



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE  
T: +44 (0)20 7957 5700 E: [contact@chathamhouse.org](mailto:contact@chathamhouse.org)  
F: +44 (0)20 7957 5710 [www.chathamhouse.org](http://www.chathamhouse.org)

Charity Registration Number: 208223

Asia ASP 2013/01

# Sri Lanka: Obstacles to Change

Charu Lata Hogg

Chatham House

June 2013

The views expressed in this document are the sole responsibility of the author(s) and do not necessarily reflect the view of Chatham House, its staff, associates or Council. Chatham House is independent and owes no allegiance to any government or to any political body. It does not take institutional positions on policy issues. This document is issued on the understanding that if any extract is used, the author(s)/ speaker(s) and Chatham House should be credited, preferably with the date of the publication or details of the event. Where this document refers to or reports statements made by speakers at an event every effort has been made to provide a fair representation of their views and opinions, but the ultimate responsibility for accuracy lies with this document's author(s). The published text of speeches and presentations may differ from delivery.

## INTRODUCTION

Despite the end of the civil war, some Sri Lankan activists claim that their country has entered 'its darkest phase since independence'.<sup>1</sup> While this may be an overstatement, there is little argument that Western perceptions of Sri Lanka, beleaguered since its decisive but brutal defeat of the Liberation Tigers of Tamil Eelam (LTTE) in 2009, have taken a blow. On 21 March 2013, 46 countries voted at the United Nations Human Rights Council to pass a resolution calling on Sri Lanka to take action against alleged violations of international humanitarian and human rights law during the last stages of the conflict. The resolution came in the wake of growing evidence of violations of the rules of war by the Sri Lankan government in that period. It also follows a series of attacks by the government on Sri Lanka's judiciary and on those it considers political dissenters. The country faces ongoing pressure as well over its hosting of the Commonwealth heads of government summit in November 2013.

The lead-up to the resolution on Sri Lanka at the Human Rights Council sent tremors across the subcontinent. In India, the issue became a rallying point for the Dravida Munnetra Kazhagam (DMK), the ruling United Progressive Alliance's coalition partner in the southern state of Tamil Nadu. The DMK pulled its support from the alliance and the government, demanding that the government toughen the language of the resolution, including by calling the high loss of lives during May 2009 a genocide.

Nearly four years after the military defeated the LTTE, the government has conducted no credible investigations into allegations of war crimes, disappearances or other serious human rights violations. Instead it has attacked the independence of the judiciary and impeached the chief justice (in January 2013). It has failed to take any steps towards establishing a meaningful process of devolving power to Tamils; it has detained peaceful protestors and clamped down on the media; and it is accused of torturing those perceived to be linked to the LTTE. Finally, the military has tightened its grip since the defeat of the LTTE, raising the spectre of complete and irreversible military control of the country's Tamil-dominated northeast.

Despite the defeat of the LTTE, the regime in Sri Lanka has become increasingly authoritarian. Many fear that continued persecution of Tamils could well trigger a violent response. Divergent but not contradictory

---

<sup>1</sup> Kishali Pinto Jayawardene, 'Democracy mourns for judgment fled to brutish beasts', *Sunday Times*, 13 January 2013, [www.sundaytimes.lk](http://www.sundaytimes.lk).

explanations are cited for this trend. The common view is that the government is strong but insecure. This insecurity stems from a range of factors, most prominently ongoing allegations of war crimes, the fear of loss of official position and privilege should the leaders be stripped of their official positions and power, and suspicions that President Mahinda Rajapakse, re-elected after a campaign marked by violence and conducted in an environment in which the rule of law had largely collapsed, is embarking on a dynastic project. Another view is that President Rajapakse has an innate disdain for democracy and his bid to remain all-powerful has fuelled his actions. It is in keeping with this spirit that in 2010 the 17th amendment to the constitution – meant to establish an independent Constitutional Council that would appoint commissions to run the police, public service, election secretariat and judiciary – was replaced with the controversial 18th amendment. This enhanced presidential powers and removed presidential term-limits, which it is feared will mean Rajapakse ‘need never retire’.<sup>2</sup>

Whatever the reasons for the president’s authoritarian course, recent steps taken by the state make it amply clear that its stability rests on a combination of factors: the development of a Sinhala-Buddhist authoritarian political discourse, and the government’s ability to maintain the military subjugation of Tamils. To continue this narrative, the Rajapakse government has to maintain its stranglehold over political power and build this power through a real or imagined fear of an LTTE revival.

## **INTERNATIONAL PRESSURE AND THE UN RESOLUTION**

According to the United Nations, tens of thousands of civilians lost their lives between January and May 2009 during the final stage of the war between the Sri Lankan military and the LTTE. Despite two reports by the UN,<sup>3</sup> countless others by credible human rights organizations and three documentaries produced by UK journalists, the last of which was screened in the margins of the Human Rights Council meeting, international responses to the bloodshed have been muted. An internal inquiry report by the UN last year demonstrated that senior UN officials downplayed and in some instances concealed casualty figures and information on war crimes.

