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Sri Lanka: Jumpstarting the Reform Process

Asia Report N°278 | 18 May 2016

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Executive Summary

The unexpected chance for lasting peace and reconciliation in Sri Lanka that followed President Maithripala Sirisena's January 2015 election faces increasing turbulence. Initial moves by Sirisena's government halted and began to reverse the slide into authoritarianism and family rule under Mahinda Rajapaksa. Its reform agenda is ambitious: restoring the rule-of-law and ending impunity for corruption and abuse of power; a new constitution; a complex package of post-war reconciliation and justice mechanisms agreed with the UN Human Rights Council (UNHRC); and major policy changes to jump-start a beleaguered economy. Progress, however, has been slower than key constituencies expected and lacks the coherence and resources needed to sustain it. The "national unity" government expanded the political centre and isolated hard-line nationalists, but the window for change has begun to close. Seizing Sri Lanka's unprecedented opportunity for reform requires bolder and better coordinated policies, backed by a public relations campaign to restore sagging popular support.

The stuttering progress strains ties between the government and the constituencies that brought it to power. Tamils in the north and east voted overwhelmingly for Sirisena but are increasingly doubtful he will fulfil his reconciliation and justice promises. Many Sinhala "good governance" activists criticise the failure to follow through on rule-of-law measures, continued cases of alleged nepotism and corruption and what they consider the lethargic pursuit of corruption and criminal investigations. As the budget deficit grows and currency reserves dwindle, belt-tightening has been blocked or scaled back due to protests. At the same time, strains are growing between Sirisena's Sri Lanka Freedom Party (SLFP) and the United National Party (UNP) of Prime Minister Ranil Wickremesinghe. The small window for threading the political needles essential for reforms is shrinking.

Institutional factors hamper progress: too few staff and too little expertise, particularly on reconciliation and transitional justice issues, multiple power centres and unwieldy, often overlapping ministries, and the different priorities and governance styles of president and prime minister. Governance reforms are slowed by need to work through bureaucrats and politicians implicated in past abuses, some of whom were given cabinet posts to help the government achieve the two-thirds parliamentary majority needed to approve a new constitution.

Boldness is limited by Sirisena's struggle to counter the faction loyal to ex-President Rajapaksa within his SLFP, especially in upcoming local elections. Reacting defensively to Sinhala nationalists' attacks against Sirisena's relatively modest reconciliation gestures and proposed constitutional reform and scared of giving opponents ammunition or angering the military and security services, the government has returned only a small portion of military-occupied land and released few Tamil detainees.

Seven years after the end of the civil war in May 2009, issues of reconciliation and accountability remain largely unaddressed. The government appears to be backtracking on transitional justice plans, particularly the role of foreign judges and experts. The enormity of the crimes, especially in the final weeks of the war, makes them impossible to ignore but hard for the military and most Sinhalese to acknowledge or accept responsibility for. Mechanisms promised to the UNHRC feed Sinhala nation-

alist suspicions, while attempts to reassure Sinhalese and the military encourage doubts among Tamils about government willingness to pursue justice for wartime atrocities or back constitutional changes that satisfy legitimate Tamil aspirations for meaningful autonomy.

To hold its coalition together and meet UNHRC obligations, the government must sequence reforms carefully, speeding progress on some fronts to rebuild public confidence, while committing resources to build support and institutional capacity for deeper and harder steps, particularly making progress on the critically important special court for prosecuting war crimes. Better communication and cooperation between president and prime minister, more transparent policymaking and clearer lines of authority are essential.

To rebuild confidence among Tamil communities in the north and east, the government must quickly release detainees and military-occupied land, begin credible inquiries into the fate of the disappeared, investigate and end abuses and repeal the Prevention of Terrorism Act (PTA). For these and other reforms to be sustainable, the president and prime minister will have to assert authority over the military and national security apparatus, including by developing a credible security sector reform plan. If they are serious about constitutional changes that will contribute to a lasting solution to the ethnic conflict, Sirisena and key ministers must make a much stronger public case for greater devolution of power.

Ending impunity and restoring rule-of-law are concern to the whole country, as seen in the popularity of good governance and anti-corruption citizen movements in the Sinhala south. To resonate more broadly with all ethnic groups and regions, measures for addressing the war's legacy should be presented by the government and civil society as an integral part of the rule-of-law and good governance agenda. Moves to prosecute key cases of corruption and political killing under the Rajapaksa regime need to be backed by a sustained public relations campaign that articulates a broad vision of a reformed state, the links between the various initiatives and the benefits they bring all communities.

As longstanding dysfunctional political dynamics reassert themselves, the government's ability to distinguish itself from the Rajapaksa era, which is essential to its political survival, has begun to fade. If ethnic and religious chauvinists in all communities are not to grow stronger and belief in democratic reform that Sirisena's election reflected and encouraged is to be rekindled, the government must make a concerted push to jump-start the flagging reform process.

Recommendations

To strengthen rule-of-law and democratic governance

To the government of Sri Lanka:

1. Ratify the UN Disappearances Convention and pass enabling legislation criminalising disappearances; terminate the Paranagama commission on missing persons and transfer its investigation files to dedicated police investigation units.
2. Pass the pending Right to Information (RTI) Act and legislation to establish a well-resourced and empowered Audit Commission.
3. Repeal the Prevention of Terrorism Act (PTA) and replace it, in consultation with lawyers and human rights defenders, with legislation in line with Sri Lanka's international human rights obligations; and develop and publish guidelines for expediting cases against existing PTA detainees and releasing those against whom there is insufficient evidence to bring charges.
4. Overhaul the Victims and Witness Protection Act, in consultation with human rights activists, to establish a well-resourced witness protection authority fully independent of police and security forces.
5. End the longstanding conflict of interest in the Attorney General's Department by establishing a permanent, independent special prosecutor for serious human rights cases in which state officials are alleged perpetrators.
6. Establish a clear focal point in the Attorney General's Department, staffed by state counsels vetted for conflict of interest or involvement in past cover-ups, to oversee and prosecute emblematic cases of political killings and abduction currently under investigation.

To promote reconciliation, reestablish effective civil administration in the north and east and begin security sector reform

To the government of Sri Lanka:

7. Take immediate steps to end remaining military involvement in civil administration; remove the military from all shops, farms, hotels and other commercial businesses; and immediately suspend construction or expansion of military camps in the north and east.
8. Establish, in consultation with communities and the military, transparent principles, processes and timetables for the return of military-occupied land or payment of compensation for land that is not to be returned.
9. End intimidating monitoring of civil society activists and ex-detainees by security services and appoint an independent, multi-ethnic, well-resourced internal affairs unit to investigate credible allegations of arbitrary detentions, abductions and torture in custody.
10. Begin developing a longer-term plan for comprehensive security sector reform that includes job training for demobilised personnel; and devise and implement in the short term policies for handling individuals credibly alleged to be responsible for serious violations of human rights and humanitarian law.

To support constitutional reform needed for lasting political stability

To the government of Sri Lanka:

11. Launch a public outreach campaign, led by the president and prime minster, in support of expanded devolution of power to provinces.
12. Support a mixed electoral system that maintains proportionality and the influence of smaller, regionally-dispersed parties through use of double-ballots.

To address the complex demands of transitional justice processes

To the government of Sri Lanka:

13. Reaffirm publicly the government's commitment to full implementation of the 1 October 2015 UN Human Rights Council resolution and take initial steps to build capacity and public support for effective transitional justice, by:
    a) launching a coordinated public outreach campaign – involving the offices of the president and prime minister, the Reconciliation Secretariat (SCRM), National Unity Office (ONUR) and national dialogue ministry – to promote the value of transitional justice mechanisms and highlight links to broader rule-of-law measures, beginning with immediate distribution of the UN Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) report in all three languages once Tamil and Sinhala translations are available;
    b) giving the public consultation process adequate resources and endorsement and presenting draft legislative proposals to it for popular input, with a transparent timeframe for final submission to the parliament;
    c) publishing draft legislation for the Missing Persons Office and inviting active input from families of the missing and disappeared and other stakeholders;
    d) establishing a timeline for training judges, lawyers and investigators for participation in the special war crimes court and for passing legislation establishing command responsibility as a mode of criminal liability and incorporating war crimes and crimes against humanity into national law; and
    e) requesting the OHCHR to recommend international prosecutors and judges for participation in the special court as committed to in the resolution.

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I. Introduction

2015 presidential and parliamentary elections gave Sri Lanka an historic but tenuous opportunity to tackle its most important, longstanding challenges: ethnic relations, power-sharing and the painful war legacy; and rebuilding democratic institutions and reestablishing the rule-of-law.[1] The August 2015 national government uniting President Maithripala Sirisena's Sri Lanka Freedom Party (SLFP) and Prime Minister Ranil Wickremesinghe's United National Party (UNP) created the possibility of broad reform and long-needed constitutional change.

Significant progress has been made. The coalition has begun to reverse the Rajapaksa government's slide into authoritarianism and family rule. Space for dissent and activism has reopened in civil society, particularly the Sinhala-majority areas in the south. There have also been modest gains in rule-of-law and liberal-democratic governance, with the police and judiciary functioning more independently and reduced powers for the executive president. Sirisena and Wickremesinghe have set a more conciliatory tone on ethnic issues. Symbolic gestures like singing of the national anthem in Tamil on Independence Day accompanied initial progress in releasing military-occupied land in the Tamil-majority north and east and a slight pullback of the military's role there.

The government's broader agenda is extremely ambitious, including a new constitution, to be drafted and approved by the end of 2016, further governance and rule-of-law reforms, addressing the legacy of the war and major changes in economic policy. Each track has powerful political opponents; all need to move at their own speed and are hard to synchronise against a backdrop of a deteriorating economy. The risks of overload and gridlock are high.

It is unclear how willing and able the government is to move on deeper reforms, such as justice for wartime abuses and a political solution to the ethnic conflict based on greater devolution of power. August 2015 elections saw voters endorse the less nationalist choices in both Sinhala and Tamil majority areas and eliminated the immediate threat of a Rajapaksa comeback. The government gained space to agree to a ground-breaking resolution at September's UN Human Rights Council mandating reconciliation and transitional justice mechanisms, including a special court with international participation. Since then, it has cooperated with UN human rights mechanisms and begun planning to implement its resolution commitments.

This report examines progress made on the government's reform agenda and the major challenges remaining and proposes ways forward. It looks in particular at how

[1] Crisis Group has covered both challenges extensively: Asia Reports N°s 253, *Sri Lanka's Potemkin Peace: Democracy under Fire*, 13 November 2013; 243, *Sri Lanka's Authoritarian Turn: The Need for International Action*, 20 February 2013; 239, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, 20 November 2012; 209, *Reconciliation in Sri Lanka: Harder than Ever*, 21 July 2011; 172, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, 30 June 2009; 141, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, 7 November 2007; 135, *Sri Lanka's Human Rights Crisis*, 14 June 2007; and 134, *Sri Lanka's Muslims: Caught in the Crossfire*, 29 May 2007.

the proposed transitional justice mechanisms, while complicating other plans, might be used to make the overall process stronger and more meaningful. Interviews were conducted with government officials, diplomats, journalists, business leaders, lawyers and activists in Colombo, London, Washington, Brussels and Geneva, from November 2015 through May 2016. Most asked to remain anonymous, due to the sensitivity of the issues discussed and the lingering scepticism that Sri Lanka has seen its last repression of dissent.

II. Post-election National Government: Political and Economic Challenges

Following an acrimonious but remarkably peaceful campaign, the UNP-led United National Front for Good Governance (UNFGG) won 106 of the 225 seats in the 17 August 2015 parliament elections. Former President Mahinda Rajapaksa's United People's Freedom Alliance (UPFA), most of whose legislators are in the SLFP, won 95 seats. The results blocked his return to power as prime minister, but with his SLFP wing outpolling President Sirisena's faction, the long battle to control the party remains unresolved.[2] The electoral defeat of the UPFA and Rajapaksa and offers of ministerial portfolios convinced the majority of the SLFP parliamentary group to back Sirisena and join the governing coalition.

