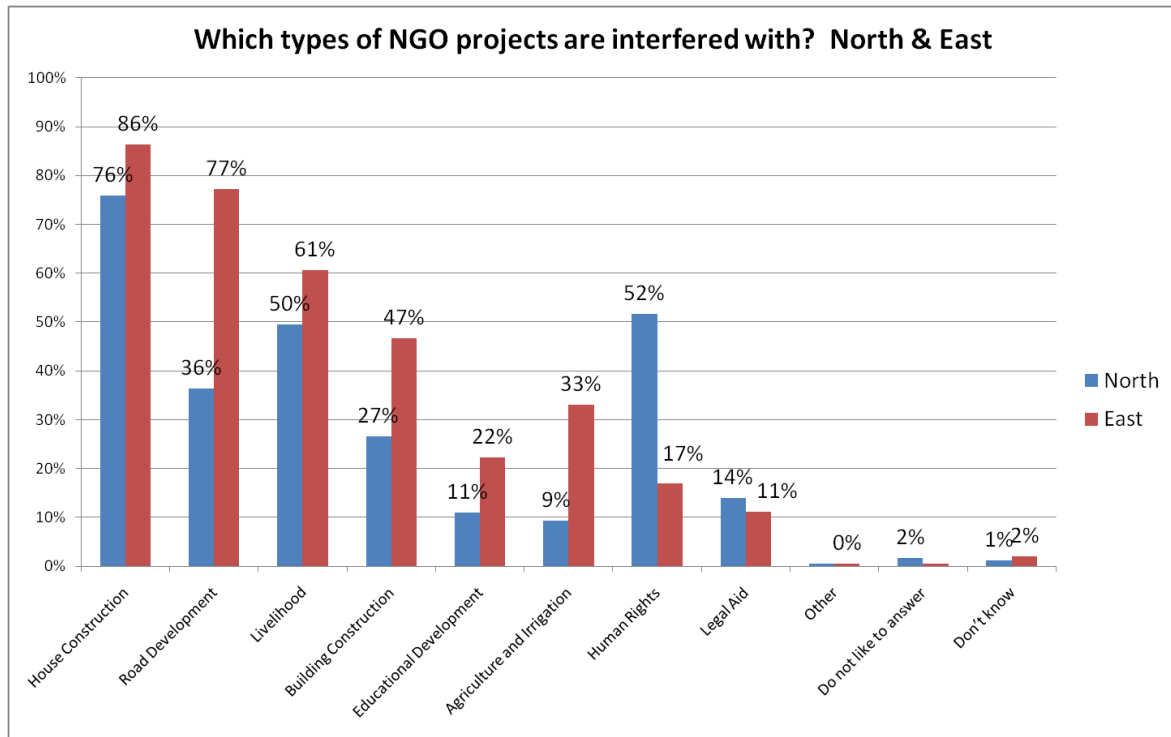


Figure 18: Type of NGO projects most subjected to interference (North and East)

5.1.3 Restrictions on fundamental freedoms

Survey findings pertaining to freedom of association in conflict-affected areas confirm a generalized trend of often violent intimidation of political dissent (mostly by the military or police) and overall criticism of the government across the country. Despite the LLRC calling for community leaders and people to be able to organize meetings and peaceful events without restrictions (9.118), 29% of respondents stated they could not meet freely in public spaces. Threats from the military were indicated as the major reason for being unable to meet for 90% of respondents.

21% of respondents also indicated not being able to practice their religious traditions freely. Out of these, 74% indicated special remembrance days are the most restricted events, underlining the fact that too many of those who have lost family members and friends in the war are still unable to freely and openly mourn their dead. Another 35.5% stated restrictions were imposed on arranging religious festivals. The military is, again, indicated as the main restricting actor for an overwhelming 87% of respondents.

In light of the recent arrest and subsequent detention and rehabilitation of Jaffna university students for the organization of a peaceful commemoration event, these findings only confirm

the continued stranglehold of the security forces over gatherings of any sort, preventing a return to normal life and the enjoyment of fundamental freedoms – a prerequisite for reconciliation and a lasting peace.