---

2 T. Gunasekara, ‘Taming the east’, *Himal magazine*, 30 November 2012, <http://himalmag.com/component/content/article/5129-taming-the-east.html>.

3Report of the Secretary General’s panel of experts on accountability in Sri Lanka, 31 March 2011; Report of the Secretary General’s internal review panel on United Nations Action on Sri Lanka, November 2012.

The March 2013 resolution, sponsored by the United States, was similar to the one introduced in March 2012. The earlier resolution sought a roadmap from the Sri Lankan government on its plans to implement recommendations from the Lessons Learnt and Reconciliation Commission (LLRC).<sup>4</sup> This year, the resolution calls on the government 'to fulfil its public commitments, including on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population.'<sup>5</sup> The new resolution calls on Sri Lanka to formally invite UN Special Rapporteurs who have pending requests to visit the country to investigate a range of issues including extrajudicial, summary or arbitrary executions, and involuntary disappearances and other grave human rights violations. The resolution once again puts the responsibility on Sri Lanka to act on allegations, instead of recommending an 'international investigation', and therefore stunts ongoing demands for accountability.

In February 2013, a group from the country's Christian clergy wrote to the Human Rights Council, calling for an international independent commission of inquiry to look into allegations of violations committed by all sides during the war.<sup>6</sup> It cited findings by a panel of experts appointed by the UN secretary-general that investigated accountability issues in 2010 and that had demanded the establishment of a proper witness-protection mechanism. These demands by domestic critics have been echoed by some international donors and governments with influence on Colombo. Yet international criticism has so far failed to pressure Sri Lanka to initiate any real reforms.

The international community – in particular the UN, Western governments and India – has failed to exercise influence on Sri Lanka to publicly acknowledge the deaths of thousands of civilians, to conduct an honest and independent inquiry, to punish those responsible for grave violations of international humanitarian and human rights law, to demilitarize the northeast,

---

<sup>4</sup> The LLRC was mandated to investigate the facts and circumstances that led to the failure of the ceasefire agreement made operational on 27 February 2002, the lessons that should be learnt from those events and the institutional, administrative and legislative measures 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. After an 18-month inquiry, the commission submitted its report to the president on 15 November 2011.

<sup>5</sup> Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 19 March 2013, <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/122/61/PDF/G1312261.pdf?OpenElement>.

<sup>6</sup> 'Letter to the UNHRC in Support of North and East Christian Clergy Sri Lanka', 2 March 2013, available at <http://dbsjeyaraj.com/dbsj/archives/17458>.

to work with Tamil parties on a package of political devolution and embark on a new, genuinely pluralistic political path. Instead, the government chose to deny all allegations and in the process managed to alienate India.

### **The Tamil Nadu factor**

Despite linguistic, cultural and ethnic affinity, the relationship between Tamils in the southern Indian state of Tamil Nadu and those in Sri Lanka is complex. Throughout recent history, the plight of Sri Lankan Tamils has sparked a hugely emotional response among Indian Tamils, often triggering widespread protests, including self-immolations by campaigners. The Sri Lankan 'Eelam' cause has been espoused most vociferously by leaders from Tamil parties, most prominently the Marumalarchi Dravida Munnetra Kazhagam (MDMK). The two leading parties, which have played musical chairs to stay in power in Tamil Nadu – the DMK and the All India Anna Dravid Munnetra Kazhagam (AIADMK) – have only expediently and intermittently held the torch for Sri Lankan Tamils.

The issue of Tamils dying in Sri Lanka in 2009 was raised by both parties when fighting between Sri Lankan troops and the LTTE was at its fiercest, but neither the DMK nor AIADMK gave it the momentum needed to turn it into a campaign issue. The DMK, which stood accused of letting down the Sri Lankan Tamil cause, won the 2009 parliamentary elections in Tamil Nadu, defeating the AIADMK by a comfortable majority.

The DMK was a coalition partner of India's ruling UPA government when it provided strategic intelligence to the Sri Lankan government in 2008–09. This led to the sinking of seven of the eight LTTE ships and thereby, some contend, contributed directly to the movement's defeat. The DMK did not pressure the Indian government to call for an end to hostilities during the last months of fighting, and its symbolic act of resistance, a fast undertaken by its leader, was swiftly broken on assurances provided by a Sri Lankan team to a high-level visiting Indian delegation that heavy weaponry would not be used in the fighting.

The DMK's expediency over the UN Human Rights Council resolution therefore has to be viewed in the light of the corruption scandals from which it is presently reeling, most prominently the multi-billion-dollar 2G telecom scam. Struggling to snatch back its support base from the AIADMK, the DMK has found it hard to rebuild its own credibility in Tamil Nadu. When the issue of India's support to the UN resolution heated up in March 2013, this provided the DMK with an opportunity to regain some of its lost political ground. A

litany of reports by credible human rights organizations pointing to past and continued violations of rights of Tamils in Sri Lanka, most prominently the release of pictures suggesting that the 12-year-old son of LTTE leader Vellupilai Prabhakaran was shot after being captured, pushed the DMK into a confrontational course.