On 21 August, Sirisena renamed UNP leader Wickremesinghe prime minister, and the UNP and SLFP formed a two-year national government. The coalition, planned since Sirisena was the joint opposition candidate in the January 2015 presidential election, was meant to enable progress on an ambitious agenda of political, constitutional and economic reforms promised in both elections.[3]

With its potential two-thirds parliamentary majority needed for constitutional changes, the government hopes to avoid the tradition of opposition parties blocking constitutional change by appeals to aggressive Sinhala nationalism. In principle, the support of both major parties and the Tamil National Alliance (TNA) strengthens its hand with nationalists on both sides when facing the challenges of post-war reconciliation and accountability and meeting the requirements of the Human Rights Council (HRC) resolution. To the extent it pursues its constitutional reform and reconciliation promises, the government will have TNA backing, even though that alliance formally leads the parliamentary opposition, along with the left-wing nationalist People's Liberation Front (JVP). The TNA strengthened its role as a de facto government ally by fighting off vocal opposition from more nationalist Tamil parties to win a respectable sixteen seats from the north and east.[4]

A. *Parliamentary and Party Battles*

Coalition politics pose deep challenges to serious reform. Indeed, given the history of SLFP-UNP hostility and the many controversial issues it will have to tackle, few assume the government will survive the full five-year term of parliament. Many in the government itself believe the window for major reforms will close when the coalition agreement expires in August 2017.[5] Much depends on how well Sirisena manages intra-party tensions and attacks by Rajapaksa and his supporters in the SLFP-dominated UPFA. One politician described Sirisena as "an orphan" in his party.[6] Many

[2] On his attempted comeback, see Crisis Group Report, *Sri Lanka Between Elections*, op. cit.
[3] Ibid.
[4] TNA leader R. Sampanthan, was named opposition leader on 3 September; the same day the TNA gave the opposition whip post to JVP leader Anura Dissanayake. The JVP did surprisingly poorly in the August poll (six seats) but has acted positively as a principled opposition, pressing for more effective action on corruption and more equitable social and economic policies.
[5] Crisis Group interviews, Colombo, January 2016.
[6] Or as a lawyer put it, "the most popular politician in Sri Lanka is not popular within his own party". Crisis Group interview, Colombo, January 2016.

SLFP legislators aligned with Sirisena will support him only as long as they believe he holds the balance of power in the party.[7]

While the SLFP as a whole agreed to help form the national government, more than half the SLFP and UPFA parliamentary group opposed the decision. The pro-Rajapaksa faction and the smaller left-wing and nationalist parties in the UPFA – whose leaders were the most vocal champions of a Rajapaksa comeback – form the de facto opposition in parliament.[8] The ex-president's supporters have relied on Sinhala nationalist ideas and fears to challenge the government in and outside of parliament. They accuse it of weakening national security, betraying the military and threatening Buddhism and the unitary character of the state.[9] The attacks have put the government on the defensive, though it is unclear how much support ultra-nationalist positions have.[10] What is clear is the continued strong support within the SLFP for Rajapaksa, particularly at district and municipal levels. Fearing unfavourable results that could weaken his national control, Sirisena has repeatedly postponed local elections, despite the message of weakness this sends.[11]

Much of Sirisena's party-control problem stems from the fact that "no one fears him".[12] Emboldened by his difficulty in consolidating control and frustrated at being

[7] Many SLFP members in government dislike playing second fiddle to the UNP and hope that, as the UNP and national government grow unpopular, Sirisena might appoint a UPFA-led government. The government would have to lose a budget vote or a vote of confidence and at least twenty UNP legislators would have to support a UPFA-led government, both currently unlikely.

[8] With the most legislators opposed to the government, the "joint opposition" has demanded it be formally designated the parliamentary opposition. However, the speaker ruled the SLFP and UPFA remained part of government and declared the TNA the largest opposition party. After months of joint opposition protests, in parliament and out, that Sri Lanka was being denied an effective opposition, the speaker in February granted the joint opposition many of the rights it had been demanding, including additional debate time and to join party leaders' meetings. "Letting go of unnecessary tension over ETCA", *Daily News*, 27 February 2016.

[9] "Mahinda's slogan is 'they're releasing Tigers and planning to arrest our war heroes'". Crisis Group interview, academic, Colombo, January 2016. Rajapaksa's political organisation is widely believed to be involved in the "Sinhale" nationalist campaign that emerged in early 2016. Mostly a bumper sticker and poster campaign, Sinhale (pronounced "Sing-a-lay") is a double-entendre meaning "Lion's Blood" and recalling a traditional Sinhala-language name for the island. "Sinhale campaign raises alarms", *Sunday Leader*, 10 January 2016. Rajapaksa's faction has also accused the government of stifling democratic rights. "SLFP can't get rid of me that easily: Mahinda Rajapaksa", *Colombo Telegraph*, 19 February 2016.

[10] A recent survey suggests Sinhala support for devolution and transitional justice is thin. "Democracy in post war Sri Lanka", Centre for Policy Alternatives, April 2016.

[11] "The technical reason for the delay", a political analyst said, "is that delimitation of constituencies isn't completed, but the real reason is that Sirisena fears his faction won't do well". Crisis Group interview, April 2016. Once expected in June 2016, elections now are likelier in early 2017. Repeated delays, during which presidential appointees manage local government, have undercut Sirisena's democratic credentials, one of his central selling points. Worries about local elections strengthening Rajapaksa in the SLFP also appear to explain Sirisena's caution on reconciliation-related issues. "The big issue [for constitutional reform and transitional justice] is that Sirisena is not confident about controlling his party. He controls less than half". Crisis Group interview, government adviser, January 2016.

[12] Crisis Group interview, Colombo, January 2016. In February, Sirisena suspended some pro-Rajapaksa members of the SLFP central committee and appointed his own people as local party organisers; on 8 March, he chose a loyalist, Mahinda Amaraweera, as UPFA general secretary. SLFP leaders threatened to expel members who took part in unauthorised rallies. These moves had little effect; more than 40 SLFP legislators joined a 17 March anti-government rally with Rajapaksa and a

sidelined in parliament and at the party's national level, pro-Rajapaksa forces, including Mahinda and his once-powerful brothers Basil and Gotabaya, have threatened to form a new party, possibly before the local elections.[13] Sirisena's principal strategy to gain control of the party – winning over Rajapaksa-aligned legislators with ministerial posts – has political costs. Bringing in members of the old government has blurred the distinctiveness of his own, elected on a platform of yahapalanaya (good governance).[14]

The alliance of Sirisena, a health minister under Rajapaksa, with the UNP makes him a traitor to many in his party, not just the pro-Rajapaksa camp, and brings its own challenges, including frequent shifts in policies that have undermined public confidence.[15] Tensions have been managed relatively well, but the president and prime minister come from different political traditions and have different styles. Wickremesinghe, widely seen as arrogant and secretive, is criticised for not consulting beyond a narrow circle that often excludes the president.[16] Some analysts and government advisers are more optimistic. A journalist said: "There are so many occasions when they could have fought, but they didn't. They need each other. Rajapaksa is a ghost hanging over everything".[17]

B. *Economic Challenges*

Despite six years of relatively high post-war growth, there are potentially severe economic problems. Rajapaksa-era growth was generated primarily by big infrastructure projects of limited economic value, financed by bonds and commercial loans, principally from China, at relatively high interest rates. This contributed to high debt, some $4 billion of which is due for repayment in 2016, and a ratings downgrade has made raising new funds more expensive.[18] Repaying existing loans and financing long-running trade deficits are depleting foreign currency reserves, leading, in turn, to rupee devaluation and more expensive imports.[19]

joint opposition May Day rally. "MR predicts his arrest", The Island (online), 2 May 2016. The SLFP has not acted against them.

[13] Emergence of new party inevitable – BR", *Island*, 17 February 2016. Sirisena's reluctance to call the bluff of SLFP foes appears to stem from not "want [ing] to be the person who will go down in history as destroying the SLFP and leaving them out of power for ten-fiifteen years". Crisis Group interview, civil society activist, Colombo, February 2016.

[14] The government includes many ex-Rajapaksa ministers, some facing criminal charges or serious allegations of crimes. Others who prominently defended the Rajapaksas domestically and internationally are back in power. After April appointments of additional SLFP members, the government has 92 cabinet, deputy and state ministers. The large number of ministers runs counter to campaign promises to appoint a small cabinet and has damaged the government's "good governance" credentials.

[15] Kishali Pinto Jayawardena, "A run-away government and the president's 'Pirivena' mandate", *Sunday Times*, 20 March 2016.

[16] Crisis Group interviews, politicians, lawyers, business people, Colombo, January 2016. Echoing many, a politician argued, "the PM hasn't changed since [he was prime minister in] 2002-2004. He failed to bring in the president then, and he's excluding the president's people now from important decisions".

[17] A government adviser added: "Ranil and Sirisena have a good relationship – though Sirisena hasn't given up on politics, so he's probably Ranil's greatest rival". Crisis Group interview, Colombo, February 2016.

[18] "Sri Lanka downgraded by one level to 'B+'; outlook negative: Fitch", *Economy Next*, 29 February 2016.

[19] "Taxing times", *The Economist*, 13 February 2016.

Government debt is both cause and effect of high budget deficits. Tax revenue (12 per cent of GDP) is insufficient to fund the large state, over a million public employees (a figure that doubled under Rajapaksa) and the still-expanding military budget. Debt repayments are greater than annual revenue.[20] "Everyone agrees we're going to hit a very bad patch with balance of payments and budget deficit stability", said a prominent business leader. According to another analyst, "the government is broke. It would have been smarter to be straight with the public as soon as they arrived in power, rather than promising new treats …. The longer they wait to level with people, the harder it will be".[21]

Strategies to reduce economic pressure all face problems. The government has not won a popular mandate for the tough measures it seems tempted to impose to restructure the economy: cutting state employees, privatising loss-making national industries, ending agricultural and other subsidies and floating the rupee. Stiff opposition from public sector unions and other interest groups forced it to reverse modest tax increases and subsidy reductions in the budget submitted in November 2015.[22] With hoped-for foreign investment increases yet to materialise, it has turned back to China for help.[23] Reversing a key campaign pledge, it has allowed construction to resume on the controversial Chinese-funded Colombo Port City project, while opening negotiations with Beijing on new investment for a range of Rajapaksa-era developments once called wasteful and vain.[24]

Key to the economic strategy is greater integration into the Indian market, chiefly through a new trade agreement, the Economic and Technology Cooperation Agreement (ETCA). There has been strong resistance, even before signing, from the joint opposition and left wing parties, as well as trade unions, including those representing professionals, who fear local jobs will be lost to Indian professionals and service workers.[25] These fears are aggravated by the longstanding distrust of India's power and agenda in Sri Lanka and echo concerns about "foreign intervention" in support of transitional justice and constitutional reforms.[26]

To gain immediate relief for the balance of payments crunch, the government has negotiated a new $1.5 billion International Monetary Fund (IMF) credit line, agreeing to reduce the budget deficit by increasing taxes, reforming state enterprises and

[20] "SL's external debt service ratio 'heading for danger zone'", The Island (online), 1 May 2015. The military budget has grown yearly since war's end. In 2016, it is Rs. 306 billion ($2.25 billion), compared to Rs. 285 for the military and urban development combined in 2015. "Defence allocation rises, education up four-fold, president's budget slashed", *Sunday Times*, 11 October 2016.

[21] Crisis Group interviews, Colombo, February 2016, December 2015.

[22] Sirisena, known to be sensitive to public opinion and less economically liberal than the UNP, is thought to have supported the reversal. A journalist said, "[he] watered [it] down so many times that the budget that passed bore no resemblance to the original". Crisis Group interview, Colombo, January 2016. On the risks of government policies fuelling greater inequality and potential instability, see Ahilan Kadirgamar "Budget for business: A red flag for the people", *Sunday Times*, 29 November 2015.

[23] "Businesses are holding back their money", said an analyst. "They're staying out because they're not confident of what might happen". Crisis Group interview, Colombo, February 2016.

