

# Sri Lanka: LLRC Implementation Monitor

Statistical and Analytical Review No.1

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### Background

The 30-year war between the Sri Lankan Government and the LTTE ended in May 2009. The vagaries of war had increased the tension between the Sinhala and Tamil people in Sri Lanka. At the end of the war, there were calls, both domestically and internationally, to consider the root causes of the conflict and develop a framework for national reconciliation. In response, President Mahinda Rajapaksa, on 15 May 2010, appointed the Lessons Learnt and Reconciliation Commission (LLRC).

The mandate of the LLRC was limited. It was essentially tasked with inquiring into the facts and circumstances that led to the failure of the Ceasefire Agreement (CFA) operationalised on 21 February 2002 and the sequence of events that followed thereafter up to 19 May 2009.<sup>1</sup>

However, Clause V of the Warrant pertaining to the LLRC empowered the LLRC to inquire and report on *'the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and*

*to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.'* Hence the LLRC possessed an important mandate with respect to ensuring national unity and, notably, the non-recurrence of ethnic tensions in the future.

The final report of the LLRC was released to the public on 16 December 2011.<sup>2</sup> The recommendations were, by and large, received positively, both in Sri Lanka and within concerned international bodies such as the United Nations Human Rights Council (UNHRC). In March 2012, the UNHRC passed Resolution 19/2<sup>3</sup> on Promoting Reconciliation and Accountability in Sri Lanka. The Resolution specifically welcomed the **'constructive recommendations'** of the LLRC. The UNHRC meets three times a year, and Sri Lanka's progress with regard to Resolution 19/2 will be constantly reviewed.

The Government of Sri Lanka has since then drawn up a 'National Plan of Action to Implement the Recommendations of the LLRC' (NPA). This was released to the public on 26 July 2012. The plan specifies timeframes, Key Performance Indicators (KPIs) and responsible agencies with respect to the fu-

ture implementation of the LLRC recommendations.

The present report is the first in a planned publications series called ‘Sri Lanka: LLRC implementation monitor’. It is designed as a series of research and informational documents that could be of assistance in efforts to implement the LLRC recommendations, and increase compliance with UNHRC Resolution 19/2.

## Scope of Assessment

The present report, as the first in the series, sets out to provide preliminary data and assessment on the LLRC recommendations and the NPA actions. The exercise may be categorised into two main areas: (a) an analytical counting and categorisation of the LLRC recommendations; and (b) an analytical assessment of the NPA.

Each area may be sub-categorised in the following manner:

### A. Analytical Counting and Categorisation of the LLRC Recommendations

1. A numbered list of **distinct recommendations** directed at the Government by the LLRC
2. An organisation of the recommendations into the **constructive categories** listed by the UNHRC
3. An organisation of the recommendations into **time-scale categories** based on an assessment of reasonable duration needed for implementing each identified recommendation

### B. Analytical Assessment of the NPA

1. An assessment of the overlap and differences between the recommendations of the LLRC and the actions envisaged by the NPA
2. An assessment of the NPA with regard to the constructive categories listed by the UNHRC resolution.

3. An over-all critical assessment of the NPA, with regard to content, timeframes, key performance indicators, and implementing agencies.

## 1. Analytical Counting and Categorisation of the LLRC recommendations

### 1.1 The Distinct Recommendations of the LLRC

#### 1.1.1 Count

The total number of distinct LLRC recommendations, anticipating some visible action by the Government, is **180**. Of this number, 13 recommendations are not actionable in their current form, as they directly relate to the Land Circular No. 2011/04, which was subsequently withdrawn.<sup>4</sup> Hence the total number of LLRC recommendations that are currently actionable is **167**.

Popular discussion of the LLRC cites the number of recommendations in the LLRC Report as 285.<sup>5</sup> This number emerges from the fact that the LLRC Report, in its ninth chapter, has 285 paragraphs.

However, upon close scrutiny, it is clear that many of those paragraphs contain observations or comments, rather than recommendations, and that some of the paragraphs contain more than one distinct recommendation. Therefore, an accurate assessment of the distinct number of recommendations requires an analytical scrutiny of the text.

#### 1.1.2 Methodology

It is not possible to avoid subjective judgments in such a scrutiny. The following methodology has been developed in the process of the exercise as an attempt to create, as far as possible, an objective basis. The analysis remains open to review by peers and readers and may be revised in future editions of this series based on the comments and suggestions received.

1. Extract the distinct recommendations of the LLRC that specifically anticipate some action by the Government. The basis of the analysis is a close reading of the LLRC Report with a specific focus on Chapter 9.

2. Exclude those recommendations where the action called for is not a visible action such as when what is recommended is a thought process or an attitudinal change.

E.g. **Consider** providing schools, teachers, school supplies, financial and other forms of support such as scholarships to support children and education;<sup>6</sup> and **Consider** establishing a Second Chamber comprising Representatives from the Provinces.<sup>7</sup>

3. Identify redundancies and overlap between recommendations and retain only unique recommendations or parts thereof.

The Annex lists the distinctly identifiable recommendations of the LLRC. It summarises the distinct recommendations into their imperative statements and references the specific paragraphs in Chapter 9 of the LLRC Report in terms of each identified recommendation. Where a paragraph contains more than one recommendation, the said recommendations are classified as '1a', '1b' etc.

## 1.2 'Constructive' Categorisation of the LLRC Recommendations

### 1.2.1 Categorisation

The UNHRC Resolution 19/2 of March 2012 makes reference to 'constructive recommendations' of the LLRC and lists eight specific 'constructive' categories. These are:

1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances;
2. Demilitarising the North of Sri Lanka;
3. Implementing impartial land dispute resolution mechanisms;
4. Re-evaluating detention policies;
5. Strengthening formerly independent civil institutions;

6. Reaching a political settlement on the devolution of power to the provinces;
7. Promoting and protecting the right of freedom of expression for all; and
8. Enacting rule of law reforms.

The Annex allocates one of the above numbers to each recommendation based on an analytical judgement with regard to the recommendation's relevance to each category. The number 0 is used when a recommendation falls outside of the above eight categories.

### 1.2.2 Methodology

As in the counting, it is not possible to avoid subjective judgements in such a categorisation process. The following methodology has been developed in the process of the exercise in an attempt to create, as far as possible, an objective basis. The analysis remains open to review by peers and readers and may be revised in future editions of this series based on the comments and suggestions received.

1. Identify the key terms in the language and context of each LLRC recommendation to determine relevance to the eight constructive categories. The basis of this analysis is a close reading of the LLRC Report with a specific focus on Chapter 9.
2. In cases where one recommendation is relevant to more than one category, determine a single category based on the criterion of 'highest relevance'.

