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# Sri Lanka: Prospects for Reform and Reconciliation

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## KEY POINTS

- Since the end of the civil war in 2009, there has been little progress in reforming Sri Lanka's tattered democratic institutions, building reconciliation between communities or addressing the core grievances around political representation that fuelled the three-decade-long ethnic conflict.
- The government has declined to heed international calls for an independent war crimes investigation using its relationships with developing countries and with Russia and China to build support for its position at the UN Human Rights Council.
- The United States, the EU and Japan have been diffident about applying concerted and coordinated pressure on Sri Lanka, while Russia and China have emerged as key allies in blocking UN action. In recent months there have been signs that shifts in India's position, dictated by a combination of external and domestic factors, could trigger steps which eventually lead to a process of accountability for acts committed during the civil war.
- A failure to address fundamental issues relating to accountability and political devolution in Sri Lanka is already generating nostalgia for the Liberation Tigers of Tamil Eelam (LTTE) among some sections of the Tamil population. Continuing violations of rights, impunity and an absence of meaningful political participation in governance for the citizens of the north-east have the potential to trigger a new cycle of conflict.

## INTRODUCTION

Sri Lanka's capital, Colombo, is no longer dotted with security check points and the government, which has defeated the Liberation Tigers of Tamil Eelam (LTTE) in a civil war marked by grave human rights violations and alleged war crimes by both sides, is busy resurrecting the island as a tourist paradise. However, since President Mahinda Rajapaksa's troops decisively defeated the LTTE two years ago, military bases continue to dominate the landscape in north-east Sri Lanka, and the army's control over civilian lives has inexorably increased. There has been little progress in reforming the country's tattered democratic institutions, building reconciliation between communities or addressing the core grievances around political representation that fuelled the three-decade-long ethnic conflict.

The government's victory in the battlefield contributed directly to electoral victories for Rajapaksa's United People's Freedom Alliance in presidential and parliamentary polls in 2010, providing it with a strong mandate to govern. The decimation of the political opposition, accompanied by attacks on civil society, has resulted in the further erosion of the rule of law. Civil society continues to be violently suppressed in Sri Lanka and national security legislation has been consistently used to arrest and intimidate political dissenters. Constitutional changes implemented in 2010 added significantly to the president's powers in a climate where impunity – entrenched as a result of weaknesses in the criminal justice system, corruption and political interference with law enforcement – remains widespread.

Post-war revival in trade and tourism, and the injection of a second tranche of a \$200m loan by the International Monetary Fund, have breathed life into the economy. However, investment remains low, and high youth unemployment and continuing poverty in certain provinces, including the north-east, coupled with low levels of trust in the government, pose significant risk factors to future growth.

The government refuses to heed international calls for an independent war crimes investigation, using its network of relationships, especially among developing countries and with Russia and China to build support for its position at the UN Human Rights Council (HRC). It has promoted its model of counterinsurgency, which reportedly included repeatedly shelling civilians in areas declared 'no fire zones' and targeting hospitals, as an example for other countries to emulate. In addition, the Sri Lankan government's own efforts to investigate the events of the final years of the war through a Lessons Learnt and Reconciliation Commission (LLRC) have been limited and widely regarded as not adhering to international standards.

The United States, the EU and Japan have been diffident about applying concerted and coordinated pressure on Sri Lanka, while Russia and China have emerged as key allies in blocking UN action. In recent months there have been signs that shifts in India's position, dictated by a combination of external and domestic factors, could trigger steps leading to a process of accountability. A failure to address fundamental issues relating to accountability and political devolution is already generating nostalgia for the LTTE among some sections of the Tamil population. Continuing violations of rights, impunity and an absence of meaningful political participation in governance for citizens of the north-east could trigger yet another cycle of conflict.