While the DMK's withdrawal of support has not brought forward India's general election, still due in 2014, it has accentuated the ruling Congress party's dependence on two other regional parties – the Samajwadi party and the Bahujan Samaj party – from Uttar Pradesh, the largest Hindi-speaking state. Inconvenient as it was, it also provided the government in New Delhi with the push it needed to sign up to the resolution, on which it had remained ambivalent until the last minute.

## DOMESTIC RESPONSES

The Sri Lankan government's attempts at establishing accountability have been meaningless. It instituted a number of committees to follow up on the implementation of the LLRC's recommendations and established a court of inquiry in January 2012 to 'inquire into observations made by the LLRC in its report on alleged civilian casualties during the final phase of the humanitarian operation and probe as regards Channel 4 video footage'.<sup>7</sup> The court of inquiry's legal framework and time-frame remained unclear. On 26 July 2012, the government released a National Action Plan on the implementation of the LLRC recommendations, which contains 91 detailed recommendations.<sup>8</sup> There have been serious concerns about the Action Plan owing to its limited scope and the fact that there was no civil society input in its development.

In a similar vein, the government's approach to the development and reconstruction of the northeast, has contributed to minority fears and alienation. The continued use of the Prevention of Terrorism Act, inspired by a deep-seated fear of the LTTE, results in arbitrary arrests and detention. The most recent incident was the arrest in December 2012 of students of the Sri

---

<sup>7</sup> 'LLRC Observations Cleared; Army Commander Hands Over Court of Inquiry Report to Secretary Defence', 10 April, 2013, [http://www.defence.lk/new.asp?fname=LLRC\\_Observations\\_Cleared\\_Army\\_Commander\\_Hands\\_Over\\_Court\\_of\\_Inquiry\\_Report\\_to\\_Secretary\\_Defence\\_20130410\\_06](http://www.defence.lk/new.asp?fname=LLRC_Observations_Cleared_Army_Commander_Hands_Over_Court_of_Inquiry_Report_to_Secretary_Defence_20130410_06).

<sup>8</sup> 'Sri Lanka National Action Plan for the Protection and Promotion of Human Rights, 2011–2016', [http://www.hractionplan.gov.lk/posters/National\\_action\\_plan\\_for\\_the\\_protection\\_and\\_promotion\\_of\\_human\\_rights\\_2011\\_2016\\_English.pdf](http://www.hractionplan.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf).

Lankan Terrorist Investigation Department (TID) amid unrest in the northern city of Jaffna following a security crackdown in late November against attempts to commemorate dead leaders of the LTTE.

### Change from within

With Colombo preparing to host its biggest international event in decades, the biennial summit of the Commonwealth heads of government in November 2013, international and domestic groups are building pressure to prevent the event from taking place. Canada is so far the only country that has made its opposition clear. The rest, including India and the United Kingdom, have declined to come out openly on this issue – despite the Commonwealth's position to promote the rule of law by its member states.

In the future, unless the relationship between Colombo and New Delhi takes an irretrievable turn for the worse, a change in the Indian government's position towards accountability in Sri Lanka is unlikely. Tamil Nadu's influence apart, the Indian government played a key role in limiting the 2013 UN resolution to seeking action from the Sri Lankan government, as opposed to supporting calls for an international investigatory framework. Given its preference for maintaining and strengthening their bilateral trade, its steadfast refusal to support sanctions against Sri Lanka, its fear of increasing Chinese influence there and its belief in policies of persuasion in efforts to bring about a devolution of power to the Tamils, it remains highly unlikely that India will become the champion of accountability for Tamils.

There is general agreement that, however useful the role of the international community, real change can only come from within Sri Lanka. A slow but stoical wave of dissent has been set in motion by small acts of resistance. On 30 March 2013, the impeached former chief justice, Shirani Bandaranayake, was invited to the Annual Convocation of the Bar Association of Sri Lanka in Colombo, an event to which Mohan Pieris, the current chief justice, was not invited.

In general there does not seem to be enough incentive for ordinary Sinhalese to contest President Rajapakse's authority. Economic growth, despite the central bank's optimistic predictions, appears to be settled at six per cent, the country's trade with neighbours is thriving and memories of the defeat of the LTTE have not yet faded. But this is unlikely to remain the case for ever. Concern about the government's authoritarian approach towards perceived dissent is beginning to perturb some in the Sinhala community. The EU's suspension of the special tariff on textiles and garments (under the

Generalized System of Preferences) in the light of Sri Lanka's non-compliance with core human rights principles has, some say, slowed growth in the country's textile industry.

As Western notions of international norms on issues such as human rights continue to be challenged, the Sri Lanka example is a case in point. The real test for the country will be when a groundswell of domestic opinion grows to demand justice and accountability, not only for what happened to Tamils in 2009 but for the treatment of ordinary citizens in the slow and painful tarnishing of Sri Lanka's democracy.



## **ABOUT THE AUTHOR**

Charu Lata Hogg is an Associate Fellow in the Asia Programme at Chatham House. Her research focuses on domestic politics in Sri Lanka, Bangladesh, Nepal and India, and human rights issues in South Asia.