E.g. The LLRC specifically recommends that '*the Security Forces should disengage itself from all civil administration related activities as rapidly as possible*'.<sup>8</sup> On the basis of the language used, the recommendation relates specifically to category 2: 'demilitarising the North of Sri Lanka'. However, this recommendation arises in reference to the programme proposed in July 2011, titled '*Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces*'. Therefore, the recommendation is also relevant to category 3: 'imple-

menting impartial land dispute resolution mechanisms'. The recommendation's relevance to land dispute settlement is of an instrumental nature (to create the conditions for) while its relevance to demilitari-

sation is direct and intrinsic. Therefore, on the criterion of 'highest relevance' it is placed in category 2. Table 1 summarises this categorisation for the 167 distinct LLRC recommendations

**Table 1: UNHRC Resolution Based Categorisation of the LLRC Recommendations**

UNHRC Category	Number of Recommendations	Percentage of Recommendations
1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances	13	7.8%
2. Demilitarising the North of Sri Lanka	6	3.6%
3. Implementing impartial land dispute resolution mechanisms	14	8.4%
4. Re-evaluating detention policies	18	10.8%
5. Strengthening formerly independent civil institutions	5	3%
6. Reaching a political settlement on the devolution of power to the Provinces	7	4.2%
7. Promoting and protecting the right of freedom of expression for all	5	3%
8. Enacting rule of law reforms	19	11.4%
0. Other	80	47.9%
<b>Total</b>	<b>167</b>	<b>100%</b>

### 1.3 'Time-Scale' Categorisation of the LLRC recommendations

#### 1.3.1 Count and methodology

A question asked regularly with regard to the LLRC recommendations is 'how many have been implemented?' The Government has made the claim that over 50% of the LLRC recommendations have already been implemented.<sup>9</sup> It also claimed that 'out of 285 recommendations, 60% short-term and mid-term recommendations have already been implemented.'<sup>10</sup>

In this first edition of *Sri Lanka: LLRC Implementation Monitor* we do not attempt to answer that question. The recommenda-

tions that have been fully implemented appear to be small in number — we have counted two recommendations, which could be reasonably described as having been fully implemented.<sup>11</sup> Meanwhile, various actions have been taken with regard to initiating or partly implementing other recommendations. Any assessment of the progress of those actions would need to take into consideration the complexity of the recommendation, and the 'time-scale' that would reasonably be required to implement any particular recommendation.

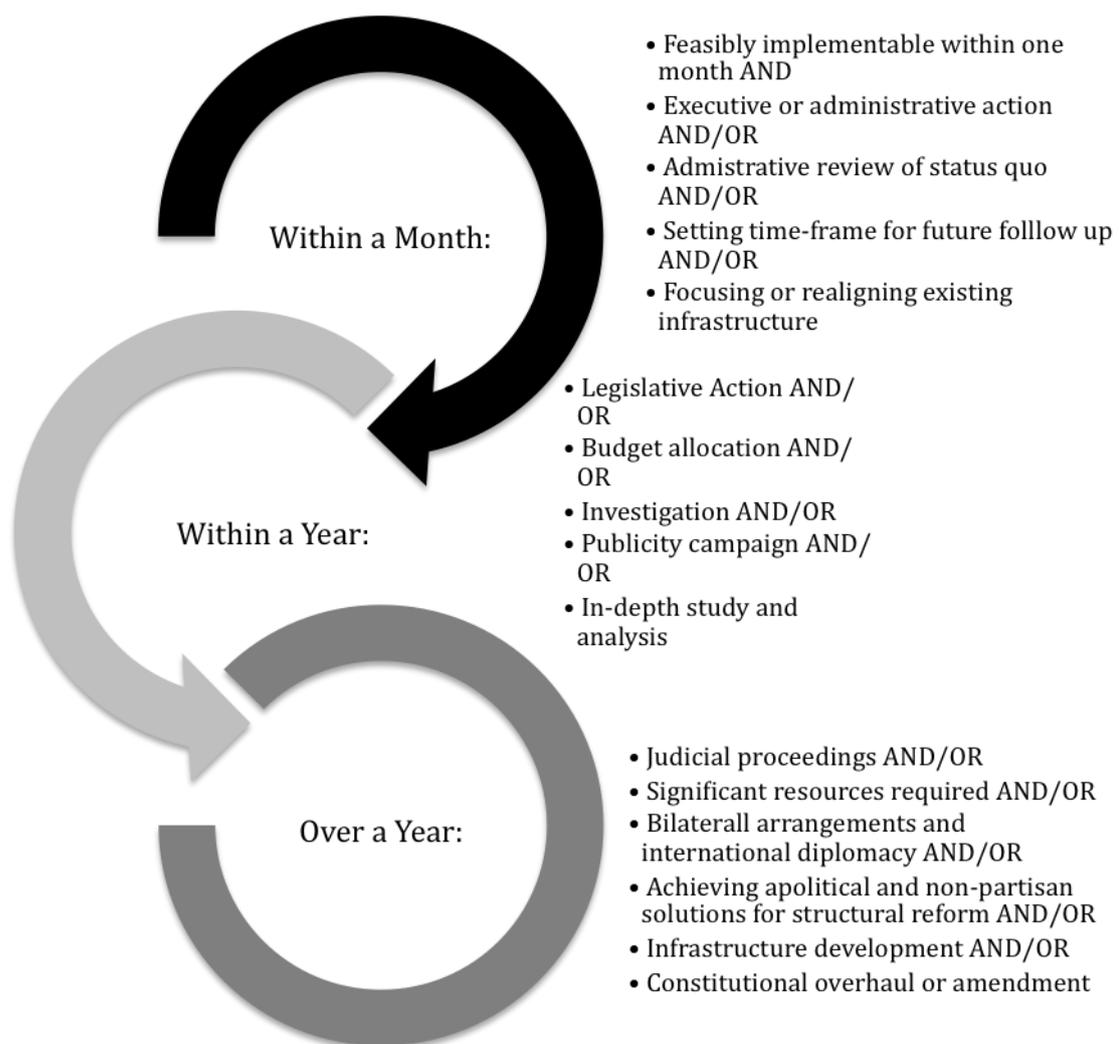
Therefore, this section takes the first step in providing a categorisation of the LLRC recommendations based on estimated time-scale. Three time-scales have been used:

(1) within one month; (2) within a year; and (3) over a year.

The Annex provides the categorisation with regard to the above time-scales. Table 2 and Figure 2 are categorised summaries of the **167** distinct LLRC recommendations with regard to time-scale.

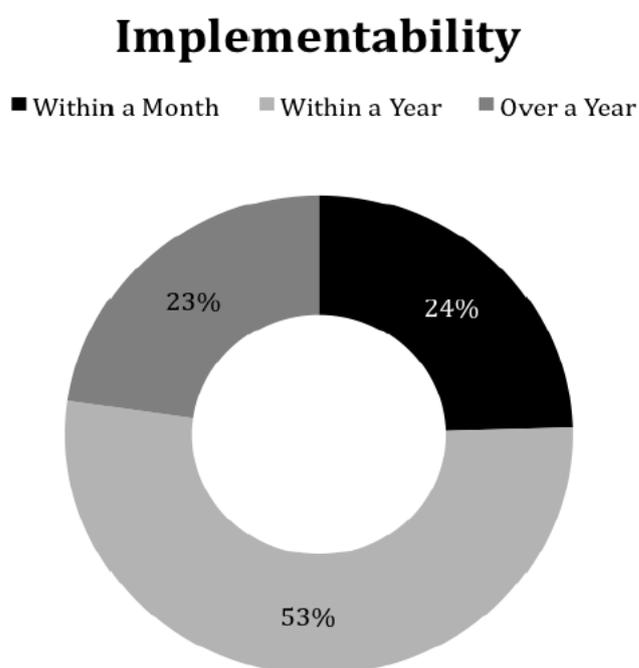
As in the previous categorisations, it is not possible to avoid subjective judgements in such a scrutiny. Figure 1 describes the methodology that has been developed in the process of the exercise in an attempt to create, as far as possible, an objective basis. The analysis remains open to review by peers and readers and may be revised in future editions of this series based on the comments and suggestions received.