5.1.4 Interference in community and day-to-day civilian affairs

Despite GoSL’s claims about demilitarization, the military’s presence in civilian affairs remains widespread. This is occurring in spite of recommendations 9.171 and 9.227 – which call for the army’s withdrawal from civilian activities and day-to-day life, particularly civilian and commercial activity.

According to 79% of respondents, the military is engaged in civilian socio-cultural events. Out of these, 76% mentioned their participation in temple festivals, 85% in school sports events, and 2.3% in private events such as birthday and wedding parties. Another 42% indicated their involvement extends to civil/community activities including community service activities (Siramathana), registration of documents, health awareness and educational activities, from Sinhala language training to sports coaching., as shown in the chart below:

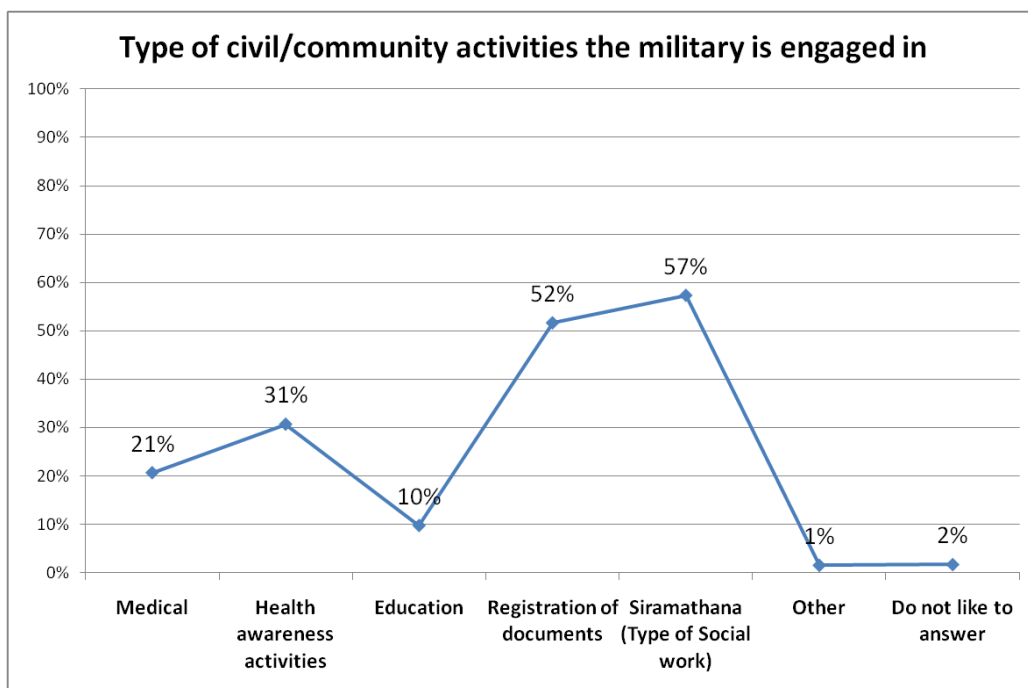


Figure 19: Type of civil/community activities the military is engaged in

In addition to engaging in community events, 11% of respondents indicated the military is participating in their day-to-day personal affairs. 7% even indicated having approached the military for personal matters. While this concerns a small number of respondents, it is disconcerting to see that the majority of these inquiries had to do with matters not directly related to ensuring security, including livelihoods (34%), education (6%), and personal affairs (18%) as opposed to 29% for security matters. Regrettably, the military is also involved in personal issues and disputes, albeit to a smaller extent, as indicated by 5% of respondents.

According to these, consultation extended to land problems, as indicated by 23.5% of respondents, criminal issues (28%) and even domestic disputes (28%).

This level of involvement clearly indicates that military personnel continue to encroach on a diverse range of activities which fall under the purview of the civilian administration. The military's presence is most notable when it comes to the registration of documents, health and educational activities. It also shows the partial duplication of the mandated role of the police and existing community dispute resolution mechanisms through their engagement in personal disputes, including on land.