## **CENTRALIZATION, MILITARIZATION AND DEVELOPMENT**

Since the defeat of the LTTE in May 2009, the government has gradually increased the presence of troops in the north and east. This appears to be a strategy to suppress militancy, and stems from a deep-seated distrust of communities there. In the north in particular, the military monitors civilians, decides policies and controls many aspects of peoples' lives. Community workers report that the level of military scrutiny in northern Sri Lanka is so high that civilians have to seek permission even to hold religious or other personal gatherings. In some instances, rights activists in the north-east say the military is known to attend private functions and take pictures of people attending in order to gather intelligence.

The military's increasing control of administrative decisions in the north and east, including distribution and use of land, has turned the issue of land ownership into a deeply politicized and ethnically-charged one. Administrative and developmental decisions in north-east Sri Lanka are frequently taken by the military in consultation with the Presidential Task Force for Resettlement, Development and Security (PTF) and the military is involved in various committees set up in a September 2011 government policy regarding land in the northeast. Furthermore, the military continues to impose restrictions on humanitarian, developmental and psychiatric social work, accentuating existing resentments and impeding quick recovery.

The presence of large numbers of army personnel, particularly in the north, has increased the vulnerability of women to violence and other forms of abuse. Women without male companions or carers are particularly vulnerable. However, what continues to remain a deeply emotional issue for many Tamil women and men is that despite the large-scale army presence, the government has failed to release the names of the thousands of Tamils detained in various sites across the country. While the number of those detained in the period immediately following the end of the conflict remains unknown, information provided by the government to the UN panel of experts suggests that, as of February 2011, around 5,800 had been released, some 4,500 were detained in rehabilitation centres and another 1,300 were detained elsewhere for possible prosecution.

Since 2005, and even more so since the end of the conflict in 2009, the government has increasingly intimidated and tried to silence the media, NGOs, and others with independent or dissenting views of state military and human rights policies. Subsequently, many journalists practice self-censorship. The media watchdog, Journalists for Democracy in Sri Lanka (JDS), has reported that, as of August 2009, 34 journalists have been killed,

another 10 abducted and over 50 have had to flee the country.<sup>1</sup> The government has used national security legislation to arrest and intimidate political dissenters. In August 2011, it repealed the Emergency Regulations, which have been enforced intermittently over nearly two decades. However, the Prevention of Terrorism Act (PTA) continues to remain a tool for large-scale rights violations against Tamils. Under this anti-terror legislation Tamil men and women continue to be arbitrarily arrested, while an unspecified number remain in custody in detention centres to which the International Red Cross and domestic human rights organizations have no access.

By silencing the media, and buying or intimidating political opponents, the current administration has managed to tighten its grip over power while President Rajapaksa and his family appear to have set the stage for dynastic rule. The president's brothers Gotabaya, Basil and Chamal hold key government ministries while his son Namal was elected to parliament in 2010 and his being groomed as his political successor. In addition, the decision to implement the 18th amendment to the constitution further concentrates power in the hands of the president's removing term limits and allowing him to directly appoint key members of the judiciary and commissions on police, human rights, public service and corruption.

This strikes a blow at the independence of the National Police Commission, Human Rights Commission, Judicial Service Commission and other independent commissions. Under the previous legislations, heads of these commissions had to be appointed by a five-member body and not by the president alone. The lack of substantive independence for these commissions has deepened the impunity with which state officials and security forces can violate the law, and has directly contributed to a situation where there has been no independent investigation into any of the alleged human rights violations committed over the last four years of the Rajapaksa administration.

The International Monetary Fund (IMF) offered strong praise for Sri Lanka's macro-economic performance as it approved the second tranche of a loan to aid recovery from the war and global financial crisis in 2011. Approval, granted in 2009, was contingent on considerable reductions in military expenditure and the creation of social safety nets for war-displaced people. In a move reflecting concerns about the Sri Lankan government's human rights record, both Britain and the United States abstained from the board