**Figure 1: Criteria for assessing the time-scale for implementation**



**Table 2: Time-scale Categorisation of LLRC Recommendations**

Time-scale for implementation	Number of Recommendations	Percentage of Recommendations
Within one month	41	23%
Within one year	88	50%
Over a year	38	27%
<b>Total</b>	<b>167</b>	<b>100%</b>

**Figure 2: Proportion of LLRC Recommendations, by time-scale categorisation**

### 1.3.2 Illustrations of time-scale categorisation

The following examples serve to illustrate how the methodology was used to categorise the LLRC recommendations according

to time-scale. The examples are categorised into the eight constructive categories listed above. Some examples of other recommendations (which do not fall into one of the eight categories) are also included.

**Table 3: Illustrations of Time-Scale Analysis for LLRC Recommendations**

Category	Recommendation	Ref	Time-scale	Methodology
1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances	Keep families informed of progress towards locating their missing loved ones.	9.50	Within one month	This recommendation could be implemented within a month, as it only requires administrative action on a continuous basis.
	Appoint a Special Commissioner of Investigation to investigate alleged disappearances and provide material to the Attorney-General to initiate criminal proceedings as appropriate.	9.51	Within one year	This appointment could be made within one month, as it involves an administrative appointment. However, providing material to the Attorney-General to initiate criminal proceedings may take up to one year.
	Investigate material implicating Security Forces in death and injury to civilians; prosecute wrongdoing thereupon.	9.9	Over a year	Investigation and prosecution of Security Forces involve judicial proceedings that would take longer than a year.
2. Demilitarising the North of Sri Lanka	Disengage Security Forces from all civil administration related activities as rapidly as possible.	9.134	Within one year	Because Security Forces are heavily involved in civil administration, this recommendation could take up to a year to accomplish.
3. Implementing impartial land dispute resolution mechanisms	Be clear in policy with regard to the areas available to be resettled; create more awareness among people about such policies and the options available to them.	9.106	Within one month	Areas to be resettled may be designated within a month. The awareness raising campaign could also be launched within a month.
	Expedite action on the establishment of a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines; include guidelines for the equitable distribution of State land.	9.150	Within one year	Establishment of the NLC could be completed within one month, as the Constitution already provides for the NLC. However, formulation of guidelines could take up to one year.

Category	Recommendation	Ref	Time-scale	Methodology
	Grant those who have been resettled legal ownership of the relevant land.	9.104	Over a year	This process may exceed a timeframe of one year, particularly given the fact that the Land Circular No. 2011/04: Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces, which is referred to as the modality through which this recommendation could be implemented, was subsequently withdrawn.
4. Re-evaluating detention policies	Ensure the safety and security of any person taken into custody by governmental authorities through surrender or arrest.	9.47	Within one month	This recommendation could be implemented immediately, as it involves executive or administrative action, which may be feasibly taken within one month. The recommendation also involves the guarantee of basic constitutional rights.
	Examine the cases of young LTTE suspects as a priority; institute legal action without delay; rehabilitate or release.	9.82	Within one year	Examining cases, instituting legal action, and rehabilitating and releasing young suspects could be carried out within one year, as the process is ongoing and nearing completion.
	Prosecute failure of police to record an arrest, detention and transfer or failure to record or investigate complaints of abductions.	9.55	Over a year	Prosecution of offenders may take more than one year to complete, as it involves judicial proceedings.
5. Strengthening formerly independent civil institutions	Set up units of the Attorney General's Department in the Provinces to guide and advise the Police regarding matters of criminal justice.	9.212	Within a year	This recommendation calls for units of the AG's Department to be set up in all the Provinces, so it may take up to a year to fully implement.
6. Reaching a political settlement on the devolution of power to the Provinces	Ensure that development activities should be carried out in consultation and with the participation of the local people.	9.223	Within one month	Consultation and participation of local people could take place immediately, and could be carried out as an on-going initiative thereafter.

Category	Recommendation	Ref	Time-scale	Methodology
	Launch a good-faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre.	9.236	Over a year	Such an effort would require building consensus for political overhaul and could take over a year to fully realise.
7. Promoting and protecting the right of freedom of expression for all	Take all steps to prevent harassment and attacks on media personnel and institutions.	9.115	Within one month	Preventive steps such as condemning attacks on media personnel and launching proper investigation into past violations could be taken within a month.
	Enact legislation to ensure the right to information	9.115	Within one year	Such legislation has already been drafted and could be enacted within one year.
8. Enacting rule of law reforms	Take strong deterrent action to prevent incidents of inter-faith intolerance and make every endeavour to arrest the occurrence of such incidents	9.267	Within one month	Deterrent action such as condemning religious intolerance and launching proper investigations into past violations could be taken within a month.
	Launch a full investigation of allegations that specific individuals committed several offences of abduction, extortion, robbery etc. in the Eastern Province.	9.207	Within a year	Completing investigations could take up to one year to complete.
	Investigate all allegations against illegal armed groups; prosecute and punish all wrongdoers irrespective of their political links.	9.213	Over a year	Investigation and prosecution may involve judicial proceedings that take longer than a year.
Other	The practice of the National Anthem being sung simultaneously in two languages to the same tune must be maintained and supported.	9.277	Within one month	This recommendation could be implemented within a month, as it only requires an administrative directive to all public institutions introducing the practice of singing the National Anthem in both languages.
	Enact necessary national legislation to realise the rights of persons with disabilities in line with the UN Convention on Rights of Persons with Disabilities.	9.100	Within one year	Legislative reform could be introduced within one year.

Category	Recommendation	Ref	Time-scale	Methodology
	Provide comprehensive, island-wide human rights education programmes targeting the school children, youth, members of the Security Forces, and the Police etc.	9.60	Over a year	A comprehensive education programme of this nature could take longer than a year to design and launch.

## 2. Analytical Assessment of the NPA

The Nation Plan of Action to Implement the Recommendations of the LLRC (NPA) was designed as a planning tool that converts selected recommendations of the LLRC into an actionable programme. However, news reports and a perusal of the document have suggested that it might have been completed in some haste. This could have led to some errors of omission and commission in the NPA.