[24] "Port City project to resume", *Daily Mirror*, 11 April 2016; "SL requests equity swap for Chinese debt", *Daily Mirror*, 11 April 2016. The shifts were announced during the prime minister's April 2016 visit to Beijing.

[25] For the joint opposition statement, see "Reject the ETCFA: Joint opposition", *Colombo Telegraph*, 19 February 2016. The prime minister labelled ETCA critics traitors. "ETCA will be signed, traitors can't sabotage deal with India, says PM", *Sunday Times*, 21 February 2016.

[26] "JVP warns people of UNP's track record starting from CFA", *Island*, 20 February 2016.

easing restrictions on trade.[27] Facing growing pressures from the global economic downturn and downgrades by international credit rating agencies, the government introduced unpopular new taxes in April.[28]

Given the strength of nationalist sentiments and the range of political challenges, donors and financial institutions should be careful not to push economic liberalisation too hard or too dogmatically.[29] Reforms are needed, for both short-term stabilisation and long-term inclusive growth. If they are not seen to be made transparently and their social costs distributed fairly, however, the loss of popular trust could cause the more politically risky reforms on demilitarisation, transitional justice and devolution of power to slip out of reach.

[27] The IMF deal aims to "reduce the overhang of public debt, and ease pressure on the balance of payments" by "rais[ing] the tax-to-GDP ratio to near 15 percent by 2020", "reduc[ing] the fiscal deficit to 3.5 percent of GDP by 2020", "ensur[ing] that the pricing of electricity and fuels is guided by the market," and "reduc[ing] trade protection while pursuing new trade agreement". "IMF reaches staff level agreement with Sri Lanka on three-year $1.5 billion EFF", IMF press release, 28 April 2016.

[28] "Sri Lanka downgraded by one level", op. cit.; "VAT price bomb after May Day", *Sunday Times*, 17 April 2016. Cabinet approved a "mini-budget" on 4 March that increases VAT and Corporate Income Tax and imposes a Capital Gains Tax for the first time since 1987. "Emergency budget: cabinet approves sweeping tax reforms", *Sunday Times*, 6 March 2016; "Former president calls on people to rise up against 'unreasonable tax increases' after May Day", ColomboPage, 28 April 2016.

[29] Lessons should be learned from the 2002-2006 Norwegian-facilitated peace process, when government liberalisation and privatisation generated popular discontent that was channelled by nationalist parties into opposition to negotiations with the Tamil Tigers. Crisis Group Asia Report N°124, *Sri Lanka: The Failure of the Peace Process*, 28 November 2006, p. 9.

III. Limited Progress on Rule-of-law and Corruption

The two 2015 elections gave the government a clear mandate to tackle corruption, end and investigate other abuses of power and pursue reforms to restore rule-of- law. The promises to do so were central to the victory. However, there is growing concern the government may be suffering from traditional Sri Lankan political dysfunctions it campaigned to end: corruption, nepotism, abuse of position and intolerance of criticism.[30]

A. *Institutional Reforms*

The government's greatest achievement remains to have revived democratic politics and ended repression of the media and civil society in the south, the non-Tamil-majority areas, by ceasing to use the tools of repression the Rajapaksas had relied on to silence dissent. With political leaders no longer regularly interfering in cases, courts and police have been more willing to pursue investigations and make rulings that would have been taboo under the former regime.[31] The challenge now is to institutionalise these changes, so freedom of expression and equal enforcement of laws do not depend on the goodwill of those in power. The modest moves so far to institutionalise checks on executive power and abuses by the state have had limited effect and are not yet backed by a coherent policy.

Reestablishment of independent police, human rights and bribery commissions offers hope of better monitoring and prevention of corruption and human rights abuses.[32] The re-invigorated Human Rights Commission quickly made important interventions on police abuse and political detainees but has limited resources and trained staff.[33] Appointment of an energetic investigations director soon after Sirisena's election rejuvenated the Commission to Investigate Allegations of Bribery or Corruption (CIABOC). The National Police Commission is less active and is criticised for slow response to apparent police abuses.[34] The constitutional council has been strongly criticised for not establishing clear procedures for appointing independent commission members and other key officials.[35]

[30] This includes jobs for relatives or friends of the president and ministers and attacks by the prime minister and other senior officials on their civil society and media critics. See, for example, "Sri Lanka trade union alliance calls for resignation of Sirisena brother Hora", *Colombo Telegraph*, 20 April 2016.

[31] The effects were apparent in August 2015. The parliamentary elections saw remarkable reduction in governing-party violence and abuse of state resources. A bold elections commissioner, newly-empowered police and civil society and election monitoring groups ensured laws were largely followed and violators arrested, including prominent politicians.

[32] The Nineteenth Amendment to the constitution (April 2015) reestablished the Constitutional Council, responsible for appointment of to these and other commission and approval of senior judicial and administrative appointments.

[33] "Sri Lanka police guilty of violating international law", Agence France-Presse, 4 December 2015. Crisis Group interviews, commission members, Colombo, January 2016.

[34] "Sri Lanka minister castigates Police Commission, IGP", *Ceylon News*, 1 February 2016; "Ten police officers to be charged over Embilipitiya killing", *Colombo Telegraph*, 25 March 2016.

[35] The new attorney general's appointment in February was particularly controversial, as the council appeared to revise its recommendation to the president, who formally appoints, based on government wishes. An anomaly is that the government in effect dominates the council. Four of ten members are ministers; a fifth, the parliament speaker, is a senior UNP leader; a sixth, the parliamentary opposition leader and TNA head, is close to the government. This is partly an effect of the

The presentation to parliament of the Right to Information Act on 24 March is welcome, after months of delays and growing public doubts.[36] Legislation needed to activate the new Audit Commission is still awaited. Both laws should help hold this and future governments to account; expediting their passage could help restore fading confidence in the coalition's good governance credentials.

Legal reforms to tackle institutionalised impunity for corruption and human rights abuses are missing from the government's agenda and public debate. These include modernising the police (custodial torture remains routine);[37] building the capacity and strengthening the powers of the independent commissions;[38] and establishing an independent prosecutor for cases of major rights violations allegedly perpetrated by officials, as government commissions have repeatedly recommended.[39] While there is some cautious optimism this will change under the new attorney general, broader commitment to structural reform is needed.

B. *Criminal Investigations*

Within these significant institutional constraints, courts and police have acted against at least some powerful interests. In January 2016, hard-line Buddhist monks, including leaders of extremist groups responsible for anti-Muslim and anti-Christian attacks under the Rajapaksas, were arrested for contempt of court.[40] There were also two important convictions of military personnel in 2015: on 6 October, four soldiers were found guilty of the 2010 sexual assault of two Tamil women in Vishvamadu, Kilinochchi; and on 25 June, a soldier was convicted of the 2000 massacre of nine

Nineteenth Amendment, which cut civil society members from seven to three. For important critiques of the reborn council's lack of transparency, see "Constitutional Council as a job agency for the *yahapalana* camp: An interview with Srinath Perera PC", *Island*, 18 February 2016; and Nihal Jayawickrama, "The Constitutional Council & the tale of the emperor's clothes", *Colombo Telegraph*, 21 February 2016.

[36] "Right to Information bill presented in parliament", *Colombo Telegraph*, 24 March 2016. The bill was promised in the 100-day government agenda, approved by cabinet in December, then reviewed by provincial councils. It is generally judged as strong. "Sri Lanka: Analysis of the draft right to Information Act", Centre for Law and Democracy, December 2015.

[37] At the conclusion of a nine-day country visit, the UN special rapporteur on torture, Juan Mendez, announced "torture is a common practice inflicted in the course of both regular criminal and national security-related investigations". "Preliminary observations and recommendations", 7 May 2016.

[38] The UN Development Programme (UNDP) is funding the Human Rights Commission.

[39] The case for a prosecutor's office separate from the attorney general's – which has been plagued by conflicts of interest – has been strengthened by numerous reports that senior state lawyers with the attorney general have prevented prosecution or otherwise blocked key cases. Crisis Group interviews, lawyers, journalists, Colombo, February 2016. See discussion of the Avant Garde and PTA detainees cases below. Scores of police corruption investigations have reportedly been awaiting the attorney general's decision on whether to indict. "Justice delayed in anti-corruption drive in Sri Lanka", Anti-Corruption Front, Report #152, 8 March 2016.

[40] Ven. Gnanasara Thera, general secretary of Bodu Bala Sena (BBS, "Buddhist Power Force") was arrested after disrupting the Homagama magistrates court; Sinhala Ravaya and Ravana Balaya leaders were arrested for participation in mobs that surrounded the court trying to prevent Gnanasara's arrest. Dharisha Bastians, "Out of the shadows", *Daily FT*, 28 January 2016. The police have not investigated the June 2014 anti-Muslim violence in Aluthgama and neighbouring towns, widely seen as instigated by BBS, or the deadly August 2013 shooting of protestors at Weliweriya. The president has not released a report on the 2012 killing of 27 Welikada prison inmates. "Speed up the investigations regarding the killing of Welikada prisoners", Anti-Corruption Front, 1 March 2016. Prosecutions would show accountability is not just for Tamils.

Tamils in Mirusuvil, Jaffna. In their rarity and overcoming of threats faced by witness and victims, they illustrate the institutional obstacles to justice, especially when the accused are police or military.[41]

Magistrates have also directed important investigations into alleged political killings under the old regime.[42] Some have led to arrests of members of military intelligence units.[43] Gotabaya Rajapaksa's possible role is of great public interest. As defence secretary, 2005-2015, he reportedly supervised military intelligence activities closely and had overall command of counter-insurgency against the Liberation Tigers of Tamil Eelam (LTTE).[44] Investigations have gone farther than some expected and promise potentially explosive results, but many doubt the government will break with tradition and indict anyone in a command position.

Investigators are examining criminal allegations against many members of the Rajapaksa family – brothers Basil and Gotabaya, Mahinda's wife Shiranthi and two of his sons – and many key figures in or around their government.[45] Basil Rajapaksa, the ex-economic development minister, was arrested in April 2015 and indicted in December for bribery and misusing public funds to influence the presidential election.[46] Much greater media interest greeted the January 2016 arrest of Mahindaa's second son, Yoshitha, on fraud and money laundering charges.[47] The family mem-

[41] For an overview of the Vishvamadu case that points to the continuing obstacles to justice for sexual assault, particularly when alleged perpetrators are military or police, see "Military rape cases: no judgement on 2001 Mannar gang rape: WAN", *Colombo Telegraph*, 9 October 2015. Given that the Mirusuvil judgment was fifteen years after the murders and a twelve-year trial and only one of many charged was convicted, one should not exaggerate the case's significance. For an argument that it illustrates the systemic limitations of justice, see Niran Anketell, "The Mirusuvil case: why searching reform is urgent and necessary", Groundviews, 2 July 2015.

[42] These include the 2012 murder of rugby player Wasim Thajudeen, allegedly with the involvement of Rajapaksa staff and family members – who deny all charges – and covered up by judicial medical officers and senior police ("A rugby star's body exhumed, a ghost returns to haunt Mahinda Rajapaksa", *Indian Express*, 14 August 2015); the January 2010 disappearance of Prageeth Ekneligoda, a cartoonist working for opposition presidential candidate Sarath Fonseka, reportedly abducted by a military death squad; abductions for ransom by a naval unit during the war's final years (Ranga Jayasuriya, "Gota's (other) war", *Daily Mirror*, 9 August 2015); and murders of TNA parliamentarians J. Pararajasingham and N. Raviraj in 2005-2006. The Colombo magistrate hearing the Raviraj case ruled there was enough evidence for the attorney general to indict the seven suspects. "Raviraj killing: sufficient evidence for indictment", *Daily News*, 18 March 2016.

