

Sri Lanka: Post-War Progress Report, 12 September 2011

Key messages

The Government of Sri Lanka has not taken credible steps to ensure accountability for the grave allegations of war crimes and crimes against humanity identified in the April 2011 [report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka](#). Nor has the government pursued policies to reconcile the country's ethnic communities after decades of political violence and conflict. Instead, its post-war agenda has been to further centralise power, expand the role of the military, undermine local civilian authorities, and politicise the institutions that should uphold the rule of law and combat impunity. As argued in [Crisis Group's most recent report](#), the risk of an eventual return to violence is growing again.

In the upcoming session, members of the UN Human Rights Council should:

- (a) note the May 2009 Special Session Resolution (A/HRC/S-11/L.1/Rev. 2) regarding Sri Lanka, the panel of experts report, and the Secretary-General's 25 April 2011 [commitment to monitor domestic accountability efforts](#);
- (b) note the government's insistence at the last session that it is working toward "[truth, justice and reparation](#)" including through its Lessons Learnt and Reconciliation Commission (LLRC), whose report to President Rajapaksa is due in November 2011; and
- (c) call for full discussion of these initiatives and any progress towards accountability at the March 2012 session, inviting submissions from the government and Secretary-General in advance.

Council members should be prepared in March 2012 to endorse an international inquiry into allegations of crimes by both sides in Sri Lanka's civil war, unless the government implements a credible accountability process before then. That would require at a minimum:

- (a) unqualified public commitments to accountability – expressly from the president and the defence ministry, given the power they wield – including for the allegations of international humanitarian and human rights law violations deemed credible by the panel of experts;
- (b) establishment by the government of a new investigative body, independent of the attorney-general, composed of non-political appointees nominated by both the government and opposition parties and fully empowered and resourced to investigate and prosecute alleged violations; and
- (c) substantial progress by the government in investigating specific alleged crimes, including the deadly February 2009 shelling of PTK hospital and the alleged executions of LTTE commander "Colonel" Ramesh and LTTE news reader Isaipiriya in May 2009; such progress should include interviewing the units and commanders implicated, reviewing relevant written, photographic and video evidence from government and other sources, and making public the government's findings about the events leading to, and the legality of, those killings.

Members of the Council should also question the government on its claims of progress on crucial post-war issues such as the state of emergency and repressive anti-terrorism laws, militarisation and insecurity, resettlement of internally displaced persons (IDPs), reintegration of alleged ex-combatants, and a political settlement on devolution and minority rights. As demonstrated in the following brief assessment of those issues, much of what the government tells the international community and its own people does not reflect reality on the ground. This reinforces the need to press the government to allow visits from relevant special procedures, including the Working Group on Enforced and Involuntary Disappearances and the special rapporteurs or representatives on extrajudicial executions, torture, violence against women, the protection of human rights while countering terrorism, the human rights of IDPs, and children and armed conflict.

Post-war progress: Assessing government claims

State of emergency and anti-terrorism laws

Government claim: On 25 August 2011, the president announced the government would not renew the emergency regulations (ERs), which have been in force for much of the last 30 years. He claimed the country can now “[function democratically under the ordinary law](#)”. The ERs, promulgated under the Public Security Ordinance No. 25 of 1947 (as amended), lapsed on 31 August.

Reality: Far from reverting to “the ordinary law”, the government has now extended some of the most controversial powers under the ERs by issuing parallel regulations under the similarly repressive Prevention of Terrorism Act No. 48 of 1970 (as amended) (PTA). These include the continuance of militarised high-security zones (HSZs) and the detention (without charge or access to legal counsel) of thousands of LTTE suspects, including the remaining 3,000 of those detained for “rehabilitation” at the end of the war – nearly all of whom already have been held beyond the ERs’ two-year maximum. The new PTA regulations, which the government made public belatedly in September, are to be replaced with permanent legislation in due course, including an “[omnibus empowering provision that enables the secretary of defense or the president to pass regulations as it is deemed necessary](#)”.

The PTA itself allows arrest for a broad range of offences including causing “mischief” to public property, causing “religious, racial or communal disharmony or feelings of ill-will”, and interfering with “any board or other fixture” in a public place. It also makes confessions to police admissible as evidence which encourages already endemic torture, permits detention without charge for up to eighteen months (more than the expired ERs), and grants government officials immunity for acts done in good faith and pursuant to any direction or order under the PTA. Hundreds of PTA detainees have been held for years. In short, the expiration of the ERs has brought little change in law or practice. The most potent emergency powers, which have long encouraged abuse and impunity, remain intact.

Militarisation and insecurity

Government claim: The government has embarked on what it calls a “[comprehensive programme of socio economic development in the former theatre of conflict](#)”. While it claims [HSZs are being reduced](#) in the north and east, the military’s role in development (as well as in other government and commercial projects across the island) is widely acknowledged. In terms of post-war security, the president recently commented: “[From the time when terrorist activities ended in May 2009 until today there have been no reports of any terrorist activities, other than the imaginary ‘Grease Demon’ ... We are proud to mention that our government has succeeded in protecting law and order and peace through rules and regulations approved by Parliament based on the Constitution](#)”.

Reality: The actual security situation for the minority Tamil and Muslim communities in the north and east, and for some segments of the majority Sinhalese, is much more precarious. There is deep distrust of the police and army. The “Grease Devil” controversy, which the president blithely dismisses, has in fact resulted in vigilante attacks on and some killings of alleged “grease devils” believed responsible for a spate of attacks on women, [particularly in the heavily militarised north and east](#) but also in the [central highlands and the south](#). Civilians have launched violent protests against the security forces, suspecting them of harbouring attackers, while the forces have often responded with arbitrary arrests and excessive use of force, killing and badly injuring protestors. Instead of restoring law and order by investigating the reported incidents and arresting those responsible, the police and military have reacted defensively, displaying the same “with us or against us” mentality that defined the final years of the war. Indeed, Defence Secretary Gotabaya Raja-

paksa has made it clear that anyone who challenges the military will be dealt with as “[terrorists](#)”, even now.