The foregoing analysis makes three kinds of assessments: (1) the extent and manner in which the LLRC recommendations are included in the NPA; (2) a categorisation of the actions envisaged in the NPA, according to the constructive categories of the UNHRC resolution; and (3) a preliminary assessment of how timeframes, key performance indicators, and implementing agencies assigned by the NPA can be improved upon.

### 2.1 Overlap and Differences between the LLRC and NPA

There are two kinds of deviations that can arise in mapping recommendations of a commission such as the LLRC to an action plan such as the NPA. The first relates to those recommendations of the LLRC which have been taken into the NPA. When the envisaged actions in the NPA fully map the salient elements of an LLRC recommendation, that recommendation is recognised as **fully included**. When the envisaged actions in the NPA only partly map the salient elements of an LLRC recommendation, that recommendation is recognised as **partly included**. The sec-

ond relates to omissions or additions in the mapping from the LLRC to the NPA. When there are no actions in the NPA relating to a particular LLRC recommendation it is treated as an **omission**. When there are actions in the NPA that have not been anticipated by any of the LLRC recommendations, but build upon some LLRC recommendation, they are counted as **additions**.

These deviations could occur simply as unintended errors of omission or commission. The foregoing analysis could be useful in identifying when such deviations were unintended, and correcting them accordingly in future updates of the NPA. The analysis remains open to review by peers and readers and can be revised in future editions of this series based on the comments and suggestions received.

#### 2.1.1 Methodology

**Step one:** the NPA's specific references to the LLRC are used to identify the LLRC recommendations that were directly intended to be included (referencing is identified by language and/or paragraph citation). Each included recommendation is checked to ensure that (a) the actions indeed relate to the cited recommendations, and (b) that what is cited is indeed a recommendation. Where (a) and (b) are both verified these are counted in the first pass as **included** recommendations (**directly included**).

**Step two:** Each set of NPA actions is checked to ascertain whether it (a) relates to actions anticipated by another non-referenced LLRC recommendation;

or (b) can be counted as an **addition**. In the case of (a) these are added to the **included** recommendations (**indirectly included**).

**Step three:** (a) The LLRC recommendations that were recognised as non-actionable, but are counted as included from step one and two, are subtracted. The resulting operative count is the number of recommendations included in the NPA from the actionable LLRC recommendations. (b) All the LLRC's actionable recommendations that are not counted in step one as directly included, or in step two as indirectly included, are then counted as omitted.

**Step four:** For each **included** actionable recommendation, a textual analysis is used to compare the recommendations against the recorded set of NPA actions, with due consideration given to the substantive import of the text that has been omitted or added, to determine whether the recommendations are **fully included**, or **partly included**. All indirect inclusions ascertained under step two are treated as 'partly included', as the NPA does not mention them explicitly, nor contain any specific timelines, KPIs or implementing agencies with regard to those recommendations.

### 2.1.2 Analytical Results

**Step one results:** The NPA references by citation 92 paragraphs in the LLRC report. These paragraphs contain **101** of the LLRC recommendations,<sup>12</sup> which are initially counted as 'directly included'. In addition, **10** LLRC recommendations are mis-cited, but referencing is identified by the language in the NPA. All of these are also counted as 'directly included'.<sup>13</sup> Therefore, the total number of recommendations *initially*<sup>14</sup> counted as 'directly included' is **111**.

**Step two results:** From part (a) **20** recommendations that were not-referenced in the NPA were credited as 'indirectly included', because some set of NPA actions on other recommendations were

adjudged as also giving effect to elements of these 20 recommendations.<sup>15</sup> From part (b) **3** recommendations are counted as additions in the NPA, because they build upon the LLRC, though not in the LLRC's recommendations.<sup>16</sup>

**Step three results:** From part (a), amongst the 111 directly included LLRC recommendations in the NPA, **11** are '**not actionable**' in the current form, as they directly relate to the Land Circular No. 2011/04, which was subsequently withdrawn.<sup>17</sup> Therefore, the total number of recommendations included in the NPA from the actionable LLRC recommendations is **120** (100 directly included + 20 indirectly included). From part (b), the LLRC had 167 actionable recommendations. Therefore, the number of recommendations omitted from the NPA is **47** (167 - 120).

**Step four results:** Of the 120 recommendations that have been included in the NPA, **69** have been analysed as fully included. The balance **51** recommendations have been analysed as only partly included (31 directly, but partly included + 20 indirectly, and therefore partly included). Tables 4 and Figure 3 provide data on the extent of mapping of the LLRC recommendations into the NPA.

## 2.2 'Constructive' Categorisation of the LLRC Recommendations

### 2.2.1 Categorisation

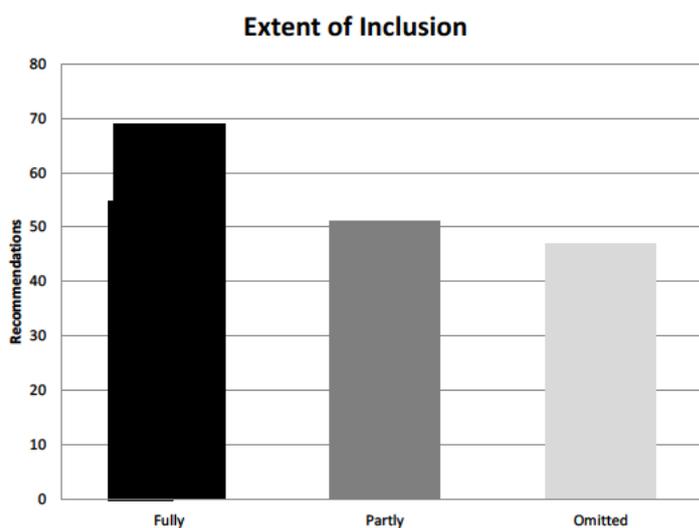
Table 5 presents a breakdown of the extent of mapping from the LLRC to the NPA in terms of the eight constructive categories listed in the UNHRC Resolution 19/2

### 2.2.2 Illustrations

Table 6 presents examples that serve to illustrate how the methodology was used to categorise the LLRC recommendations according to the level to which they have been included in the NPA. The examples are categorised into the eight constructive categories listed above

**Table 4: Extent of Mapping from LLRC to NPA**

<b>Extent of Mapping from LLRC to NPA</b>		
<b>Narrative</b>	<b>Number of Recommendations</b>	<b>% of LLRC Recommendations</b>
Fully Included in NPA	69	41.3%
Partly Included in NPA	51	30.5%
Not Included in NPA	47	28.1%
<b>Total number of Actionable LLRC Recommendations</b>	<b>167</b>	<b>100%</b>