[43] These include former LTTE members later attached to the pro-government Tamil paramilitary units of the Tamil Makkal Viduthalai Pulikal (TMVP). The TMVP was founded by ex-LTTE commander V. Muralitheran (aka Karuna) and later led by S. Chandrakanthan (aka Pillayan), who served one term as Eastern province chief minister and is currently jailed on suspicion of involvement in Pararajasingham's murder. "Former Chief Minister Pillayan further remanded till April 28", Colombopage, 1 April 2016,

[44] Ranga Jayasuriya, "Gota's (other) war", op. cit. Gotabaya denies involvement in any of the killings. "Gota denies any prior knowledge", *Ceylon Today*, 22 March 2015.

[45] "Sri Lanka's Rajapaksa family: Crashing fall from grace", BBC News, 6 February 2016.

[46] "Basil, former Divineguma DG indicted on criminal charges", *Sunday Times*, 13 December 2015. The indictment has received surprisingly little media coverage. He remains under investigation in numerous other fraud or abuse-of-power cases and was arrested on separate money-laundering charges on 12 May 2016. "Sri Lanka police arrest former president's brother over land deal", Reuters, 12 May 2016. He denies all charges. "Basil petitions SC against his imminent arrest by FCID", *Sunday Times*, 21 February 2016.

[47] "Yoshitha's Waterloo", *The Sunday Observer*, 7 February 2016. The case centres on millions of dollars used to start a TV company, Carlton Sports Network. On 29 February, his naval lieutenant's commission was suspended pending investigation into possible violations of navy regulations. "Yo-

bers implicated have denied all allegations and call the investigations and arrests "political revenge".[48]

How well these investigations go will be an indicator of the government's ability to restore rule-of-law. With hundreds of cases under investigation by different agencies, anti-corruption efforts have stretched resources. Delays have also been caused by confused and overlapping lines of authority, bottlenecks when cases go to the inspector general of police and attorney general, lack of effective coordination or prioritisation and ad hoc, at times amateurish, initiatives.[49]

There are well-grounded doubts about how many skeletons investigators will be willing to dig up. The government includes many Rajapaksa-era ministers, some accused of illegal activities, as well as UNP notables with close ties to the Rajapaksa regime.[50] Lack of indictments in the "Avant Garde" case and revelations about UNP ministers' connections with the company's leadership were early blows to public confidence.[51] Rumours about corrupt deals and kickbacks arranged by current senior officials are numerous, and confidence is low in the ability of existing institutions to prevent them, given their limited powers.[52] The intensity of criticism may partly reflect unrealistic high expectations civil society had. Finally, there is a widespread perception that it serves the purposes of Wickremesinghe and the UNP to prevent political

shitha suspended from Navy", *Daily Mirror*, 1 March 2016. Before being released on bail, he spent six weeks in remand prison with other company executives, receiving regular visits from family members, including his father.

[48] See, for example, "FCID records Namal's statement", *Daily Mirror*, 18 March 2016. On 17 March, the police financial crimes unit questioned Mahinda Rajapaksa's eldest son, Namal, on allegations of bribery in awarding a contract for a major commercial development project in Colombo. "Namal questioned on Krrish transaction", *Daily News*, 18 March 2016.

[49] Crisis Group interviews, lawyers, government advisers, journalists, Colombo, January 2016. Initial failed attempts to regain allegedly stolen assets in Dubai banks were widely criticised for not following required procedures. "Dubai Court refuses to freeze account of VVIP's son", *Sunday Times*, 18 October 2015. Many have questioned lack of prosecutions of ex-executives of government-owned SriLankan Airlines, which was recommended by a board of inquiry appointed by the prime minister in 2015 that said it found evidence of major fraud and mismanagement. "Sri Lanka panel calls for prosecutions, probe into state airline", Bloomberg, 5 April 2015. Other recommendations have also reportedly not been implemented. "Turbulence continues at SriLankan Airlines?", *The Sunday Leader*, 20 December 2015. A presidential commission (PRECIFAC) is also looking into allegations of corruption and mismanagement. "Former CEO of SriLankan Airlines appears before Presidential Commission of Inquiry", *Daily FT*, 29 January 2016.

[50] "Sri Lanka's historic election that voters lost", *Economy Next*, 9 September 2015.

[51] On Avant Garde, see Crisis Group Report, *Sri Lanka Between Elections*, op. cit. During 2015 parliamentary debate, senior UNP ministers defended Avant Garde activities, though police and government lawyers recommended executives be prosecuted, including for illegal weapons transfers and sales and money laundering. Law and Order Minister Tilak Marapana resigned after admitting he had been an Avant Garde lawyer. Longstanding ties were revealed between Justice Minister Wijedasa Rajapakshe and Avant Garde's head. Rajapakshe and Marapana deny wrong-doing. "Sri Lanka's new regime faces major split over arms scandal", *Economy Next*, 5 November 2015; "Fonseka reiterates allegation justice minister is corrupt", *Sunday Times*, 13 December 2015.

[52] Crisis Group interviews, lawyers, politicians, businessmen, Colombo, January 2016. Confidence in the anti-corruption commitment was already badly dented by failure to hold anyone to account for an alleged million-dollar loss to the treasury from insider trading benefiting relatives of the central bank's head, a close friend of the prime minister. The latter's investigation was criticised as not independent. Crisis Group Report, *Sri Lanka Between Elections*, op. cit.

elimination of the Rajapaksas through criminal charges, in order to keep the SLFP divided and weakened.[53]

Nonetheless, there are also reasons to hope. Without the crippling climate of fear that prevailed under the Rajapaksas, a more active, politically diverse civil society is demonstrating the capacity to pressure government and organise better.[54] For deeper improvements in democratic governance and rule-of-law, the citizen good governance movements in the south will need to find common cause with activists working on ethnic and war-related issues in the north and east.

[53] Endorsing a widely held belief the government does not pursue the Rajapaksas as vigorously as it could, a politician said Wickremesinghe "likes to keep the SLFP divided … [and Sirisena] doesn't want to throw his weight around". Crisis Group interview, Colombo, January 2016. See also Dharisha Bastians, "Corruption: The inconvenient truth", *Daily FT*, 12 May 2016.

[54] Civil society organisation important in Sirisena's election reportedly threatened him with protests by January's end unless there was stronger action on corruption. They reportedly postponed these after receiving assurances. Yoshitha Rajapaksa was arrested on 30 January. Crisis Group interview, journalist, February 2016.

IV. Confidence-building Measures in the North and East and Security Sector Reform

The government's rule-of-law and good governance agenda is generally seen as separate from the reconciliation-related confidence building promised Tamil areas of the north and east. In fact, the agendas overlap considerably, notably in need to empower courts and police to properly investigate alleged police and military abuses and in the central role of the Attorney General's Department to facilitate or block needed changes. To succeed, the "southern" governance agenda and "north-eastern" reconciliation agenda must be pursued together.

A. *Land, Detainees and the Disappeared*

Despite progress in the first months of Sirisena's presidency, confidence building appears stalled on the most urgent issues to Tamils in the north and east.

1. Land

Since Sirisena's election, approximately 3,400 acres of military-occupied private land have been returned to owners.[55] Hopes for significant new returns were raised by his December 2015 visit to Jaffna, after which he said all remaining displaced persons would be returned to their land within six months.[56] Nevertheless, promises by the foreign minister in December and prime minister in January that large amounts of land would soon be released have yet to be realised.[57]

Return of land, like the reform program as a whole, has suffered from the involvement of multiple agencies and officials – the resettlement ministry, the defence and armed services ministry, ex-President Chandrika Kumaratunga and her Office of

[55] Figures vary widely on the land, private and state, occupied by the military in the north and east. Resettlement Minister D.M. Swaminathan reportedly said that the military holds 8,000 acres of private land in the north. "Sirisena makes surprise visit to IDP camp in Jaffna", *The Hindu*, 21 December 2015. A 2016 survey of district-level government officials estimated 12,750 acres, including state land, were held by the military in the north alone. "Land occupation in the northern province: a commentary on ground realities and recommendations for reform", Centre for Policy Alternatives, March 2016. The return occurred in five parts, most recently 177 acres in Sampur, Trincomalee on 25 March. On 12 March, Sirisena presented deeds totalling 700 acres, formally released by the army on 29 December 2015, to owners in the northern Jaffna district. "Sri Lankan president hands over deeds of over 700 acres of security forces occupied lands to original land-owners in Jaffna", *Colombo Page*, 14 March 2016. Almost 2,000 acres in Jaffna and Trincomalee districts were released between the January and August 2015 elections. On 5 October, Sirisena formally released another 615 acres in Kilinochchi and Mullaitivu districts. LankaSriNews.com, 5 October 2015.

[56] Sirisena promised the long-term displaced in Jaffna camps land and homes within six months. "Sirisena makes surprise visit to IDP camp in Jaffna", *The Hindu*, 21 December 2015.

[57] On 3 December 2015, the foreign minister told parliament the government had already released 47,000 acres, and the cabinet would soon approve an additional 6,000 acres, but without noting time or locations. "No new secret detention centres in Sri Lanka – Mangala", www.news.lk, 4 December 2015. On 15 January 2016, the prime minister told a Jaffna meeting the military held an additional 4,600 private acres there and a smaller amount elsewhere in the north and east. He promised a report on how to balance the competing uses of this land would be completed within two months. "PTA is now an expired act – PM", Ada Derana, 15 January 2016. The following week the resettlement minister gave a much smaller figure for military-held private land. "Govt keen to get maximum land released from army in north: Minister Swaminathan", *Ceylon News*, 21 January 2016.

National Unity and Reconciliation (ONUR), the prime minister and the president and officials close to him – with no clear process for arbitrating disputes. There appears to be no overall plan or timetable for return of land or compensation policy for land not returned, and no process of consultation or regular information sharing with displaced communities.[58]

Where land has been returned, it has taken repeated efforts by senior officials to overcome military resistance: returns in Jaffna reportedly came only after multiple interventions by Kumaratunga; successful return of the displaced in the eastern town of Sampur has depended on sustained personal attention by the eastern governor and presidential adviser, Austin Fernando.[59] Such efforts are limited and ad hoc. "It's a question of political will. The government could tell the army to leave. They'll grumble and say they sacrificed their lives for the land, but they will move if they are told to", said a researcher, echoing a common opinion.[60]

Much of the land that has been released has not been easily reoccupied, due to lack of resources and its overgrown condition. A journalist said:

> To his credit, Sirisena has gotten 3,000 acres of land released, but it needs a lot of work …. There need to be more resources. The army is being very shabby in giving back the land in very bad shape. They have the means to clean it up first. The land is given very unwillingly. This is not a good attitude, and the PR possibilities are not exploited as a result.[61]

Government plans to address the north's and east's housing shortage by building 65,000 prefabricated houses have come under fire from community leaders, housing experts and the TNA, who cite inflated costs, improper tender procedures and lack of consultation with communities.[62]

2. Detainees under the Prevention of Terrorism Act

The government has repeatedly promised to quickly try or release the 200-250 Tamils held under the Prevention of Terrorism Act (PTA). After hunger strikes and public protests, 39 were released in November, but remain on bail, required to report to police though never charged.[63] The government acknowledges another 117 against

[58] This is evident, for example, in the north west coastal Tamil village of Mullikulam, which the navy took over in 2007. Senior government officials report it is moving the base off private land but will stay on neighbouring state land. Displaced villagers complain they have lost their houses and land and also have not been told why or the navy's plan. Crisis Group interviews, Mullikulam, Colombo, December 2015. See also "Mullikulam: Restrictions on fishing, cultivation, access to the church and school continue", *Groundviews*, 15 March 2013. The military also continues to hold Muslim-owned land in Ampara, Trincomalee and Mannar districts.

[59] Crisis Group interviews, government officials, Colombo, January 2016.

[60] Crisis Group interview, Colombo, December 2015. A government adviser confirmed, "they're not pushing the military. … they've asked the military to do a survey and get back to them. But if the president orders them to do something, and release land, they will. Maithri's style is to not get into confrontations". Crisis Group interview, Colombo, January 2016.

[61] Crisis Group interview, Colombo, January 2016.

[62] Crisis Group interviews, Colombo, May 2016; "Despite protests, Arcelor Mittal seems set to secure a $1 billion housing contract in Sri Lanka", Scroll.in, 28 March 2016.