The latter is controversial, given the occupation of private land by the military – a fact highlighted as problematic by the LLRC itself (9.171). Based on these findings, one can safely say that the government claim that 95% of security personnel were withdrawn from civilian affairs is significantly inflated. Beyond this however, the considerable number of respondents having themselves consulted the military on private matters suggest a concerning trend: that their presence and involvement is progressively becoming normalized among the population. A de-facto acceptance which, in the long run, bears the risk of legitimizing their interference to the detriment of the mandated institutions.

Furthermore, a considerable number of respondents stated the military is involved in their livelihood activities, including agriculture (5%) and fishing (8.5%) which are the main source of income for the majority of the population in conflict-affected areas, but also small businesses (4%).

These trends are visibly worse in the North, particularly for agriculture (8% in the North as opposed to 2% in the East) and fishing (10% in the North, 6% in the East). Interference in fishing (mostly related to obtaining permits) indicates undue involvement in economic activities in a sector in which the widespread loss of fishing equipment is already a major obstacle for resuming livelihoods. Many fishermen have very little access to the sea. With allegations of navy inaction and tacit approval of the encroachment Indian fishermen in Sri Lankan waters in the North and reported preferential treatment of Sinhalese fishermen coming from the South, this situation also has the potential of exacerbating underlying tensions which could harm any prospects of reconciliation.

5.1.5 Occupation of public spaces and private lands

Besides involvement in civilian activities, the survey clearly confirms the military's consistent use of community resources, as stated by 29% of respondents. Out of these respondents, 27% indicated hospitals were being occupied by military personnel. 46% specified the military is using roads (potentially restricting or controlling access through checkpoints). 25% mentioned the use of public wells by military personnel. As public wells are mainly being used for bathing, this effectively prevents women in those areas from feeling safe and secure, and impeding their access to basic sanitation facilities. Educational facilities are also being occupied, including playgrounds and schools, as indicated by 42%

and 23% of those who answered. Finally, 10% indicated religious sites were being occupied. Beyond the mere occupation of key public service buildings and spaces which prevent a return to normal life and hinders the enjoyment of a number of basic rights, this indicates further restrictions on freedom of religion by preventing unimpeded access to places of worship.

Furthermore, in spite of recommendation 9.227 calling for the military’s presence to “progressively recede to the background”, 76% of respondents in the North and 62% in the East stated having military personnel residing close to their residential areas. Out of these respondents, 75% indicated they are situated within 5 km of their home in the North, as opposed to 55% in the East. 59% of respondents mentioned that security forces had patrolled their area between March and December 2012.

This is a concerning reality which clearly shows utter disregard for the relevant LLRC recommendations, particularly as the majority of military installations were set up after the end of the war, with a notable increase from July 2012 to the present, as shown in the graphs below – a trend which flies in the face of consistent government claims of demilitarization.