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<sup>1</sup> Journalists for Democracy in Sri Lanka, 'Sri Lanka: Thirty Four media workers and journalists killed during present government rule.' Journalists for Democracy Sri Lanka, 1 August 2009, <http://www.jdslanka.org/2009/08/sri-lanka-thirty-four-journalists-media.html>

discussion. Realities on the ground show that resettlement has been painfully slow, with vulnerable communities continuing to live in precarious, makeshift accommodation with few means of seeking gainful employment. Meanwhile, military spending since the end of the war remains high, with a forecast 6.3% increase in defence spending to Rs215.2 billion (\$1.9 billion) in 2011.<sup>2</sup>

Despite the Asian Development Bank's overall positive forecast for Sri Lanka's economic growth, the bank maintains that investment remains too low to achieve national development goals.<sup>3</sup> Private investment in particular needs to be scaled up substantially to achieve development goals laid out in *Mahinda Chintana*, the president's 10-year development plan. Expenditure remains a key area of concern, with doubts persisting over the government's ability to achieve its target of bringing down the budget deficit to promised levels. High production costs had a particularly heavy impact on the agricultural sector, making it harder for local landowners to earn a living by farming. As the government controls or manages 80 per cent of the land<sup>4</sup> in Sri Lanka, it is not a marketable commodity and agricultural markets remain inefficient.

High youth unemployment, growing poverty in certain provinces and the decimation of trust in government in the north-east remain significant risk factors to sustainable economic growth. Figures for 2009–10 indicate that poverty in the Northern, Eastern, North Western, Uva and Sabaragamuwa provinces stood at 10% compared with 4.2% in the western provinces.<sup>5</sup>

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<sup>2</sup> Reuters, 'Post-war Sri Lanka buys 14 military choppers from Russia', 17 August 2011, <http://in.reuters.com/article/2011/08/17/idINIndia-58832720110817>

<sup>3</sup> Asian Development Bank, 'Asian Development Outlook 2011: Sri Lanka', <http://www.adb.org/documents/books/ado/2011/ado2011-sri.pdf>.

<sup>4</sup> International Crisis Group, 'Sri Lanka's Eastern Province: Land, Development, Conflict', Asia Report No 159, 15 October 2008, [http://www.observatori.org/paises/pais\\_75/documentos/159\\_sri\\_lanka\\_s\\_eastern\\_province\\_\\_\\_land\\_development\\_conflict.pdf](http://www.observatori.org/paises/pais_75/documentos/159_sri_lanka_s_eastern_province___land_development_conflict.pdf)

<sup>5</sup> *Sunday Times*, 'SL must watch out for high youth unemployment, a historical cause of conflict: Ceylon Chamber of Commerce', 14 August 2011, <http://sundaytimes.lk/110814/BusinessTimes/bt12.html>

## **NO ACCOUNTABILITY, NO AUTONOMY**

In April 2011, United Nations Secretary-General Ban Ki-moon released a report by a panel of experts that concluded that both government forces and the LTTE had conducted military operations 'with flagrant disregard for the protection, rights, welfare and lives of civilians and failed to respect the norms of international law.' The panel found that the conduct of the war represented a 'grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.' It noted that as many as 40,000 civilians were killed in the final months of the conflict, which ended in May 2009.

In sharp contrast, the Sri Lankan government maintains that it pursued a 'humanitarian rescue operation' with a policy of 'zero civilian casualties' during these final months of the conflict, in which more than 300,000 ethnic Tamil civilians were trapped in the fighting. Despite facing repeated international calls to establish an independent war crimes inquiry, the Sri Lankan government's response has been limited and apparently politically motivated. The government's Lessons Learned and Reconciliation Commission (LLRC), which began public hearings in August 2010, has a mandate to assess why the 2002 ceasefire broke down in 2008. However, the LLRC has come under severe international criticism for failing to meet criteria necessary to contribute to reconciliation or to legal accountability for alleged war crimes.

International attempts at pressuring Sri Lanka to establish accountability have been limited. In July 2011, the US House Foreign Affairs Committee approved a measure that would ban all US government funding to Sri Lanka except for humanitarian aid, demining and activities to promote democracy and governance. Other criteria include an improved climate for freedom of the press, an end to emergency regulations and information from the government to families on the fate of people unaccounted for at the end of the civil war.