**Figure 3: Extent of Mapping from LLRC to NPA**

**Table 5: Extent of Mapping from LLRC to NPA in terms of Constructive Categories**

UNHRC Category	Number in LLRC	Number fully included	%	Number partly included	%	Number omitted	%
1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances	13	7	54%	3	23%	3	23%
2. Demilitarising the North of Sri Lanka	6	3	50%	2	33%	1	17%
3. Implementing impartial land dispute resolution mechanisms	14	8	57%	2	14%	4	29%
4. Re-evaluating detention policies	18	5	28%	3	17%	10	56%
5. Strengthening formerly independent civil institutions	5	3	60%	2	40%	0	0%
6. Reaching a political settlement on the devolution of power to the Provinces	7	0	0%	3	43%	4	57%
7. Promoting and protecting the right of freedom of expression for all	5	5	100%	0	0%	0	0%
8. Enacting rule of law reforms	19	9	47%	7	37%	3	16%
0. Other	80	29	36%	29	36%	22	28%
<b>Total</b>	<b>167</b>	<b>69</b>	<b>41%</b>	<b>51</b>	<b>30%</b>	<b>47</b>	<b>28%</b>

**Table 6: Mappings from LLRC to NPA according to Constructive Categories (Examples)**

Category	Index	Recommendation	Ref	Mapping	Methodology
1. Credibly investigating widespread allegations of extra-judicial killings and enforced disappearances	a	Conduct investigations into specific cases of surrender to the Army; prosecute members of Army responsible for disappearances after surrender to official custody thereupon.	9.23	Fully included	All salient elements of this recommendation have been included.
	b	Appoint a Special Commissioner of Investigation for alleged disappearances; provide material to the Attorney General for prosecution. Provide the Commissioner with experienced investigators.	9.51	Partly included	The NPA omits reference to the Special Commissioner of Investigation.
	c	Keep families informed of progress towards locating their missing loved ones.	9.50	Omitted	This recommendation is not included in the NPA.
2. Demilitarising the North of Sri Lanka	d	Phase out the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces; give reasonable time lines.	9.171	Fully included	All salient elements of this recommendation have been included, since a plan for reducing involvement of Security Forces in relation to civilian work has been put in place.
	e	Revert the Northern Province 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 such as agriculture, fisheries land etc; Recede military presence to the background.	9.227	Partly included	NPA only refers to a plan for reducing involvement of Security Forces in relation to 'civilian work' rather than 'civilian administration'.

Category	Index	Recommendation	Ref	Mapping	Methodology
	f	Disengage Security Forces from all civil administration related activities as rapidly as possible.	9.134	Omitted	This recommendation is not included in the NPA. There is only reference to reducing Security Forces in the NPA item with respect to the LLRC recommendation contained in para.9.171. There is no commitment to complete disengagement.
3. Implementing impartial land dispute resolution mechanisms	g	Facilitate and encourage the return and resettlement of displaced persons living in India; make essential facilities available if they should choose to return.	9.108	Fully included	All salient elements of this recommendation have been included.
	h	Ensure that the land policy of the Government does not become an instrument to effect unnatural changes in the demographic pattern of a given Province.	9.124	Partly included	NPA only calls for the issue of a clear statement by the Government that private lands would not be utilised for settlements by any government agency. No specific mention of a commitment to avoid demographic changes.
	i	Amend the law pertaining to prescription in its application to land transfers/occupation effected during the period of conflict in order to prevent legitimising of forced eviction and secondary occupation of private lands in the North and the East.	9.148	Omitted	This recommendation is not included in the NPA.
4. Re-evaluating detention policies	j	Create a centralised comprehensive database containing a list of detainees; make available to the next of kin with names, place of detention and record of transfers.	9.63	Fully included	All salient elements of this recommendation have been included.

Category	Index	Recommendation	Ref	Mapping	Methodology
	k	Give priority to investigation and speedy disposal of cases of young detainees.	9.68, 9.69	Partly included	The NPA only calls for reviewing the status of the remainder of the detainees with a view to assessing whether special attention to certain groups or individuals is needed. The required action if special attention is in fact needed has not been specified.
	l	Prosecute failure of police to record an arrest, detention and transfer or failure to record or investigate complaints of abductions.	9.55	Omitted	This recommendation is not included in the NPA.
5. Strengthening formerly independent civil institutions	m	Set up units of the Attorney General's Department in the Provinces to guide and advise the Police regarding matters of criminal justice.	9.212	Fully Included	All salient elements of this recommendation have been included.
	n	De-Link the Police Department from the institutions dealing with the armed forces which are responsible for the security of the State.	9.214	Partly Included	The NPA makes implementation contingent on the PSC.
6. Reaching a political settlement on the devolution of power to the Provinces	o	Initiate a serious and structured dialogue on a high political level with technical backstopping with all political parties and those representing the minorities in particular, based on a proposal containing the Government's own thinking on the form and content of the dialogue process envisaged.	9.237	Partly Included	The NPA cites this recommendation, but does not commit to any conclusive action beyond referring to the PSC, and only activates the Presidential Secretariat as an agent to accomplish this specific objective.
	p	Empower the Local Government institutions to ensure greater peoples' participation at the grass roots level	9.231	Omitted	This recommendation is not included in the NPA.

Category	Index	Recommendation	Ref	Mapping	Methodology
7. Promoting and protecting the right of freedom of expression for all	q	Take all steps to prevent harassment and attacks on media personnel and institutions; give priority to the investigation, prosecution and disposal of such cases; properly investigate past incidents of such illegal action.	9.115	Fully included	All salient elements of this recommendation have been included.
8. Enacting rule of law reforms	r	Take immediate action to disarm persons in possession of unauthorised weapons and also prosecute such offenders	9.204	Fully included	All salient elements of this recommendation have been included.
	s	Take effective measures at an administrative level to implement the Registration of Death Act within a published timeframe.	9.52	Partly Included	The NPA omits reference to a published timeframe.
	t	Take strong deterrent action to prevent incidents of inter-faith intolerance and make every endeavour to arrest the occurrence of such incidents.	9.267	Omitted	The NPA does not import this recommendation.
Other	u	Conduct a professional island wide survey covering all affected families to ascertain the scale of civilian death, injury and property damage.	9.37	Fully included	All salient elements of this recommendation have been included.
	v	Take steps to ensure public universities have ethnically mixed student populations with a choice of courses offered in all three languages.	9.257	Partly included	The NPA does not contain a clear commitment to implement this recommendation, as it only commits to mobilise an expert group to consider the present system and recommend any changes that would promote the trilingual process.
	w	Provide increased employment opportunities in consultation with the private sector for former conflict zones.	9.80	Omitted	This recommendation is not included in the NPA.

## 2.3 Overall Critical Assessment of the NPA

The main Strengths and Weaknesses of the NPA are assessed here in relation to the following aspects that are integral to mapping the LLRC recommendations into an action plan:

1. Content
2. Timeframes
3. Key Performance Indicators
4. Implementing agencies

### 2.3.1 Content

**Inclusion, additions and omissions:** The NPA includes almost 72% of the LLRC recommendations. Moreover, the NPA also has three additions that are not envisaged in the LLRC recommendations:

1. Encourage free movement of persons on A9 to ensure greater participation in the economic, social and cultural activities.
2. Maintain greater coordination and communication between the [Government Agents] and security authorities in normalising civilian administration.
3. Use interpreters in public offices as appropriate to facilitate communication until long term programmes are put in place.