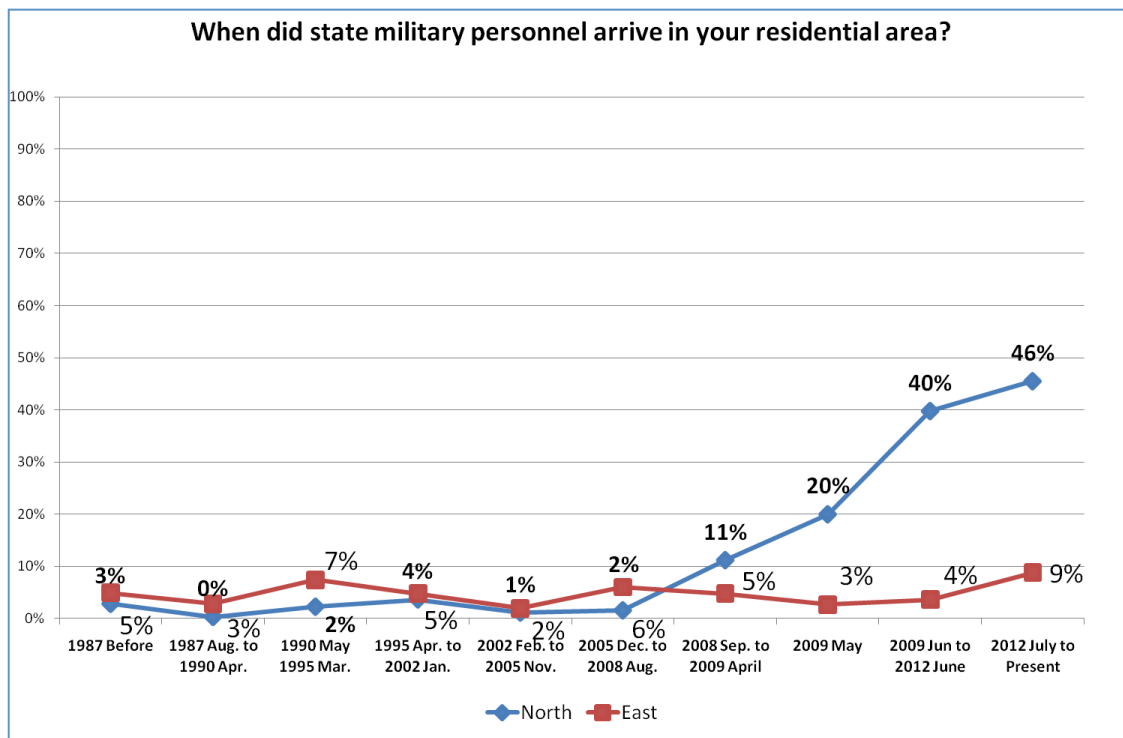


Figure 20: Timeframe of arrival of military personnel

This is not a positive development, as the majority of these structures are camps rather than mere checkpoints, suggesting that a number of checkpoints were effectively converted into permanent camps.

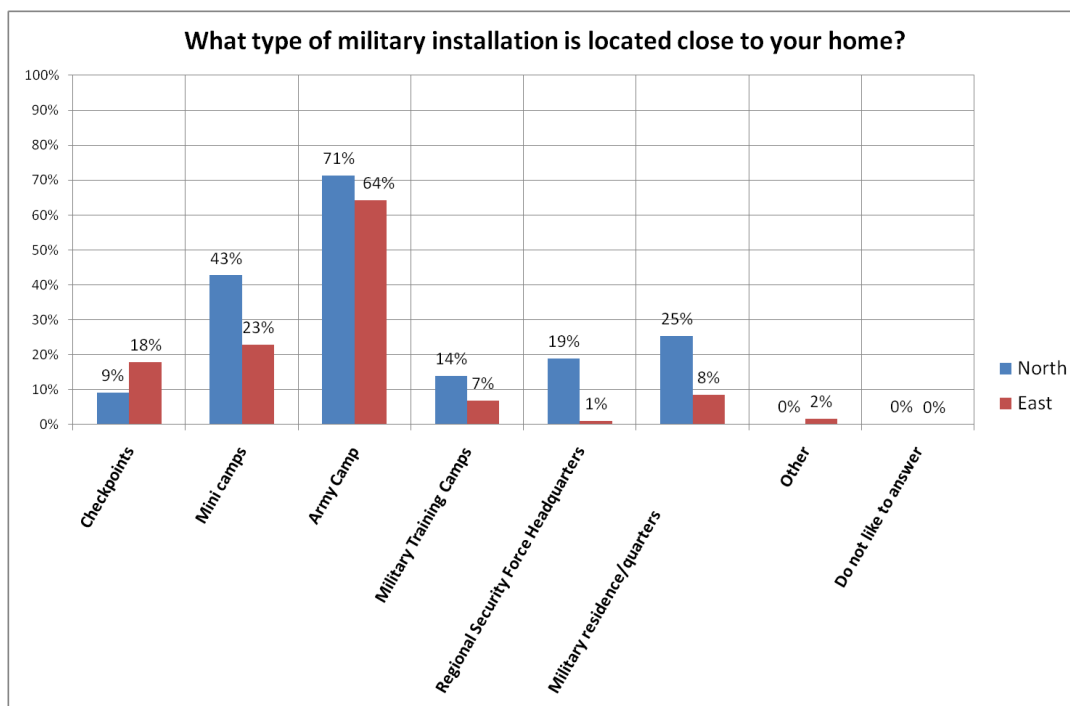


Figure 21: Types of military installations located close to residential areas

The occupation of land by the military is another major concern which is clearly highlighted in the survey, with 3% of respondents indicating occupation of their agricultural land and 3% of their residential land¹⁶. Only 8% of these respondents had their land released by the military.