This most recent violence is occurring against a backdrop of an increasingly permanent military presence in the north and east. The predominantly male, Sinhalese soldiers control nearly all aspects of daily life for the Tamil-speaking residents, a disproportionate number of whom are female and [vulnerable](#). Much of the militarisation is informal, with new de facto HSZs being established as others are being shut down, large areas of the north accessible only the military, and soldiers taking on a range of commercial activities. There is no plan for security sector reform on the horizon. While the government claims its development activities are promoting reconciliation, they are in fact increasing ethnic polarisation and distrust.

Resettlement of IDPs

Government claim: Regarding the nearly 300,000 Tamil IDPs held in camps at the end of the war in 2009, the president told parliament on 25 August 2011 that “[we have now resettled all but 8,000 in their former places of living](#)”.

Reality: This is not true. As of 31 July over 60,000 of those “resettled” IDPs were still in temporary settings – living with host communities or in transit situations. Even for those who have returned home, many still rely on food assistance from international donors, and most are living in make-shift shelters. The central government and the military control all humanitarian and development activities in the formerly LTTE-held areas and continue to restrict the activities of local and international humanitarian groups. Another 7,000 IDPs are still in the Manik Farm camps, which the government is quickly closing, moving the residents out but not to their places of origin because those are still closely guarded by the military and reportedly not open to returns because of uncleared landmines. Critically, there are another 100,000 IDPs who were forced from their homes before 2009 – including tens of thousands of Muslims expelled from the north by the LTTE in 1990 – still in camps, with host families or in transit situations. Those IDPs are rarely if ever mentioned by the government.

Rehabilitation and reintegration of ex-combatants

Government claim: For well over a year, the government has been promoting as a “success” its “rehabilitation” and “reintegration” of the thousands of suspected LTTE cadres detained at the end of the war in 2009. As of [7 September 2011](#), it claimed that nearly 8,000 had been released while another 3,000 were still in rehabilitation centres.

Reality: There is plenty of reason to doubt that these efforts have effectively “neutralised” former combatants, promoted reconciliation or reduced the risk of a new outbreak of violence. First, these individuals have been detained for rehabilitation without access to counsel or basic rights such as habeas corpus, and many for longer than (or reasons not allowed under) the governing ERs. Second, there is no independent procedure in place to determine whether those detained and later “reintegrated” have any history of perpetrating human rights abuses or are in fact ex-combatants. Indeed, many were not combatants while others participated in forced recruitment of children and other LTTE crimes. Third, [reports](#) confirm that after release many former detainees are regularly re-arrested, harassed or forced to act as informants by the military. There is no system of independent monitoring of their treatment or protection. Finally, thousands of individuals have been missing since the war’s end, with many last seen in military custody – as numerous eyewitnesses have testified to the LLRC. To date, the government has launched no credible investigations into these cases and refuses even to make available to family members the names and locations of those detained for rehabilitation.

Political settlement on devolution and minority rights

Government claim: The president and other senior government officials have frequently expressed their commitment to finding a political solution to the ethnic conflict through negotiations with Tamil and other minority political representatives. At various points they have expressed their willingness to develop “a devolution package, building upon the 13th Amendment”, including in a [joint statement](#) with the Indian government on 17 May 2011. The government has pointed to its ten rounds of talks with the Tamil National Alliance (TNA) as evidence of its commitment to a negotiated settlement. In late August, the government began the process of establishing a [Parliamentary Select Committee](#) (PSC) that would be tasked with developing “political and constitutional measures to enhance the unity of the people of Sri Lanka, further empower the people to work as a nation, and enable the people to take decisions”. The PSC will have 31 members representing all political parties in parliament, most of whom are part of the government’s large coalition.

Reality: Numerous statements and actions cast doubt on the Sri Lankan government’s commitment to serious negotiations designed to devolve power to the north and east. Most recently, the defence secretary and president’s brother, Gotabaya Rajapaksa, who has de-facto veto power over any government policies relating to security issues, [announced that](#) “The existing constitution is more than enough for us to live together.... I mean now the LTTE is gone, I don’t think there is any requirement.... Devolution wise I think we have done enough, I don’t think there is a necessity to go beyond that”. Prior to this, on 4 August 2011, the TNA announced it was suspending talks until the government responded to TNA proposals with its own written positions on such crucial matters as its preferred structure of governance and division of powers between centre and provinces.

The government has refused to state any clear position; the president has instead [announced his intention](#) to defer the decision on the contours of a political solution to the PSC. All major opposition parties – the TNA, the United National Party and the Janatha Vimukthi Peramuna (JVP) – have expressed doubts about the utility of the PSC, and their participation on the committee remains in doubt. Despite the PSC being given a six-month mandate, past experience with such initiatives suggests discussions in the PSC could take years. Sceptics point to the All Party Representative Conference (APRC) established by President Rajapaksa in 2006 with the mandate to agree on constitutional reforms for “maximum devolution” within a united Sri Lanka. Despite nearly three years of negotiations that reportedly produced a draft set of constitutional reforms that had the broad agreement of both government and minority parties, the APRC’s report to the president has never been made public and its valuable work has been shelved.

Finally, widespread scepticism within Sri Lanka about the government’s willingness to devolve power is also based on the highly authoritarian, centralised and militarised way in which the Rajapaksa regime governs the whole country. Since the end of the war in May 2009, power has been further centralised in the hands of the president, his brothers and the military, both through the eighteenth amendment to the constitution in September 2010 and other administrative changes.