The government meanwhile continues to fail to acknowledge the legitimate minority grievances that led to conflict, and has made little attempt at promoting and protecting minority rights and freedoms. Despite demands by Tamil political parties, the government has essentially rejected the need for any political solution or power sharing with the Tamil-speaking-majority north and east. The Sri Lankan Defence Secretary's comments to an Indian media outfit in July 2011 laid to rest any illusions on the government's position on devolution of land and of police powers to the north-east provinces. Gothabaya Rajapaksa, the Defence Secretary and the president's brother, said: 'The existing constitution is more than enough for us to live together...'



mean what can you do more than this? ... Devolution-wise I think we have done enough, I don't think there is a necessity to go beyond that.'<sup>6</sup>

Ahead of local elections in the north in July 2011, the government painted the polls as a referendum on its development-oriented reconciliation efforts. However, the ruling coalition was crushed, and Tamil politicians in favour of self-determination won 20 of 25 seats on local councils. The overwhelming victory consolidated the Tamil National Alliance's status as a legitimate representative of Tamils in negotiations with the government on sharing political power and post-war rehabilitation. Government officials have since played down the results, and all indicators are that the poll results are unlikely to influence government policy.

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<sup>6</sup> *India Today*, 'SL war crimes: Gotabaya hits out at Jayalalithaa; confident of Indian support', 8 August 2011, <http://indiatoday.intoday.in/story/sl-war-crimes-gotabaya-hits-out-at-jayalalithaa-confident-of-indian-support/1/147475.html>.

## INTERNATIONAL PRESSURE

Thus far any attempts by Western governments and multilateral institutions to promote accountability for past and continuing violations of human rights and international humanitarian law in Sri Lanka have been limited and met by stiff resistance. The Sri Lankan government has taken cover behind the principles of sovereignty, non-interference, and Southern solidarity, and created a diplomatic backlash against the few efforts to establish accountability for violations during May 2009 and previously. Hectic diplomatic activity by permanent missions in Geneva and New York has ensured that any attempts at internationalizing the issue of rights violations have been thwarted. Sri Lanka has similarly neutralized the impact of withdrawal or suspension of preferential trade privileges by the European Union by deepening its trade relationship with China and continuing to benefit from Japanese and Indian aid.

Faced with the prospect of support for two separate EU-led resolutions on the deteriorating human rights situation at the HRC in 2007 and 2009, Sri Lanka mustered the help of a large group of countries – Brazil, Nicaragua, Bolivia, Venezuela, Cuba, Egypt, Iran, Russia, Pakistan, India, China, Indonesia, Malaysia, Vietnam, Cambodia and Philippines. Sri Lanka then claimed the defeat of the resolution as ‘a defeat of the foreign affairs apparatuses of the European Union, the Western dominated international media, international NGOs and the pro-Tiger Tamil Diaspora’.<sup>7</sup>

Sri Lanka harbours a deeply ingrained worldview that conflates international rights protection with colonialism. Further evidence of this emerged when its government voiced disapproval over the Western-led military intervention in Libya following the UN Security Council's authorization of a 'no-fly zone'. It is not alone in this. Other Asian states, led by China, have in the past mounted intense challenges to criticism of the Burmese government and possible prosecution of Sudanese President Omar-al-Bashir. However, Sri Lanka is unique in its success of blatantly and creatively using this discourse to stall any serious international action. These actions have served to deeply compromise the efficacy of the international human rights framework and the working of the relatively new HRC.

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<sup>7</sup> Dayan Jayatilleke, 'Battleground Geneva: The Special Session of the HRC on Sri Lanka', Groundviews, <http://groundviews.org/2009/06/01/battleground-geneva-the-special-session-of-the-hrc-on-sri-lanka/>. Dayan Jayatilleke is the former Sri Lankan Permanent Representative to the UN in Geneva.

## India's role

The capacity of India to engage actively in peace-building in Sri Lanka is limited. Yet, it wants to maintain some leverage over the political process in order to ensure that Tamil politics remain pluralistic, that the government offers a political package of devolution to the Tamils, and more importantly to attempt to check the influence of China and Pakistan on the country.