This suggests that the implementation of recommendation 9.171 (calling for the withdrawal of security forces from private lands within a reasonable timeframe), is far from completed. The continued occupation of private land – particularly land held by deeds – is very disturbing, and confirms past reports indicating that up to 26,000 IDPs remained unable to return home because of occupation of their land by the state or military¹⁷.

On a more positive note, however, the majority of HSZs in Jaffna have been released. As of the writing of this report, 52/69 HSZs had been released. 16 HSZs are yet to be released in Jaffna and one remains in place in Vadamarachchi East. The GoSL should be commended for this relatively positive development.¹⁸ That said, there is no question that land rights are still a major problem in the North and East.

As clearly shown above, the interference of the military in civilian affairs in various forms is highest in the North. A district level analysis highlights the situation is most critical in Kilinochchi and Mullaitivu districts, confirming past reports estimating the ratio of security personnel to civilians to be 1:5 in Mullaitivu and 1:10 in Kilinochchi as of September 2012¹⁹.

¹⁶ Privately owned land held by deed

¹⁷ "A hidden displacement crisis", Internal Displacement Monitoring Centre/Norwegian Refugee Council, 31 October 2012

¹⁸ TSA telephone interview with Sri Lankan government official, 11 March 2013.

¹⁹ "A hidden displacement crisis", Internal Displacement Monitoring Centre/Norwegian Refugee Council, 31 October 2012

For instance, interference in livelihood activities reached 71% in Mullaitivu and 67% in Kilinochchi, as opposed to 21% in Batticaloa and 31% in Jaffna. In another striking contrast, 81% of respondents in Kilinochchi and 72% in Mullaitivu indicated having security personnel patrolling in their areas, as opposed to 51% in Batticaloa and 23% in Jaffna.

5.2 Land rights (including challenges for female-headed households)

- **6.104** – *“The land policy of the Government should not be an instrument to effect unnatural changes in the demographic pattern of a given Province.”*
- **9.104** – *“Grant the legal ownership of land to those who have been resettled.”*
- **9.142** – *“[...] All families who have lost lands and or houses due to formal HSZs or to other informal or ad hoc security related needs be given alternate lands and or compensation be paid according to applicable laws. [...] Provision of alternate lands and or payment of compensation be completed within a specific timeframe.”*
- **9.171** – *“[...] Phasing out of the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces with reasonable time lines being given”*
- **9.87** – *“[...] Immediate needs of women, especially widows who most often have become heads of their households must be met. These immediate needs include economic assistance by way of providing them with means of livelihood and other income generating means [...]”.*

5.2.1 Return and land expropriation

Following the closure of the last remaining official IDP camp, Menik Farm, in September 2012, the government claimed the resettlement process was over, stating no internally displaced persons remained in the country. In spite of LLRC recommending for legal ownership of land to be granted to all resettled (9.104), many of those resettled from IDP camps can still not access their legally owned land. The survey findings indicate that a significant number of families were unable to return home after displacement, as stated by 8% of respondents. Among these, 74% could not return due to a lack of basic facilities, 32% because of insecurity, 34% because of unemployment and 19% due to their lands not yet being released for return. The diversity of reasons, most of which were not directly linked to land not being physically accessible, confirms that the completion of the “resettlement” process through the closure of official IDP camps does in no way mean the “return” process is completed.