[63] The latest government statement on the issue to parliament said 218 are detained or on bail under the PTA, which allows virtually endless detention without trial or charge. In addition to 39 released on bail in 2015 without being charged, 21 have been indicted, 117 have pending court cases but have not been indicted, and 41 are detained following conviction. According to the minister in charge,

whom cases are pending.[64] Some of these, a number of whom have been locked up for more than a decade, are reportedly being offered release in exchange for pleading guilty and agreeing to undergo "rehabilitation".[65] Many of those released, as well as ex-combatants who have done a rehabilitation term, reportedly face police and military harassment and community ostracism.[66] Despite additional hunger strikes by detainees, most recently in late February-early March, there have been no releases since November.[67] The Attorney General's Department is widely held responsible for the delays. In January, the government created a special High Court to expedite action on the pending PTA cases.[68]

Many detainee advocates, including TNA leader Sampanthan, call for a general amnesty or presidential pardon like detained Sinhala insurgents received after the JVP uprisings of 1971 and the late 1980s.[69] The TNA and others argue it is contradictory for the government to hold people under the PTA, most of whom are believed to have been tortured, even as it says it intends to repeal that law and replace it with one "in keeping with international best practice". The National Law Commission has drafted a new law, now under justice ministry review.[70] But the government continues to apply the PTA; some four dozen people have been arrested and held under it in 2015-2016, including more than 25 in March-April 2016, after explosives were found in the Jaffna house of an ex-LTTE member.[71]

nearly half those released have been requested to undergo "rehabilitation". Convictions have often relied on confessions that many observers believe were coerced by torture. "We'll repeal PTA, says Sri Lankan government", *The Hindu*, 9 March 2016.

[64] For valuable analyses of the categories of PTA detainees and suspects, including case studies of some of those detained for years without trial, see "PTA detainees: Ignored under 'Yahapalanaya'", Groundviews, 5 September 2015; Ruki Fernando, "Court acquits Tamil mother after 15 years of detention under PTA", Groundviews, 5 October 2015; and Ruki Fernando, "PTA detainees in Sri Lanka: Prospects for justice", Groundviews, 6 November 2015.

[65] "Released detainees refused IDs", *Ceylon Today*, 19 February 2016. Designed for surrendered ex-LTTE combatants, the system has no legal provision to receive those already detained, though it has happened. "Tested 1-year rehab programme will suit PTA detainees", *Sunday Times*, 22 November 2015; Crisis Group interview, lawyer, Colombo, December 2015.

[66] Crisis Group interviews, activists, Northern province, December 2015; "Court acquits Tamil mother", op. cit.

[67] "Tamil detainees end hunger strike after AG's assurance", *Sunday Times*, 13 March 2016. The three-week hunger strike by fourteen Tamil detainees ended on 11 March after Attorney General's Department officials assured them charges would be filed soon in magistrate's court and their cases would be expedited. This is at least the third such hunger strike in a year; previous government promises have failed to materialise.

[68] "PTA detainees about to launch hunger strike", Centre for Human Rights and Research, 23 February 2016. A government adviser confirmed that Sinhala nationalist lawyers in the department were actively blocking releases and implementation of the HRC resolution. Crisis Group interview, Colombo, January 2016. "We'll repeal PTA", op. cit.

[69] R. Sampanthan, parliamentary speech, 8 March 2016; "How can you justify holding persons under the PTA any longer?", *Colombo Telegraph*, 10 March 2016.

[70] Mangala Samaraweera, speech to parliament, 8 March 2016; "The issue of missing persons & PTA", *Colombo Telegraph*, 11 March 2016.

[71] Some of those arrested reportedly had worked with military intelligence. Crisis Group interviews, journalists, lawyers, Colombo, April 2016; Dharisha Bastians, "A crisis of the 'deep state'", *Daily FT*, 5 May 2016.

3. The disappeared

The past year has seen no concrete progress in resolving thousands of enforced disappearance cases, though many processes to address their legacy appear underway. A presidential commission of inquiry has yet to locate or clarify the fate of a single missing person out of more than 20,000 cases presented to it – virtually all Tamil and most taken on suspicion of LTTE involvement.[72] Investigations into a small portion of these are said to be underway, but no one has been arrested. Families of disappeared relatives report that the police and military generally continue to see them as enemies. Given that credible investigations will inevitably implicate serving police and military and their institutions as a whole, it will require strong, sustained political will for any truth and justice to be found.

The government has been considerably more open to international input on disappearances than its predecessors and has begun developing polices that promise to address some of the issues.[73] Frustration at the slow pace, however, is growing among the families and those who work with them.

- The government has not announced even a broad outline of the **office on missing persons** promised in September, though it is expected to present a draft law in May or June. It is known to have received input from International Committee of the Red Cross (ICRC) experts but has not consulted with relatives of the disappeared.[74]
- Cabinet approved in September **"certificates of absence"** to allow families to receive legal rights normally available only after a relative is declared dead, but the justice ministry has not sent the bill needed for issuance to parliament.
- Based in part on a 2015 ICRC needs assessment, the government announced it is preparing **"interim relief"** for families of the missing, who face often devastating psychological and economic problems from loss of their relatives.[75]
- The government signed the **UN Disappearances Convention** in December, has promised to ratify it and says it is drafting a requisite law. Effective implementation will be challenging, however, given the 2006 Supreme Court Singarasa

[72] The Paranagama Commission, named for its chairman and originally appointed by Rajapaksa in 2013, has been renewed three times by Sirisena. Its bias and procedural flaws have been widely documented, and its continuation is widely seen as an insult by families of the disappeared. Crisis Group Report, *Sri Lanka Between Elections*, op. cit. In its August 2015 interim report, made public in February 2016, the commission, despite clear contrary evidence, declared the LTTE responsible for the vast majority of disappearances, a finding possible only by pre-selecting the cases. "Interim report on the first mandate of the presidential commission of inquiry into complaints of abductions and disappearances", August 2015, pp. 22-23.

[73] Following its November 2015 visit to Sri Lanka, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) noted the "almost complete lack of judicial accountability and decisive and sustained efforts to secure the truth about the disappeared – including the determination of their fate or whereabouts – as well as the absence of a comprehensive reparation program and social, psychological and economic support for the relatives". "Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015)".

[74] Crisis Group interviews, diplomats, lawyers, Colombo, May 2016.

[75] In a statement to parliament, the foreign minister said his ministry was studying the ICRC assessment and pledged to "expedite action to explore what interim relief can be provided to the families of the missing". Mangala Samaraweera, 8 March 2016. "The issue of missing persons & PTA", *Colombo Telegraph*, 11 March 2016.

judgment that prevents individual appeals to the UN body that reviews state compliance.[76]

B. *Whither Security Sector Reform?*

The difficulty the government has had in following through as promised on the above confidence-building measures is linked directly to civilian leadership failure to assert authority over the military. Going beyond an ad hoc approach on land, detainees and the disappeared requires a coherent, politically savvy policy for comprehensive security sector reform, including the police and intelligence services. There is no sign such a policy is even under development.[77]

While the military's physical presence in the north and east is less overt, and it interferes less directly and aggressively in civilian affairs than under the Rajapaksas, there has been no fundamental change in its role there:

- army shops, hotels and farms continue quite visibly to operate, despite the damage to the local economy and the anger it generates among local Tamil farmers and business people;[78]
- military and police surveillance, while less aggressive, remains active and often intimidating. A human rights activist reported being questioned about why he was "working against the government" after release of a report;[79] and
- there continue to be credible reports of torture and sexual abuse by "counter-terrorist" police and military intelligence units against Tamils returning to the country who are suspected of past LTTE involvement.[80] While there is no evidence these have civilian leaders' sanction, they raise fears that at least part of the national security apparatus may be acting independently.[81]

In this context, the continued increase in the military budget in 2016, which otherwise might be justified as a way to win acceptance for reforms, is worrying.

Except for statements made to or in the UNHRC context, there is no evidence the senior political leadership is sending clear messages to military leaders and the police to end abuses and begin planning for major restructuring. Diplomats and UN officials report little knowledge in the military about transitional justice and no sus-

[76] Kishali Pinto Jayawardena, "Sri Lanka's deficit of justice cannot be corrected by laws alone", *Sunday Times*, 13 December 2015.
[77] Crisis Group interviews, government and UN officials, January and February 2016.
[78] Crisis Group interviews, residents, Vavuniya and Mannar, December 2015.
[79] Crisis Group interview, rights activist, Northern province, December 2015. Another said, "in my village [Jaffna], the only difference is they used to patrol in camouflage; now they use civilian clothes, in groups of five to seven". Crisis Group interview, Colombo, February 2016.
[80] Recent reports have documented additional cases of abuse under the current government, which denied the allegations but promised to investigate if evidence could be provided. See "Silenced: Survivors of Sexual Torture in 2015", International Truth and Justice Project, January 2016; and "Sri Lanka: Update on Torture since 2009", Freedom from Torture, 5 May 2016.
[81] Following the May 2016 visit of the UN Special Rapporteur on Torture, who found evidence of continued torture of detainees, the government should request his help to devise a concrete plan for investigating torture allegations and dismantling the structures that enable it. "Preliminary observations and recommendations", op. cit. Non-custodial sexual assault and exploitation of women by men in positions of power in the north and east is at epidemic levels and demands separate and urgent government attention. Crisis Group interviews, lawyers and activists, Northern province, December 2015.

tained attempt by senior civilians to win its support for institutional reform and accountability.[82] Instead, the government appears focused on reassuring the military its interests will be respected. Reports of a secret meeting between Sirisena and army commanders in charge of the civil war's final phase have fed widespread worries they received assurances of non-prosecution.[83] "The government is handling the army with kid gloves", explained a journalist. "Yes, they are scared of them, but they're also worried they'll alienate voters if they bring the army to account".[84] Said a politically connected lawyer, "if Sirisena is not able to tell the SLFP to piss off, how do you expect him to handle the military"?[85]

The failure of the president, prime minister and other senior officials to insist the military comply with policy on land, detainees and first steps to accountability risks a dangerous precedent that will be harder to reverse the more time passes. It will make it difficult to achieve even the modest accountability for wartime abuses the government plans and to implement transitional justice mechanisms.

[82] Crisis Group interviews, Colombo, January, February 2016.
[83] "Divisions within divisions in the UPFA and SLFP", *Sunday Times*, 29 November 2016; Crisis Group interview, government adviser, February 2016.
[84] "The army has a strong image. The war victory has become a source of danger …. They're feeding the beast, not taming it. They're pampering the army. Military budget is going up, they're even recruiting". Crisis Group interview, senior journalist, Colombo, January 2016.
[85] Crisis Group interviews, Colombo, January 2016.

V. A New Constitution and "the National Question"

Central to the government's reform plans is the promised new constitution.[86] The government can in theory command the two-thirds majority needed to complete the unfinished constitutional reforms from Sirisena's original 100-day agenda – including a return to a fully parliamentary model – and a political settlement to the ethnic conflict involving greater devolution. Experience with constitutional reform suggests it could be hard to achieve, however, especially with so many other difficult issues on the agenda.

Recognising the narrow window for deep reform and its own potentially short life, the UNP-SLFP coalition has transformed parliament into a "constitutional assembly" that by end-2016 and possibly sooner is to draft and approve a new constitution, which would then be put to a referendum.[87] The government hopes to complete this constitution before the politically divisive, UNHRC-mandated truth and accountability processes begin in earnest ahead of the March 2017 UNHRC session. This fast-track approach, however, particularly with respect to devolution, "runs up against the fact of deeply entrenched [Sinhala] nationalism built up over years, which is unlikely to shift quickly".[88]

The attempt to inaugurate the constitutional assembly on 9 January, Sirisena's first anniversary as president, was delayed by objections from the pro-Rajapaksa joint opposition. A compromise resolution passed two months later omitted the aims of the new constitution, including "resolution of the national issue" (ie, Tamil demands for autonomy), and removed reference to a "new" constitution. The changes could complicate the plan to develop a reform package to be approved as a whole by parliament and in a referendum. Sinhala nationalist politicians believe piecemeal amendments increase their prospect to defeat greater devolution to provinces and other reconciliation-related changes. The government-proposed drafting process remained largely unchanged, however, and backers argue parliamentary consensus was worth the delay.[89]

[86] Proponents of constitutional reform argue that the structure of the 1978 constitution, around a powerful executive president, must be changed, not merely amended. See Rohan Edrisinha, "The need for a new constitution for Sri Lanka", in Asanga Welikala (ed), *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo, 2016).