Hence, India's interests in Sri Lanka stem predominantly from geopolitical concerns and security needs. Economic and business interests are also important and create the need to maintain regional peace and stability. To that end, India has worked in favour of maintaining a strong bilateral relationship with Sri Lanka and in a majority of instances opposed multilateral initiatives. While this is driven partly by India's motivation to deflect any internationalization of its own internal conflicts in Kashmir, the north-east, and the Naxal affected states, it is also influenced by its desire to maintain autonomy, and to a degree control, over its relationship with its neighbours. Tamil Nadu politics and the close political, social and economic relationship between Tamils in Sri Lanka and India, have contributed to India's analysis that the relationship is best conducted through bilateral forums.

Since the defeat of the LTTE, India has offered significant humanitarian assistance to Sri Lanka. This has included loans for infrastructural development and developmental projects in the north-east, as well as active support to the Tamil National Alliance and the Rajapaksa government to encourage a process leading to power sharing and political devolution. In parallel, the Indian establishment's patience with Sri Lanka has been wearing thin. Sri Lanka's deepening economic and political relationship with China, its defence relationship with Pakistan and its government's disregard of India's public and private pressure to promote political devolution have contributed to the general sense of unease between the two neighbours.

In this context, the fact that Tamil Nadu chief minister Jayalalitha Jayaram has become the first mainstream Indian politician to advocate the internationalization of the Tamil issue in Sri Lanka, has provided India with a politically palatable justification for changing its position on international accountability. In recent months, she has urged the Indian government to press the UN to declare those responsible for the killings of Tamil civilians as 'war criminals'.<sup>8</sup>

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<sup>8</sup> *Indian Express*, 'Jaya asks Centre to move UN against Rajapaksa for war crimes', 27 April 2011, <http://www.indianexpress.com/news/jaya-asks-centre-to-move-un-against-rajapaks/782364/>.

India, which holds the chair as a non permanent member of the UN Security Council in 2011, has now been provided with reason to either abstain from or, should circumstances change, support any move for international accountability in a multilateral forum. Whether it will take this opportunity to put pressure on its neighbour and risk losing crucial support in its bid for permanent membership of the UN Security Council and other international interests remains to be seen. For now, India's public statements on Sri Lanka convey some dissatisfaction with the manner its neighbour has handled issues relating to reconciliation and devolution, and private messages are understood to have become terser.

## CONCLUSION

There are few signs to indicate that the Sri Lankan government is embarking on a path of inclusiveness and reconciliation. Sinhalese Buddhist nationalism, triumphalism and an increasingly authoritarian environment have combined to create a heady mix of intolerance among certain sections of the majority Sinhalese population. Unemployment in the Sinhala-dominated rural south is high, and dissatisfaction with rising corruption and spiralling food prices carries the potential to generate youth militancy, which the country witnessed previously in 1971 and 1987-89. While Tamils in the north-east appear resigned to a future that, for now, does not offer them equality or participation, there are signs that resentment, especially in the north is growing. Intense militarization and continuing rights violations, along with a lack of any meaningful participation in their political future, have the potential to create a fertile ground for militancy. In this context, the government has the dual responsibility of not only bringing truth, justice and reconciliation to all the communities in the country, but also ensuring that devolution of power to minorities is real, and meaningful.

## **ABOUT THE AUTHOR**

Charu Lata Hogg is an Associate Fellow with the Asia Programme at Chatham House and Asia Manager with Child Soldiers International. She is a graduate of Hindu College, University of Delhi and the London School of Economics and Political Science. She worked as an international journalist in India and Sri Lanka for over 12 years, writing for *India Today*, *Outlook*, *The Times of India*, *the Far Eastern Economic Review*, the BBC, the *South China Morning Post*, *Khaleej Times* and numerous other publications. She was South Asia researcher with Human Rights Watch in 2007–09, covering India, Sri Lanka, Bangladesh and Nepal.