On the other hand, 13% of respondents indicated that people of other ethnic/religious groups had recently settled in their area. Out of these, in the North, 54% of respondents indicated that new settlers were Muslim, while 28% mentioned the arrival of settlers of Sinhalese origin. 31% stated new settlers arrived between June 2009 and June 2012, and 41%

mentioned they came after July 2012. While long-term displaced Muslim populations have the rightful right to return to their home areas in the North, the relatively high percentage of new Sinhalese settlers raises questions, as there has been no mass displacement of Sinhalese populations from the North during the war.

A similar trend has taken place in the East, where government-led settlement schemes had already considerably changed the demographic composition of the Province since the end of the war in 2007²⁰. 33% of those who stated new groups had arrived indicated these were Sinhalese, while 28% specified Muslim settlers had come or returned to claim their land, mostly between September 2008 and April 2009. A visible trend appears to be emerging indicating Sinhalese are settling to the same areas in which thousands are still unable to claim back and return to their original lands, particularly in the North.

4% of respondents reported their private land was expropriated, 72% of whom indicated the military as the expropriating actor. Military needs were listed as the main reason according to 54% expropriated respondents. While the GoSL claims to have completed the implementation of recommendation 9.171 (calling for a withdrawal of the use of private lands by the security forces) in its progress report dated February 2013, these figures tell a very different story, echoing the figures in section I. e) above. In addition, 67% of respondents had their land expropriated despite having land ownership documents in their possession, but, as seen below, few have so far received compensation.

5.2.2 Compensation

Land expropriations have been hailed as necessary for national security or development purposes by the government, but the process of land acquisitions by the government has been marked by a lack of transparency and inadequate consultation with those whose land is taken. As such, it is questionable whether expropriated individuals have been consistently informed of the reasons for expropriation, conditions and terms of compensation, and appeal mechanisms should they not accept the decision. In effect, 55% of respondents whose land was taken declared not accepting the decision for the expropriation of their land for national security purposes, while 1% accepted the decision. 44% did not wish to answer.

While the February 2013 progress update on the government's LLRC action plan states that measures had been taken to pay compensation to expropriated individuals in High Security Zones and other occupied lands, the findings clearly contradict this. Indeed, out of those whose land had been expropriated, only 16% saw their land returned to them. Out of the others, only 10% had received alternate land, and 6% had received compensation, as shown below:

²⁰ The Gal Oya project and Mahaweli Development and Irrigation Programmes have been the main land settlement schemes implemented in the Eastern Province. For more information on these schemes, see: "Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka's North, East and Hill Country", The Social Architects, 20 March 2012

