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## International Law Comment

# Breaking the Cycle of Continued Impunity for War-time Abuses in Sri Lanka

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From 27 February to 23 March 2012, the Human Rights Council – the UN's political body charged with the promotion and protection of human rights – will hold its 19th Regular Session in Geneva. This is the first plenary meeting of the Council since the release of the report of Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC). How should the Human Rights Council react, and how does the LLRC report fit with international law?

Following the end of operations against the Liberation Tigers of Tamil Eelam (LTTE), President Rajapaksa of the Government of Sri Lanka and United Nations Secretary General Ban Ki-moon issued a joint statement on 26 May 2009. In that statement, President Rajapaksa undertook to ensure accountability for violations of international humanitarian and human rights law perpetrated during the six-year conflict. In May 2010, he established the LLRC, soon followed by the appointment by the UN Secretary General in June 2010 of a Panel of Experts to advise on the implementation of the joint commitment on accountability.

The UN Panel of Experts reported to the Secretary General in March 2011, finding 'credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity'.<sup>1</sup> This included allegations of the Government's indiscriminate shelling, attacks on hospitals, denial of humanitarian assistance, extrajudicial executions, and enforced disappearances; and the use by the LTTE of human shields, forced recruitment and forced labour, and exposing civilians to unnecessary harm. The Panel also concluded that the framework for the composition and mandate of the LLRC failed to meet the international standards required for the conduct of an independent and effective investigation.

The UN Panel's central recommendation was that the Secretary General should establish an independent international mechanism, with various functions to ensure that justice and accountability was achieved. Taking the view that such a mechanism should be established by a political organ of the United Nations, rather than by him, Ban Ki-moon instead referred the Panel's report and recommendations to the President of the Human Rights Council. Notably, in that regard, the Panel's report included a recommendation that the Council reconsider the outcome of its May 2009 Special Session on Sri

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<sup>1</sup> Available at <http://www.un.org/en/rights/srilanka.shtml>.

Lanka,<sup>2</sup> which, while endorsing the joint commitment on accountability, failed to take any meaningful action to ensure justice and accountability.

Two and a half years after President Rajapaksa's commitment to ensure accountability, the President released the LLRC's report.<sup>3</sup> The report contains some promising features: it acknowledges that civilians were attacked during the last days of the war; it recommends that the findings of earlier national commissions of inquiry be implemented; it calls on the Government of Sri Lanka to consider enacting a crime of enforced disappearance; and it recommends that the police be fully separated from the Department of National Defense. However, the question of impartiality was not adequately addressed, with issues having been raised about the gender and ethnic imbalance in the Commission's membership, as well as the apparent conflicts of interest concerning six members who have been, or continue to be, Government officials. Most significantly, the report failed to adequately address allegations of the violation of international humanitarian and human rights law, including those deemed credible by the UN Panel of Experts.

This outcome is not surprising, since it follows a history since 1977 of national commissions of inquiry ineffectively addressing and ensuring accountability, and reinforcing the systemic and institutionalized impunity within Sri Lanka's criminal justice system. This is compounded by the very recent examination by the UN Committee against Torture of Sri Lanka's combined third and fourth periodic reports, where the Committee referred to information from the Government of Sri Lanka that over 100 police and intelligence personnel had been indicted or were being investigated on allegations of torture. It transpires, however, that there have been only four convictions under Sri Lanka's Convention Against Torture Act since its inception in 1994.

According to the most recent report of the UN Special Rapporteur on torture, where a State is unwilling or unable to undertake prompt, independent and effective investigations into allegations of torture or other serious violations of international human rights law, the international community has a responsibility to act.<sup>4</sup> The Human Rights Council will therefore be challenged

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<sup>2</sup> For reference, see <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/11/index.htm>.

<sup>3</sup> Available at

[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf)

<sup>4</sup> UN Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez' (18 January 2012) UN Doc A/HRC/19/61, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.61.pdf>

to give effect to the recommendation of the Panel of Experts to establish an independent international mechanism for ensuring justice and accountability.

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