Though the LLRC deals with the freedom of movement,<sup>18</sup> normalising civilian administration<sup>19</sup> and use of interpreters,<sup>20</sup> the LLRC recommendations do not refer to the specifics contained in the NPA. First, in terms of the freedom of movement, the LLRC does not specifically refer to encouraging free movement along the A9. Second, in terms of civilian administration, the LLRC makes no reference to greater coordination and communication between the GAs and the security authorities. Finally, in terms of the use of interpreters, the LLRC only refers to stationing interpreters at Police Stations, and not in public offices in general. Hence the specific NPA action items in these regards appear to build on the LLRC recommendations, and may be treated as ‘additions’.

28% of the LLRC’s recommendations are omitted in the NPA. When these omissions are analysed in relation to the ‘constructive’ categories referred to in the UNHRC Resolution, it turns out that the highest percentage of omissions are in category 4 (re-evaluating detention policies) and category 6 (‘reaching a political settlement on the devolution of power to the provinces’). It is not clear whether the omissions were deliberate or inadvertent, due to the NPA being completed in haste. The analysis provided in this study could assist with rectifying inadvertent omissions.

**Including in reduced form:** Of the LLRC recommendations 72% are included. But 31%, are included only in reduced form (partly included). The methodology and examples in this regard are given in table 6 above.

The NPA reveals several types of changes and exclusions from the LLRC recommendations that lead to those recommendations being analysed as only partly included (see Annex for explanations on how each recommendation in this category was analysed as being partly included):

(i) *Falling back on existing procedures and institutions, when the LLRC specifically calls for new procedures and institutions*

- In paragraph 9.51 of the LLRC Report, (index number b in table 6), the LLRC calls for the new institution of a Special Commissioner of Investigation — to investigate alleged disappearances. The NPA does not envisage a Special Commissioner. Instead it invokes present procedures and seeks to enhance the Government Information Centre.

(ii) *Subjecting LLRC recommendations to re-examination rather than implementation*

- Paragraph 9.59 of the LLRC Report calls for legislation to ‘specifically criminalise enforced or involuntary disappearances’. The NPA does not envisage the formulation and presentation of this legis-

lation to Parliament. Instead it seeks to **examine** the need for such legislation.

- Paragraph 9.277 of the LLRC Report calls for the singing of the national anthem in two languages. The NPA does not make a commitment in this regard. Instead it envisages ‘**examining** implementation of this recommendation’.

(iii) *Referring for re-consideration to a (yet non-existent) Parliamentary Select Committee (PSC)*

- Paragraph 9.214 of the LLRC Report calls for de-Linking the Police Department from the institutions dealing with the armed forces which are responsible for the security of the State. The NPA does not envisage actions to implement this recommendation. Instead it refers this recommendation for reconsideration to a PSC that does not exist, and has no guarantee of being constituted as an all-party parliamentary committee as anticipated by government statements.

- Paragraph 9.150 of the LLRC Report calls on the Government to expedite action on the establishment of a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines and to include Guidelines for the equitable distribution of State land. The NPA does not envisage actions to implement this recommendation. Instead, it only commits to include the proposal to establish a NLC in the ToR of the PSC with a view to receiving recommendations.

(iv) *Diluting or omitting specific substantial commitments in the LLRC recommendations*

- Paragraph 9.57 of the LLRC Report recommends the appointment of an Independent Advisory Committee to monitor and examine detention and arrest of persons taken under the Public Security Ordinance or the PTA. The NPA envisages some action on monitoring and examining detention and arrests under the Attorney-General’s Department, but

makes no reference to an Independent Advisory Committee.

- Paragraph 9.270 of the LLRC Report calls on the Government to facilitate the establishment of a mechanism in consultation with inter-faith groups, with a mandate to serve as an early warning and early diffusing procedure. The NPA commits to implementing capacity building programmes for the Police officers in Civil Defence Committees, but makes no reference to consultation with inter-faith groups nor to the establishment of a special mechanism to serve as an early warning and diffusing procedure.

### 2.3.2 Timeframes

Table 7 and Figure 4 illustrate the breakdown in timeframes allocated for implementation of the LLRC recommendations as per the NPA. 114 action items can be found in the NPA, of which 11 are not actionable, as they relate to the withdrawn Land Circular 2011/04. Out of the remaining **103** items, 3 are considered as additions (the figure 100 corresponds to the total number of LLRC recommendations directly included in the NPA).

Several of the assigned timeframes appear to be unsatisfactory, owing to being overly long, too short to be effective, or unspecified.

(i) *Timeframes that are overly long for the actions that are envisaged*

*(Referenced timeframes are based on the methodology in figure 1)*

- Paragraph 9.59 of the LLRC Report calls for the framing of domestic legislation to specifically criminalise enforced or involuntary disappearances. While such legislation may be framed within a year, the NPA allocates 24 months to review the need for such legislation and to draft such legislation.

- Paragraph 9.124 of the LLRC Report recommends that in the case of inter-

provincial irrigation or land settlement schemes, distribution of State land should continue to be as provided for in the Constitution of Sri Lanka. This recommendation could be implemented within a month, as it involves enforcing the Constitution. A year could be allocated for the purpose of appointing a new Land Commission to develop a policy compliant with the Constitution. But the NPA allocates 24 months for this process.

- Paragraph 9.62 of the LLRC Report recommends the creation of a special mechanism to examine cases of those held in detention for long periods without charges and to recommend a course of action in regard to disposal of each case as appropriate. This recommendation involves the creation of a special mechanism that could be implemented within a month. However, the NPA allocates 24 months for this process.

*(ii) Timeframes that are too short for effective implementation*

- Paragraph 9.224 of the Report calls on the Government to conceive and implement a specific programme to bring about attitudinal changes including, through training programmes, to enhance the work ethic of the Public Service. This programme is likely to take at least a year to implement effectively and efficiently. Yet the NPA allocates merely three months for the full completion of

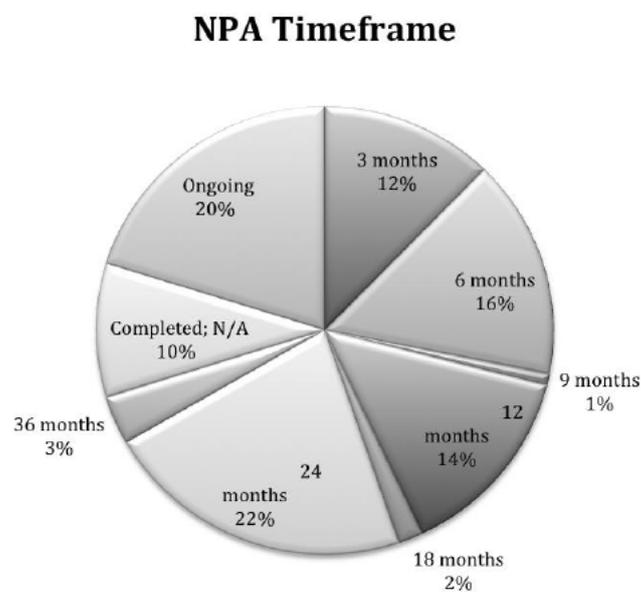
the programme vis-à-vis the National Human Resources Policy. Given the fact that the NPA was released on 26 July 2012, the Policy (or 'Plan of Action', as referenced at page 13 of the NPA) should have been implemented by 26 October 2012. The Government of Sri Lanka, through the Secretariat of Senior Ministers, commenced the formulation of the National Human Resources and Employment Policy (NHREP) in June 2011.<sup>21</sup> However, there is no available information on whether such a Policy has in fact been implemented.