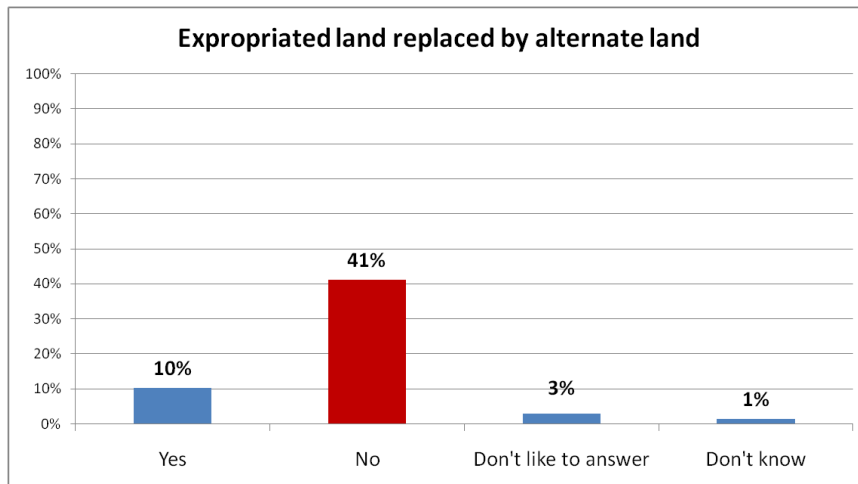


Figure 22: Alternate land provided in case of expropriation

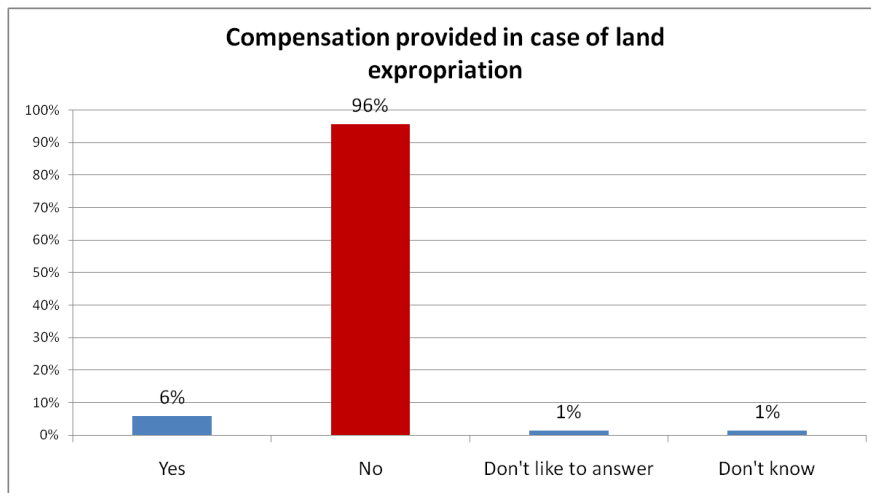


Figure 23: Compensation provided in case of expropriation

5.2.3 Challenges faced by female-headed households

The particular challenges faced by female-headed households, although mentioned in the LLRC, are still problems on the ground. While the LLRC recommended that the immediate needs of women, particularly female-headed households, be met (9.87) – essentially through economic assistance – the GoSL is not following through on this important recommendation. For instance, only 1.5% of female-headed households having had their land expropriated received alternate land (as opposed to 9% for households headed by a male). No female-headed households had received compensation. This highlights the difficulties these women face in making claims for lost land in the post-war context, mostly due to a patriarchal culture and discriminatory administrative practices and laws which make it challenging for women whose husbands are in detention, have died or disappeared, to prove legal ownership of their

family land- which commonly is in the name of the husband. This is a major obstacle for these women to meet the needs of their families and earn income. Tellingly, female-headed households having responded to the survey indicated that they faced difficulties in certain situations as a result of not owning land, mainly when trying to access housing schemes (40%) and start employment (36%). Only 18% of female-headed households said they will accept compensation if they receive it, suggesting that the majority still hope for their land to be returned to them.

6 Transitional Justice and Conclusion

The brutal end of the war in Sri Lanka gave way to the institutionalization of a “winner takes all” policy at all levels: in the government, private and non-profit sectors. Can “transitional justice” – how it is generally interpreted – apply here? Should a country simply draw a line between a brutal past and a more peaceful, democratic future? - *Or should it bravely confront the past by convening a truth commission, providing reparations to survivors and victims’ relatives, or putting those responsible for human rights abuses on trial?* As the Commander in Chief of the Security Forces of Sri Lanka, the President will have to investigate into how **118036** died. The Sri Lankan military, believed to be responsible for 75% of the deaths during the war’s final phases, spanning from Sept. 2008 – May 2009, are enjoying absolute impunity (if one supports the ruling family) and virtually unlimited perks under the Rajapaksa regime – are not concerned about any prosecution for most of the alleged war crimes and crimes against humanity carried out against the mostly innocent Tamil population.

6.1 Past Disappointments: Symbolic Justice is Not Justice

In many other cases around the world, a Commission of Inquiry (CoI) has been seen as one of the best way to end impunity. However in Sri Lanka, most of the presidentially-appointed CoI have often operated at the margin of the law because of a lack of political will.

A closer look into two specific CoIs in recent history the Commission of Inquiry into the Bindunuwewa Massacre and the Commission of Inquiry into 16 cases of human rights violations and killings, painfully illustrate this reality. One is entirely domestic while the other is a hybrid model.

In the case of the CoI into the Bindunuwewa Massacre, none the Commission’s findings went as far the High Court, but were turned down at the Supreme Court level. The findings of the CoI were never made public. In addition, one of the accused was rewarded with a Senior Police Officer post.