[87] Drafting will be done by the constitutional assembly, working through a steering committee of all parties and subcommittees for particular issues, which proponents say ensures greater transparency and participation. Approval remains the parliament's task. Jayampathy Wickramaratne, "The new constitutional edifice", *Colombo Telegraph*, 3 March 2016. Parliament will also consider the findings of the Public Representations Committee (PRC), which received hundreds of reform proposals from parties and civil society and held district-level consultations countrywide in January-February. It is expected to submit its findings to parliament in May. Crisis Group email interview, PRC member, May 2016.

[88] Crisis Group interview, researcher, Colombo, January 2016.

[89] Crisis Group interviews, lawyers, Colombo, April 2016.

A. *The Devolution Conundrum*

Officials cite three main goals for the constitution: to abolish the executive presidency, adopt a new electoral system and settle the ethnic question by strengthening provincial devolution.[90] On the first two, there is some degree of consensus, though detailed agreement may be difficult.[91]

On devolution, there is little agreement – and over a half-century of failed attempts and broken promises.[92] The government has not presented a draft or campaigned for a particular set of proposals, unlike the last attempt to write a new constitution, in the late 1990s.[93] The aim appears to be to work out an elite consensus between president, prime minister and TNA leaders and with ex-President Kumaratunga's involvement.[94] The key challenge will be to bring along the parties, particularly Sirisena's fractured SLFP, but also many in the UNP, in an increasingly polarised political context.[95] It will be hard to persuade the SLFP and UNP on reforms that substantially satisfy longstanding Tamil demands for meaningful self-rule in the areas of the north and east where they have for centuries been the majority. In any attempt to build on or exceed the ambiguous, limited provincial-level devolution in the Thirteenth Amendment, controversy is likely to centre on whether the new constitution:

- continues to designate the state as unitary, explicitly shifts to a federal system or ignores labels while strengthening devolved powers. Both TNA and Tamil critics seek a federal system. "It will be difficult for us to accept a deal with unitary status", said TNA leader R. Sampanthan.[96] Sinhala nationalists view preserving unitary status as essential to preserving the country's unity;

[90] Other major changes are possible, including a bill of rights and strengthening of constitutional council independence. Crisis Group interviews, government lawyers, Colombo, January 2016.

[91] Abolishing the executive presidency and creating a new electoral system to replace the proportional and preferential system were part of Sirisena's 100-day agenda. Attempts to achieve both, however, were stymied: the executive presidency was trimmed, not eliminated, and no consensus on a new electoral system through the Twentieth Amendment was found. Crisis Group Report, *Sri Lanka Between Elections*, op. cit., and *The Nineteenth Amendment*, op. cit. Quiet negotiations on electoral reform are said to have made progress on a mixed system of first-past-the-post and proportional representation to balance interests of the major parties and smaller, regionally dispersed parties like the JVP, which oppose any reduction in proportionality. Such a compromise, however, could generate opposition from parliamentarians whose constituencies would be eliminated. Crisis Group interviews, constitutional lawyers, April 2016.

[92] 2016 marks the 60th anniversary of the SLFP's successful electoral campaign on a "Sinhala Only" platform and the concerted turn to Sinhala nationalist politics by the two main parties, which has blocked numerous attempts to devolve power to Tamil-majority areas. Crisis Group Report, *Sri Lanka: Sinhala Nationalism*, op. cit., pp. 4-7.

[93] On the Kumaratunga government's devolution proposals defeated in parliament in August 2000, see ibid, p. 9; Rohan Edrisinha, Mario Gomez, V.T. Thamilmaran, Asanga Welikala (eds.), *Power-Sharing in Sri Lanka: Constitutional and Political Documents, 1926-2008* (Colombo, 2008).

[94] Crisis Group interviews, government advisers, January 2016. Kumaratunga was important to Sirisena's election. The TNA respects her pro-devolution efforts as president in the 1990s. She and advisers associated with ONUR began preliminary talks with the TNA in 2015. Crisis Group interview, TNA officials, December 2015. TNA-Muslim leaders agreement will also be essential.

[95] "Ranil has everything in his head, but the UNP … doesn't know what it wants on the constitution or transitional justice". Crisis Group interview, political analyst, Colombo, January 2016.

[96] Crisis Group interview, Colombo, December 2015.

- allows merger of the northern and eastern provinces, a longstanding demand of Tamil nationalists, who see these as the traditional Tamil homeland. Merger is anathema to many Sinhalese and opposed by many Muslims, who are some 40 per cent of the eastern province; and
- maintains the clause obliging the state to "protect and foster" Buddhism and its "foremost place". Many Sinhalese strongly resist a secular state.

Agreement is unlikely on north-east merger or removing Buddhism's privileged status. What seems more likely is agreement to strengthen devolution under the provincial system.[97] While the government remains publicly committed to the unitary state, consensus might be possible to remove the term "unitary" without mentioning federalism, or to maintain the unitary label but defined in a way courts would be less able to interpret as limiting devolution.[98]

Even these short-of-federalism reforms could be difficult unless the government makes a strong case for their need. Sirisena, Wickremesinghe and key ministers have clearly backed reconciliation and resolution of the ethnic conflict but have done little to build a constituency on devolution. When accused by Mahinda Rajapaksa and others of planning to adopt federalism and undermine Buddhism's status, leaders defensively and quickly offered assurances.[99]

To succeed in parliament and a referendum, any attempt to address "the national question" through greater devolution will require a major campaign to sell it to all communities, especially Sinhalese. A lawyer close to the process argued:

> Maithri and Ranil need to get together and explain to the people why certain changes are important and to dispel myths about [the] unitary state and federalism …. This doesn't mean they have to put out their specific proposals now, but … there's a huge media battle that has to be won.[100]

[97] Reforms could include clarifying powers of provinces and the centre by eliminating "concurrent" or shared ones, strengthening provinces' financial powers, reducing governors' powers and other ways the centre can take back provincial powers and arranging for provinces to enjoy land and police powers granted by the Thirteenth Amendment but not implemented. Changes to the 1987 Provincial Councils Act would also be important. Crisis Group interviews, lawyers, analysts, April 2016.

[98] Sirisena endorsed greater "devolution of power" before provincial chief ministers, but "within a united, unitary state". "Opposition to devolution of power is a symptom of an underdeveloped society: President", *News First*, 21 March 2016. Crisis Group interviews, constitutional lawyers, January, April 2016. Some lawyers say the unitary label "could still be compatible with meaningful devolution, as [it] … can be defined and circumscribed by other clauses". But "keeping 'unitary' could cause trouble when the Supreme Court interprets it … they will say it was left in [to] limit devolution". Crisis Group interview, political analyst, Colombo, January 2016.

[99] For statements from senior UNFGG ministers, see K.S. Ratnavel, "Is constitution-making a closed-end process for Tamils?", *Daily Mirror*, 21 January 2016. Ratnavel criticised the chairman of the public representations committee for claiming "it is only the Tamil extremists who seek to challenge the unitary state". Faced earlier with UPFA-Rajapaksa parliamentary campaign attacks on the alleged risks of federalism and separatism, the UNP reiterated its commitment to a unitary state and rejection of federalism and proposed a village-level devolution. The UNFGG parliamentary election manifesto endorsed "maximum possible devolution" within a unitary state. "Summary of UNFGG, UPFA, JVP & TNA manifestos: Parliamentary elections 2015", *Colombo Telegraph*, 13 August 2015.

[100] Crisis Group interview, Colombo, January 2016.

B. *Tamil Perspectives*

One risk is that the government's quiet, cautious and limited approach to devolution may not produce a strong enough deal to win broad Tamil support. This would undermine the TNA leadership, which has gone out of its way to cooperate with the government. Sampanthan and his de facto deputy, M.A. Sumanthiran, repeatedly emphasise the party's rejection of separatism and commitment to a "united and undivided" Sri Lanka. They believe the present moment is a rare opportunity for a political solution and are being careful not to endanger it with rhetoric or demands that would play into the hands of Sinhala nationalists.[101] Their approach is strongly criticised by many Tamil groups, especially in light of slow progress on demilitarisation, land returns and other promised improvements. The TNA was challenged in August's parliamentary elections by smaller, more nationalist Tamil parties. It defeated them handsomely but in part by adopting Tamil nationalist calls for a federal power-sharing arrangement based on recognition of the Tamil people's right to self-determination.[102]

The challenge had unofficial support from the TNA's controversial northern chief minister, C.V. Wigneswaran, who in December 2015 helped form the cross-party Tamil People's Council (TPC). It draws support from the many engaged Tamils who question TNA leaders' commitment to Tamil nationalist principles and argue the party "has reconciled itself with the centralised state and seeks for devolution within it. Their federalism has nothing to do with self-determination".[103]

In a detailed proposal going beyond what TNA leaders advocate, the TPC called for a "pluri-national" system recognising Tamils' right to self-determination in a merged north east, which would be one "state" in a larger Sri Lankan "federation". It argued that "prior to the constitution-making process" an internationally-underwritten "treaty" between the Sinhala and Tamil peoples must "recognise the Tamil People's right to self-determination, its sovereignty and constituent power and its traditional homeland in the areas of historical habitation of the Tamil People".[104] Supporters say this is needed to balance the majoritarian bias as a three-quarters Sinhalese parliament drafts a constitution.[105]

Virtually all non-Tamil parties sharply rejected a resolution broadly similar to the TPC plan the Wigneswaran-led northern council adopted on 23 April, and there is

[101] "We see a shift in attitude from parties who used to be radical", explained TNA leader Sampanthan, "and a feeling in the country that the conflict must be ended. We need to engage and try to persuade them". Crisis Group interview, Colombo, December 2015. Some Tamil activists have criticised him and Sumanthiran for, inter alia, attending national independence day celebrations in 2015-2016 and acknowledging injustices to Muslims by Tamils and the LTTE.

[102] The Tamil National People Front (TNPF), which criticised the TNA leadership as too willing to accept the government's limited framework for devolution and justice, won no seats. Despite a strong campaign against him, Colombo-based lawyer Sumanthiran, previously a parliamentarian from the appointed national list, was elected to a seat in Jaffna.

[103] Crisis Group email interview, TPC member, April 2016; interviews, Tamil activists and intellectuals, Northern province, December 2015. A representative TNA critique is K.S. Ratnavel, "Is constitution-making a closed-end process for Tamils?", *Daily Mirror*, 21 January 2016. "Wigneswaran has become spokesperson for people's loss of hope, given nothing tangible has changed in the north and east", a Sinhala journalist said. Crisis Group interview, February 2016.

[104] "Report of the Sub-Committee on Finding a Political Solution to the National Question", Tamil People's Council, January 2016.

[105] For this and other Tamil nationalist arguments on constitutional reform, see "Proposal for new constitution: Tamil civil society forum's submission", *Colombo Telegraph*, 2 March 2016.

no chance the government will agree to constitutionally recognise the Tamil nation's right to self-determination.[106] By insisting on merger and Tamil self-determination while doing little to win over Muslims as equal partners, Wigneswaran and the TPC have also weakened a key potential ally.[107] Still, if the president and prime minister are serious about a just and lasting deal that does not weaken the TNA, they need to acknowledge the structural imbalance of power that concerns Tamil nationalist critics and also affects Muslims.[108] At a minimum, this requires making a clear public case for devolution as essential to institutionalise Tamils' and Muslims' legitimate rights to help control and be protected against the actions of the state.

[106] "Federalism: A far-fetched solution", *Sunday Observer*, 1 May 2016.