*(iii) Failure to properly specify the timeframe*

- Paragraph 9.52 of the LLRC Report recommends that the Government take measures necessary for the effective implementation of the Registration of Death Act within a published timeframe. The NPA lists the timeframe as 'ongoing', but does not specify a deadline for completion of the activity.
- Paragraph 9.157 of the LLRC Report calls on the Government to take responsibility for prioritising payments in full, and in time and to procure funding to clear the backlog of cases as well as to prevent lack of funds being the reason for delays and non-payment in the future. The NPA lists the timeframe as 'ongoing' without making reference to a clear deadline.

**Table 7: NPA Timeframes**

NPA Timeframes		
Narrative	Number of Recommendations	% of NPA Action Items
Completed; N/A	11	10.7%
Ongoing	23	22.3%
3 months	13	12.6%
6 months	18	17.5%
9 months	1	1.0%
12 months	16	15.5%
18 months	2	1.9%
24 months	15	14.6%
36 months	4	3.9%
<b>Total</b>	<b>103</b>	<b>100.0%</b>

**Figure 4: NPA Timeframes**

### 2.3.3 Key Performance Indicators

In several instances the Key Performance Indicators (KPIs) are unsatisfactory, owing to being unspecified, inappropriate or incapable of being measured. Some examples are provided below:

#### (i) Unspecified

- Paragraph 9.57 of the LLRC Report calls for the creation of an 'Independent Advisory Committee' tasked with monitoring and examining detention and arrest of persons taken under the Public Security Ordinance or the PTA. The KPI category for this item is left blank.
- Paragraphs 9.214 and 9.215 of the LLRC Report call upon the Government to respectively de-Link the Police Department from the institutions dealing with the armed forces and establish an independent permanent Police Commission. The KPI listed in the NPA with respect to the two recommendations are 'Not Applicable', as the two recommendations are to be referred to a (yet to be constituted) Parliamentary Select Committee with no given timeline.

#### (ii) Inappropriate

- Paragraph 9.51 of the LLRC Report urges the Government to appoint a Special Commissioner of Investigation to investigate disappearances after surrender to the Armed Forces. Yet the NPA only lists as a KPI the launching of an 'appropriate mechanism', instead of the appointment of a Special Commissioner.
- As mentioned above, paragraph 9.52 of the LLRC Report recommends that the Government take measures necessary for the effective implementation of the Registration of Death Act within a published timeframe. The KPI in this respect should include some measure of effective implementation. However, the NPA only lists '**instructions issued** to implement the provisions of new legislation' as the applicable KPI.

#### (iii) Incapable of being measured

- Paragraph 9.73 of the LLRC Report calls for investigations of illegal armed groups and prosecution thereupon. The NPA cites this recommendation, but plans only to keep these illegally armed groups from re-emerging. The only KPI listed is the 'effective maintenance of law and order', which is nebulous and unlikely to be measurable.

### 2.3.4 Implementing agencies

The NPA lists specific implementing agencies for its action items. However, no single agency is tasked with the overall monitoring of the implementation of the NPA.

Several observations may be made with respect to the implementing agencies listed in the NPA. These observations relate to the appropriateness of the selection (or non-selection) of agencies and the clarity with which the functions of the agencies have been described.

#### (i) Inappropriate selection of agency

- Paragraph 9.9 of the LLRC Report urges the Government to investigate material implicating Security Forces in death and injury to civilians and prosecute wrongdoers. The envisaged proceedings may lack independence due to the involvement of the Ministry of Defence as the implementing agency. In effect, the Ministry is called upon to investigate its own officers.
- Paragraph 9.39 of the LLRC Report calls for an independent investigation into the Channel 4 footage. However, the NPA lists the Ministry of Defence and the Presidential Secretariat as the principle implementing agencies, despite the fact that the footage is alleged to reveal human rights and humanitarian law violations committed by Security Forces.

#### (ii) Non-selection of an appropriate agency

- Paragraph 9.51 of the LLRC Report recommends that the Government devise a

centralised system of data collection for all information regarding missing persons. The only agencies listed in the NPA are the Department of Census & Statistics and the Ministry of Defence. Yet the Police Department has a Disappearance Investigation Unit. Hence the Police Department should have specifically been included as an implementing agency in this regard, as the Department is likely to possess information from ongoing investigations.

(iii) *Lack of clarity as to the functions of selected agencies*

- Paragraphs 9.218 and 9.219 of the LLRC Report call for the creation of an independent institution to hear citizens' grievances arising out of any executive or administrative act, particularly those based on ethnicity or religion. The NPA lists the Presidential Secretariat, the Ministry of Defence, the Attorney-General's Department and the Ministry of Justice as implementing agencies, but fails to specify what tasks would be carried out by each agency.

## Conclusion

The foregoing analysis has resulted in several key findings that could contribute to ongoing efforts to implement the recommendations of the LLRC. These findings also reflect on how comprehensive and effective the NPA is, given the fact that it is the main tool designed to put the LLRC recommendations into effect.

First, the total number of actionable LLRC recommendations is 167. This figure comes from counting 180 distinct recommendations of which 13 are found to be non-actionable due to the relevant Land Circular No. 2011/04 no longer being in effect.

Second, the UNHRC Resolution 19/2 of March 2012 makes reference to 'constructive recommendations' of the LLRC and lists eight specific categories. Evaluating the LLRC recommendations in terms of these categories reveals that 80 (or 47%) of the

167 recommendations do not fall into any of the constructive categories. The balance 87 recommendations are distributed amongst the eight categories. No category contains less than 3% of the recommendations, and none has more than 12% of the recommendations.

Third, an assessment is made of the timeframes that would be needed to implement the LLRC recommendations. It is assessed that only 27% of the 167 recommendations would need more than a year to implement, and 23% could be implemented within one month. The balance 50% is assessed as being implementable within one year.

Fourth, of the **167** LLRC recommendations, **69** recommendations (or **41.3%**) are fully included in the NPA. A further **51** (or **30.5%**) are partly included in the NPA. This leaves **47** (or **28.1%**) that have been omitted from the NPA.