The Commission of Inquiry into the 16 cases of human rights violations and killings, did not have the desired impact to challenge impunity in Sri Lanka either. In this case, the Attorney General’s Department took on multiple identities, inevitably resulting in a conflict of interest. The CoI, by using the AG’s department to lead the interrogation of witnesses (as in the case

of 17 employees of Action Against Hunger staff murdered in 2006), predisposed itself to being partial to one party.

The inherent contradictions embedded in CoI processes have resulted in these commissions failing the victims and survivors to end impunity. At the same time, these CoIs have become apparatuses of appeasement which serve principally to circumvent international criticism.

In early 2009, the international community saw a crisis coming and decided to look the other way. The results were disastrous. Created in 2010, the LLRC – Sri Lanka’s domestic solution – was designed to deflect international pressure, not to instigate meaningful change. In fact, the GoSL has disregarded both the LLRC’s interim and final recommendations. It is just another Commission that has been disregarded by those in power.

As the GoSL continues to ignore the root causes of the conflict, international actors have been far too generous with their support of the administration of Mahinda Rajapaksa. This must change. The reality is that, nearly four years since the conclusion of the country’s civil war, Sri Lanka’s ethnic conflict rages on.

Resolution 19/2 – designed to promote reconciliation and accountability – has simply not effected change. On the contrary, authoritarian gains have been consolidated, as the situation here continues to deteriorate. The present administration has had more than enough time to prove that it is serious about justice, human rights, accountability, and the pursuit of a lasting peace.

Unfortunately, Mr. Rajapaksa and his allies are not up to these challenges because the GoSL has largely ignored the recommendations prescribed in the LLRC’s Final Report – even after the passage of the US resolution on Sri Lanka. This administration is not serious about reconciliation or addressing the long-term grievances of the Tamil people.

6.2 Present Reality

Sri Lanka has flirted with impunity throughout the ethnic conflict; the end of war hasn’t had an impact on this trend. The absolute disregard for accountability has resulted in the:

- Promotion of perpetrators;
- Destabilization of the judiciary and other national institutions;
- Removal of constitutional provisions which guarantee the independence of institutions;
- Consolidation of power by the defense establishment;
- Militarization of civilian tasks;
- Promotion of impunity through continued immunity.

Absent recourse to justice at home, activists and victims’ family members are turning to the international community for truth, justice and dignity.

6.3 The Way Forward

Sri Lanka's most recent crisis – one of human rights – has already dawned; it presents a clear and present danger to all citizens. As a result, it is imperative that the international community seize this opportunity in Geneva – to show real leadership, the kind that Mr. Rajapaksa has been unwilling to provide.

Thus far, the GoSL has failed Sri Lankan citizens, but the international community has too. Without principled leadership, there will be no justice. Without some sort of global consciousness – recognizing that human rights are meant for everyone – there can be no lasting peace.

The LLRC implementation indicators are clear, but the benchmarks have not been met. The time has come for more robust action. TSA calls on the international community to pass a strong resolution at the HRC's 22nd session, which includes the provision for an independent international investigation for wartime atrocities committed by government forces and the LTTE. The last time international action was so clearly needed in Sri Lanka, crucial stakeholders sat idly by while tens of thousands were slaughtered in Mullaitivu.

The events that transpired in early 2009 will never be forgotten – for they are an integral part of this nation's complicated and turbulent history. But what continues to happen in Sri Lanka – including, abductions, extrajudicial killings, sexual violence, and the state's systemic failure to protect the fundamental rights of all its citizens – is completely unacceptable.

An International Commission of Inquiry would also be a step toward sustainable reconciliation, which requires acknowledging the human rights violations that communities and individuals have suffered and making a strong commitment to end impunity for those violations. While most people calling for reconciliation in Sri Lanka are referring to political dialogue, more meaningful reconciliation is also needed among ethnic groups – as well as between civilians and the military.

It was not long ago that the international community found itself on the wrong side of history. TSA sincerely hopes that those currently making noise in Geneva – especially those who publicly champion the pursuit of individual liberty for everyone – will not make the same mistake twice.