[107] Many Muslims criticise Wigneswaran and Tamil groups aligned with him for not consulting with – or according equal status to – Muslims when formulating their proposals and for showing little concern for Muslim interests in the north, in marked contrast to cooperation between SLMC and TNA on the eastern provincial council. Crisis Group interviews, Colombo, May 2016.

[108] "If the TNA is unable to get a reasonable settlement", argued a constitutional lawyer advising the government, "the Wigneswaran group will grow stronger". At the same time, "if Sampanthan goes to the north and says he wants this deal, he'll get 85 per cent of his people". Crisis Group interview, January 2016.

VI. Transitional Justice and the UNHRC Agenda

The government's decision in September to endorse an ambitious transitional justice program put the country in uncharted, potentially transformative territory, but progress has been slow since the Human Rights Council ratified its plan on 1 October. The government has missed deadlines, sent mixed messages and not taken ownership of the process or articulated a clear strategy. As doubts grow domestically and internationally about its political will, there is an urgent need for a coherent plan, backed by strong public messaging and political leadership.

A. *The Human Rights Council Agenda*

After a six-month deferral the new government requested for time to develop policies, the long-awaited OHCHR Investigation on Sri Lanka (OISL) report was presented to the council on 16 September 2015.[109] It found a "horrific level of violations and abuses" between 2002 and 2011 and presented evidence of violations by government forces, pro-government paramilitaries and the separatist LTTE "that are among the most serious crimes of concern to the international community as a whole", including indiscriminate shelling, extrajudicial killings, enforced disappearances, torture and sexual violence, recruitment of children and denial of humanitarian assistance.[110] It confirmed victim and survivor accounts of systematic war crimes committed during the final months and immediate aftermath of the civil war. Arguing that the Sri Lankan judicial system was too politically compromised and had failed too often to prosecute serious human rights violations, it called for a "hybrid special court, integrating international judges, prosecutors, lawyers and investigators", and a range of institutional and legal reforms.

The resolution on "Promoting Reconciliation, Accountability and Human Rights in Sri Lanka", which the council adopted by consensus, built on the report and endorsed an ambitious reform package Sri Lanka's foreign minister announced at the start of the session. Its key commitments contain most elements essential for a credible domestic process of accountability:

- four new transitional justice mechanisms: a truth commission, reparations and missing persons offices and, most controversially, an independent special court for war crimes with "participation of Commonwealth and other foreign judges, defence lawyers, and authorised prosecutors and investigators";[111]
- important law reforms, including legal changes needed to prosecute war crimes, crimes against humanity and enforced disappearances, repeal of the PTA and a strengthened victims and witness protection authority;[112]
- a political settlement to the ethnic conflict through constitutional measures;

[109] Crisis Group Report, *Sri Lanka Between Elections*, op. cit., pp. 17-18.
[110] "Zeid urges creation of hybrid special court in Sri Lanka as UN report confirms patterns of grave violations", OHCHR, 16 September 2015; "Report of the OHCHR Investigation on Sri Lanka (OISL)", A/HRC/30/CRP.2, 16 September 2015.
[111] Resolution, operative paragraph 6. While not explicitly a "hybrid court" and without UN involvement as with previous hybrids, foreign involvement was hailed as a potentially landmark concession.
[112] Parliament will need to approve the legal changes by a majority vote.

- reports by the high commissioner to the council in June 2016 and March 2017 and a role for UN special procedure mandate holders in assisting the government to meet its commitments; and
- public consultation with victims and all stakeholders.

Adoption of the resolution with government co-sponsorship is potentially historic. For the first time, Sri Lanka committed to extensive reforms to end impunity for human rights violations and address the causes of conflict and legacy of violence that haunts all communities. However, the resolution is general, with few details on how the new institutions and reforms will be pursued.

The government has subsequently received multiple visits from OHCHR experts, including the high commissioner in February, and issued a standing invitation to special mandate holders, notably the UN's Special Rapporteur for Truth, Justice, Reparation and Guarantees of Non-Recurrence.[113] Even before the September council session, the government had begun formulating plans for the four transitional justice mechanisms, but none have yet been established, and little has been published about the plans. There has been almost no public discussion of the reparations office, "commission on truth, justice reconciliation and non-recurrence" or "compassionate council" of religious leaders that the government said would work with it. Despite extensive debate about the special court and the foreign participation the government will allow, no plans are public; nor has the government publicised the OISL report that justifies the measures.[114]

The assumption of many in and out of government had been that detailed plans would be presented to the HRC prior to its June 2016 session. With the exception of the missing persons office, the government appears to be holding back its own proposals until it receives input from the national consultation process, which will involve countrywide district- and provincial-level discussions, including with victims groups, on the design of transitional justice mechanisms. Managed by an eleven-member task force of civil society activists, the process was formally launched in February, but actual consultations have yet to begin.[115] The process has suffered from insufficient resources, publicity and backing from the government beyond the foreign ministry.[116]

Delegating the consultations to an independent civil society group has advantages but has also strengthened doubts about government willingness to take ownership of the transitional justice process. It is uncertain how the consultation results will relate to the government's plans for the mechanisms, which are believed to be well advanced. The government has promised to consider the task force report and make

[113] The Special Rapporteur for Truth, Justice, Reparation and Guarantees of Non-Recurrence visited for the second time in January. See "Observations by the Special Rapporteur on the conclusion of his second advisory visit to Sri Lanka …", 10 February 2016.

[114] OHCHR has already translated the Executive Summary into Tamil and Sinhala and is completing translations of the full 250-page report in both languages.

[115] "Task Force for reconciliation mechanism", *Sunday Observer*, 14 February 2016. The task force, formally under the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), has begun receiving online submissions. See www.scrm.gov.lk/#!consultations/cjg9.

[116] Until days before its launch, no terms of reference had been given to task force members, who had been meeting informally for a month. The task force is complemented by an "experts committee" and a "representative committee", composed of well-known Tamil, Sinhala and Muslim civil society activists, and district-level "zonal committees". Crisis Group interviews, Colombo, May 2016.

it public, but given the differences among activists and in the public, there is no guarantee the task force will generate a clear consensus.

B. *The Special Court, Foreign Judges and Uncertain Political Will*

What public debate there has been about implementation of the HRC resolution has centred on the special court. Government agreement to "participation of Commonwealth and other foreign judges" surprised many.[117] The clause was central to the TNA's endorsement and the cautious welcome from other Tamil groups, most of which had been calling for a UN-run international or hybrid tribunal.[118] Given the decades-long failures of government commissions and judicial processes, international participation is essential to credibility of any process. Yet, the military is widely admired among Sinhalese as successful defenders of the nation against LTTE terrorists. Prosecution of military personnel, particularly with foreign legal involvement, was always sure to be the most controversial aspect of transitional justice for most Sinhalese, so there is doubt about government willingness to pursue this aspect of the Geneva commitments. Sinhala nationalist groups attack any international involvement as a dangerous challenge to sovereignty; many dismiss the need for any serious investigation or trials.

Sirisena and his government have sent mixed messages, depending on the audience.[119] Within days of the resolution, senior officials denied they had agreed to a "hybrid court".[120] Responding to criticisms and protests from Sinhala nationalist politicians and commentators, they cited various supposed legal obstacles to or limitations on foreign judicial involvement.[121] Rather than explaining the OISL report, the

[117] It was the product of intense international lobbying by domestic and international NGOs, the TNA and other Tamil groups, and skilful negotiation by UK and EU diplomats. Crisis Group interviews, politicians, activists, diplomats, Colombo and Geneva, January and February 2016.

[118] "It is 'incumbent on Sri Lankan government to implement resolution' says TNA", *Tamil Guardian*, 3 October 2015. The Global Tamil Forum (GTF) said, "while welcoming the government's commitments, we note that implementing the resolution and the recommendations of the OISL report of the High Commissioner will be the real test of progress …". "Global Tamil Forum cautiously welcomes the draft resolution tabled at the UNHRC", 26 September 2015. Most Tamil diaspora and some domestic groups wanted an international criminal tribunal, though this was not politically realistic, or a UN-controlled hybrid mechanism. Other activists in Sri Lanka sought a strong hybrid process, maximum international involvement and major legal reform. Crisis Group interviews, September 2015.

[119] In his 4 February independence day speech, Sirisena said the HRC resolution would be fully implemented. Six weeks later, he reiterated statements that foreign judges would play no role in government investigations or trials. "Maithripala Sirisena rules out foreign judges in Sri Lanka war crimes probe", PTI, 19 March 2016. On 9 March, Minister Mahinda Samaraweera, thought to be close to Sirisena, reportedly said foreign judges in the special court would be unconstitutional. "Sirisena isolating Rajapaksa, also brings UPFA under his fold", *Sunday Times*, 13 March 2016. At the same time, in a 25 February speech to the U.S. Institute of Peace, Samaraweera promised the resolution's "successful" implementation and announced the government was "willing to consider the participation of international actors. … They could be judges, they could be forensic experts, investigators, prosecutors, all these options are being looked at". "Sri Lanka could accept international actors in war crimes probe", Reuters, 25 February 2016.

[120] "Sri Lanka rights abuse probe to be 'completely domestic': Sirisena", PTI, 3 October 2015.

[121] The prime minister maintains the constitution bars foreign judges on Sri Lanka trials but could allow them as advisers. "Foreign judges can't be part of Lankan rights abuse probe: Ranil Wickremesinghe", PTI, 27 September 2015; "Constitution does not permit foreign judges to sit in judgment – Ranil", Island, 2 February 2016. For a detailed argument for how foreign judges could sit on a special court, see Rhadeena de Alwis and Niran Anketell, "A Hybrid Court: Ideas for Sri Lanka", South Asian Centre for Legal Studies, pp. 39-41.

council resolution or why the truth and accountability process is needed, the president and senior ministers present the resolution as a victory, a means of defending the nation and its war heroes against the worse international treatment they allegedly would have received were Rajapaksa still in power.[122]

Sirisena has rejected foreign judges, cast doubt on a foreign-experts role and claimed the military was never accused of war crimes.[123] Following international outcry, the prime minister said the government would honour its commitment to include foreign judges but did not say what their role would be.[124] Statements rejecting foreign involvement appear designed at least in part to protect the government from nationalist accusations of capitulating to foreign pressure, particularly in the context of Sirisena's struggle for control of the SLFP against Rajapaksa and his allies.[125] The government has also been careful to reassure the military its interests and reputation will be protected.[126]

Any Sri Lankan government would struggle with a dilemma that has haunted reconciliation since 2009: the brutal and, according to the OISL and previous UN reports, illegal way in which the war ended was too extreme, and the crimes and suffering too great for Tamils, human rights groups and portions of the international community to ignore. The enormity of the crimes also makes it difficult for the military and most Sinhalese to acknowledge or accept responsibility for them.[127] The government's approach to this dilemma may be indicated by its sending to parliament the report of international lawyers, headed by Desmond de Silva, who were hired to advise the Paranagama missing persons commission.[128] The report found

[122] "Achieved a great victory at the UNHRC, as govt's approach won praise –President", News.lk, 3 October 2015. Sirisena asserted in March 2016 that it is a government victory that no one in Sri Lanka now even knows when the HRC meets, as the government "is working confidently with the international community while protecting the dignity of the war heroes and the motherland". "The word electric chair removed from our dictionaries – President", PMD News, 28 March 2016. An exception was Foreign Minister Samaraweera's 23 October 2015 speech to parliament. "A four-pillared strategy of truth, justice, reparations and non-recurrence", Sri Lanka Brief, 24 October 2015.

[123] Sirisena said this in interviews. Azzam Ameen, "Sri Lanka president wants 'internal' war crimes court", BBC Sinhala, 21 January 2016; T. Ramakrishnan, "Firmly in charge", Frontline, 5 February 2016; "Sri Lankan president: No allegations of war crimes", Al Jazeera, 29 January 2016. He said it would be determined later "whether [the court] is required". Frontline, op. cit.

[124] "Sri Lanka's disappeared "probably dead" – Prime Minister", Channel 4 News, 26 January 2016, at www.youtube.com/watch?v=pKkhLlBRzyc&feature=youtu.be.