Fifth, when analysing the level of inclusion in terms of the 'constructive categories' in the UNHRC Resolution, it is found that all (100%) of the LLRC recommendations relating to 'promoting and protecting the right of freedom of expression for all' are fully included in the NPA. With regard 'strengthening formerly independent civil institutions', all the recommendations of the LLRC enter the NPA, but only **60%** are fully included, with **40%** being only partly included. On 'enacting rule of law reforms' **84%** of the relevant LLRC recommendations enter the NPA, but only **47%** are fully included, while **37%** are partly included. Of the relevant recommendations on 'demilitarising the North of Sri Lanka', **83%** enter the NPA with **50%** fully included, and **33%** only partly included. The constructive category under which LLRC recommendations are least included in the NPA is that of 'reaching a political settlement on the devolution of power to the Provinces'. None of the relevant recommendations in this category are fully included, and only **43%** are even partly included. The second weakest is in the area of 're-evaluating detention policies' where only **45%** enter the NPA with **28%** fully included and **17%** partly included.

The final section of this report provides a critical assessment of the (i) content, (ii) timeframes, (iii) Key Performance Indicators (KPIs) and (iv) assignment of implementing agencies. The analysis reveals some strengths, such as when the NPA includes three recommendations that are relevant but go beyond what is anticipated by the LLRC recommendations. However, overall, the analysis has shown much room for improvement, and this has been enumerated by identifying the types of weaknesses that emerge in the NPA with regard to the four areas.

It is not clear whether at present there is an agency that is tasked with the overall monitoring of the implementation of the NPA. Such an agency could contribute to successful implementation by (1) monitoring the implementation of the NPA; (2) improving KPIs; (3) assessing the level to which KPIs have been met; (4) and publishing progress reports on implementation.

A question asked regularly with regard to the LLRC recommendations is 'how many have been implemented?' In this first edition of *Sri Lanka: LLRC Implementation Mon-*

*itor* we do not attempt to answer that question. As discussed in the text, information presently available can confirm only the full implementation of two recommendations; but many recommendations are in various stages of initiation or part implementation. The next edition of this monitor hopes to provide a detailed analysis that will assess the level of implementation.

All of the 180 LLRC recommendations (including the 13 that are not currently actionable) are detailed in the annex to this report. The annex provides information on how each of the LLRC recommendations was assessed in terms of constructive category, timeframe, and level of inclusion in the NPA. The *Sri Lanka: LLRC Implementation Monitor* will always provide this data set, which will enable peers to review and assess the analysis and provide feedback that can assist in refining and improving future versions of this analysis.

Readers are also invited to offer comments and suggestions on possibilities for improving the methodology described under each section, in constructing an objective basis for the analysis

## End Notes:

- <sup>1</sup> Warrant issued by H.E. The President Mahinda Rajapaksa to the Lessons Learnt and Reconciliation Commission.
- <sup>2</sup> *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (November 2011) [hereinafter: 'The LLRC Report'].
- <sup>3</sup> See United National Human Rights Council, 19th Session, Resolution on Promoting Reconciliation and Accountability in Sri Lanka (A/HRC/19/L.2).
- <sup>4</sup> See paras.9.126, 9.128, 9.131, 9.132, 9.133, 9.136 and 9.141 (each containing a recommendation) as well as 9.129 and 9.135 (each containing two distinct recommendations).
- <sup>5</sup> 'Cabinet approves National Action Plan on LLRC', *News Line*, 26 July 2012, at [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201207/20120726cabinet\\_approves\\_national\\_action\\_plan\\_on\\_llrc.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726cabinet_approves_national_action_plan_on_llrc.htm); 'Task force to monitor LLRC Action Plan', *Ceylon Today*, at 27 July 2012, <http://www.ceylontoday.lk/51-10266-news-detail-task-force-to-monitor-llrc-action-plan.html>.
- <sup>6</sup> See para.9.93 of the LLRC Report.
- <sup>7</sup> See para.9.232 of the LLRC Report.
- <sup>8</sup> See para.9.134 of the LLRC Report.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> See 'Task force to monitor LLRC Action Plan', *The Ceylon Today*, 27 July 2012, at <http://www.ceylontoday.lk/51-10266-news-detail-task-force-to-monitor-llrc-action-plan.html>.
- <sup>11</sup> See para.9.119 of the LLRC Report, which contains the recommendation that visitors from overseas should be allowed to visit their friends and relatives in recently resettled areas without any undue restrictions, and para.9.243 of the LLRC Report, which contains the recommendation that the government should make the learning of 'each other's' languages a compulsory part of the school curriculum i.e. teaching Tamil to Sinhala children and Sinhala to Tamil children.
- <sup>12</sup> Para.9.206 of the LLRC Report states: 'The Commission wishes to specifically highlight the following instances brought to its attention by a number of representers.' Therefore, despite the fact that it is referenced in the NPA, no specific recommendation can be discerned from the said paragraph. Some referenced paragraphs contain more than one recommendation, which need to be added to the count. See paras.9.51, 9.78, 9.108, 9.124, 9.129, 9.135, and 9.142, each of which contain two recommendations. Paragraph 9.261 contains five recommendations of which four are referenced in the NPA.
- <sup>13</sup> See paras.9.46, 9.62, 9.64, 9.70, 9.74, 9.157, 9.194, 9.200, 9.260 and 9.276, which are mis-cited in pages 2, 3, 4, 8, 10, 11 and 15 respectively. Para.9.124 contains two distinct recommendations, i.e. (1) Protect the right of citizens to buy lands where they please, and (2) Ensure that land policy of the Government does not become an instrument to effect unnatural changes in the demographic pattern of a given Province. While the first recommendation is clearly fully included in the NPA, the second recommendation appears to have been only partly included at page 8 of the NPA, i.e. 'Issue of a clear statement by government that private lands would not be utilised for settlements by any Government agency.' Moreover, an interim recommendation referenced in footnote 48 (under para.5.58 of the LLRC Report) is separately referenced in page 3 of the NPA i.e. 'Establish a focal point in the Attorney General's Department to support the process of examining detention cases.'
- <sup>14</sup> Under step three, 11 recommendations are removed from the count, as they are non-actionable, thereby reducing the number of LLRC recommendations that are directly included to 100 (111 – 11).
- <sup>15</sup> See paras.9.87, 9.88, 9.89, 9.93, 9.95, 9.96, 9.98, 9.100, 9.111, 9.146, 9.149, 9.161, 9.169, 9.196, 9.210, 9.243, 9.256, 9.261, 9.262 and 9.281.
- <sup>16</sup> See NPA items on page 11, and page 14: (1) 'Encourage free movement of persons on A9 to ensure greater participation in the economic, social and cultural activities'; (2) 'and Maintain greater coordination and communication between the [Government Agents] and security authorities in normalising civilian administration' and (3) 'Use interpreters in public offices as appropriate to facilitate communication until long term programmes are put in place'.
- <sup>17</sup> See paras.9.126, 9.128, 9.131, 9.132, 9.133, 9.136 and 9.141 (each containing a recommendation) as well as 9.129 and 9.135 (each containing two distinct recommendations).
- <sup>18</sup> See the LLRC Report, at paras.9.106, 9.115(d) and 9.116.
- <sup>19</sup> See the LLRC Report, at para.9.227.
- <sup>20</sup> See the LLRC Report, at para.9.250.
- <sup>21</sup> See <http://www.nhrep.gov.lk> for more information.