[125] With "resurgence of the Rajapaksa counter-revolution, he's feeling the heat and getting pressure from his local supporters … so he feels it's important to consolidate his power in the party – in the short term vis-a-vis Mahinda, in the longer term vis-à-vis the UNP. … As a result, he is courting the same constituency that Rajapaksa has cultivated". Crisis Group interview, activist/researcher, February 2016.

[126] "Hands off SL war heroes: Champika", *Daily Mirror*, 20 March 2016.

[127] Tamils have also struggled to accept the LTTE's central role in the 2009 catastrophe – most criminally by holding tens of thousands of civilians in the war zone against their will. For details, see Crisis Group Asia Report, N°191, *War Crimes in Sri Lanka*, 17 May 2010, pp. 24-27.

[128] The commission, appointed by Mahinda Rajapaksa in August 2013, is headed by retired High Court Judge Maxwell Paranagama. Sirisena has continued to extend the mandate, despite criticisms by victims and human rights groups and OHCHR. In July 2014, then President Rajapaksa expanded the mandate to include allegations of violations of international humanitarian law and appointed international lawyers, headed by the British-Sri Lankan barrister Desmond de Silva, to assist the commission in this line of inquiry. The decision to retain the international legal team, despite calls to end the involvement, has further undermined trust among families of victims and their

some allegations of war crimes credible.[129] Yet, it also argued that according to international humanitarian law, the LTTE, not the military, was "principally responsible" for civilian deaths from shelling and bombing of "no-fire zones" with tightly concentrated civilians, as it refused to allow Tamil civilians to leave.[130]

The report allows the government to appear to respond to concerns of all constituencies. Ministers argued the findings of possible war crimes came from international experts appointed by Rajapaksa, an attempt to neutralise Rajapaksa's opposition to international involvement in the HRC-mandated inquiry and trials.[131] The government can also use the report to reassure the military that only a small number of cases will be prosecuted, and the overall campaign against the LTTE will be not questioned.[132] While politically clever, this approach neither prepares Sinhalese for a full, objective appraisal of crimes committed in the final years of the war, nor assures Tamils that justice will be done. Since October, when parliament debated the Paranagama-de Silva, OISL and long-delayed 2006-2009 Udalagama Commission reports, little more has been said, but a prominent human rights lawyer called the Paranagama-de Silva report "a ticking time bomb" for the prospects of meaningful accountability.[133]

C. *Absence of Overall Vision, Lack of Capacity*

The mixed messages on foreign judges are the most obvious sign of lack of coherent strategy and continued reluctance to take ownership of the transitional justice agenda. Focus on the special court and foreign involvement, while understandable, is dangerously premature, as there has been no attempt to prepare Sinhalese to accept a strong tribunal, or even less controversial mechanisms. The debate also obscures other serious problems with the government's approach to transitional justice that could be fatal if not addressed in the next six months.

The transitional justice agenda formulated at the HRC was always principally an international process, though it responded to pressure for justice and reconciliation

supporters. Crisis Group interviews, Northern province, December 2015. For more, see Crisis Group Report, *Sri Lanka Between Elections*, op. cit., pp. 28-29.

[129] These included extrajudicial executions and forced disappearances at the war's end and immediate aftermath that were called worthy of "a judge-led investigation". "Report On the Second Mandate Of the Presidential Commission of Inquiry Into Complaints of Abductions and Disappearances", August 2015

[130] Ibid, p. xxiii. For a powerful critique of the Parangama-de Silva report's treatment of international humanitarian law, see Isabelle Lassee, "The last stages of the war: clarifying the application of IHL", South Asian Centre for Legal Studies, November 2015.

[131] "Parliament, 23.10.2015", *Daily News*, 6 November 2015.

[132] Possibly consistent with this approach are comments by ex-President Kumaratunga and Foreign Minister Samaraweera that prosecutions would focus on those who gave orders, not the military as a whole. "Top military officers to be held accountable", *Colombo Gazette*, 1 December 2015. The "white flag" killings of surrendered LTTE leaders appear a likely focus, particularly as the then army commander, Sarath Fonseka, was abroad at the time and later said Defence Secretary Gotabaya Rajapaksa ordered the executions. Crisis Group Report, *War Crimes in Sri Lanka*, op. cit., p. 7. Fonseka, regional development minister since 25 February, has endorsed participation of international advisers and observers in a domestic war crimes investigation. "Fonseka wants international monitors for war probe", *Daily News*, 11 March 2016. This and other statements support the widely held view he was appointed to parliament in February in part to strengthen government-military relations enough to allow a limited accountability mechanism with a limited international role. Crisis Group interviews, diplomats, journalists, March 2016.

[133] Crisis Group interview, Colombo, January 2016.

from Tamils and Sinhala and Muslim reformers in Sri Lanka. No politically powerful group in government drives the agenda, only the foreign minister and, more tactically, the prime minister. The president's and prime minister's central concerns are seen to be the economy, party politics and constitutional reform.[134]

Continued Sinhala nationalist, pro-military sentiment in the government and bureaucracy has prevented formulation of strategy for a long-term, successful transitional justice program; nor has the government considered how it would fit into the rest of the good governance program. Many reform-minded officials often appear to pursue transitional justice mainly to reduce international pressure and gain Western governments' support.[135] Ad hoc initiatives are principally designed to meet resolution deadlines and tick UN and other international boxes.

A coherent strategy has also been hampered by the state's "monumental" lack of capacity.[136] Both too few and too many people are involved: most transitional justice work is managed by a handful of foreign ministry and prime minister's office officials, all of whom have other jobs.[137] The government has established ad hoc, often overlapping offices, task forces and coordination mechanisms, but no single person is dedicated to the transitional justice agenda.[138] It has yet to bring on any sustained international expertise, relying instead on occasional visits from UN officials and the volunteer efforts of local civil society activists, few of whom have prior transitional justice expertise.

If the government is serious about its transitional justice commitments – which, nine months after the HRC resolution, many Sri Lankans increasingly doubt[139] – it needs to develop an integrated, politically realistic plan and timetable for building public support step by step. Less controversial ones should come first, and transitional justice should be more clearly integrated into the overall reform agenda. Faster action is needed on confidence building, starting with missing persons, and the more politically popular aspects of the justice and rule-of-law agenda, backed by a major outreach effort.[140] More time will be needed for public consultations, building institutional capacity, developing tools to tackle impunity and for security sector reform. Underlying all the steps must be the hitherto lacking political will and clear vision.

[134] Crisis Group interviews, journalists and politicians, Colombo, January 2016.
[135] Crisis Group interviews, Colombo, December 2015, January 2016.
[136] Crisis Group telephone interview, diplomat, February 2016. Lack of capacity seems both cause and effect of the lack of overall vision and strategy.
[137] The foreign ministry leads on transitional justice partly because the agenda originates from the HRC and because the foreign minister is committed to it. "The justice ministry should really be running these processes", said a lawyer, "not the foreign ministry. It doesn't have the expertise to manage or oversee them, and its involvement gives the appearance, if not the reality, of being done for international consumption". Crisis Group interview, Colombo, April 2016.
[138] There is considerable overlap, and public confusion, about the relationship between the SCRM, ONUR, the reconciliation and national dialogue ministries and cabinet and coordination bodies in the prime minister's and cabinet offices. The March 2016 appointment of businessman Mano Tittawella as secretary general should allow SCRM to take a more central role. "Tittawella to head secretariat for coordinating reconciliation mechanisms", *Colombo Telegraph*, 29 March 2016.
[139] Crisis Group interviews, journalists, lawyers, activists, Colombo, April 2016.
[140] In remarks to the HRC, the High Commissioner for Human Rights noted that "the release of land held by the military, reviewing the cases of security detainees, and resolving the issue of disappearances, need to move forward faster". He urged the government to ensure "an environment free of surveillance and intimidation, so the voices of victims can be heard" during the national consultations. "Statement to the Human Rights Council's 31st session", 10 March 2016.

VII. Conclusion: Addressing the Challenges

Weighed down by coalition politics, with too many ministers and not enough institutional capacity, and weakened by re-emergence of old political dysfunctions, the government increasingly risks losing its most valuable asset: its distinctiveness from the Rajapaksa regime. Failure to make lasting reforms that entrench rule-of-law and challenge impunity could re-empower ethnic and religious chauvinists in all communities, weakening the belief in positive democratic change that has been Sirisena's hallmark and undermining the economic reforms needed to boost growth and cement the democratic transition. If the window of opportunity for settlement of the ethnic conflict, transitional justice and lasting governance reforms is not to close, the president and prime minister must shift from defensive postures and make a bolder push for deeper reforms:

- articulating a clear national vision of a transformed state free of corruption, respecting rule-of-law and accountable to all its citizens, and explicitly linking the anti-impunity agendas of the south with those of the north and east;
- communicating this vision in a well-resourced and sustained outreach campaign to build a broader constituency for greater devolution and make clear the benefits of transitional justice for all communities and its role in rebuilding rule-of-law. This should include informing a broad swathe of the public about the nature and value of possible mechanisms; and
- developing and implementing a coherent, slow-but-steady strategy to regain civilian authority over the military – beginning with steps to demilitarise the north and east and produce a conducive environment for transitional justice mechanisms – and enable longer-term democratic transformation of the security and intelligence services.

For all this to be possible, president and prime minister must streamline multiple and overlapping mechanisms that lack clear lines of responsibility and focal points and communicate and cooperate in a more sustained way that ensures greater support from all key government players. And a coherent, sustainable, multi-track program of action on the difficult interface of transitional justice and constitutional and governance reforms is required.

A. *Public Relations Campaigns*

As the constitutional reform process and debate gather speed, the government must make a stronger case for expanded devolution. It "can't allow the spoilers to dominate the public space or … hijack the process …. they aren't going to be successful if they go on this way", a lawyer close to the process said. At the same time, a government adviser argued, "the transitional justice process needs to be marketed".[141] The government should take ownership at home by educating the Sinhala public about how, with expanded devolution, it can address the war legacy and support reconciliation. It should explain that the HRC-agreed measures are a way to respond to all communities' grievances, including Sinhalese who suffered at state and LTTE hands, and are fundamentally linked to promises to fight corruption and rebuild judicial

[141] Crisis Group telephone interview, April 2016; interview, Colombo, January 2016.

and policy independence that have wide Sinhalese support. This messaging must be backed by effective action on corruption and criminal cases against key officials of the old regime and its ruling family.

B. *Meaningful Consultations*

For the public consultations process to generate confidence among victims and greater awareness among all communities about transitional justice's value, it must have adequate resources and political support. The government should present drafts of each proposed mechanism for public comment, through the consultations process, while it lasts, and then other means.

C. *Strengthen Government Capacity*

To increase ability to develop and implement transitional justice policy, the government should assign senior staff to work full time on it. Foreign experts could help design mechanisms, partnering with the public consultations process. The government should arrange specialised training for judges, prosecutors, defence counsel and investigators and commit to a role for international judges, investigators, prosecutors and forensic experts once the special court is created.[142] While expertise and resource deficits are most acute on transitional justice, outside support and training could significantly strengthen other reform efforts, most notably in corruption investigations and the overworked Attorney General's Department.[143]

D. *Prosecutions*

Prior to and to help generate support for creating the special court, the government should expedite prosecutions in political killing cases in which investigators have already uncovered substantial evidence: those of TNA parliamentarians J. Pararajasingham (2005) and N. Raviraj (2006), journalist Lasantha Wickrematunga (2009) and rugby star Wasim Thajudeen (2012), as well as the disappearance of cartoonist Prageeth Ekneligoda (2010). Prosecutions should also be pursued in the "Trinco 5" and Action contre la faim (ACF) massacres (2006).[144]

Prosecutors should seek international help to protect witnesses as needed and pursue cases as high up the chain of command as possible. The aim should not only be justice in these cases, but also to establish a precedent for successful domestic prosecution of political crimes. This is vital for restoring rule-of-law and independent police and judiciary and would be a first step in making the public more aware of abuses during the Rajapaksas' counter-insurgency campaign.[145]

[142] "The key are good prosecutors, investigators and witness protection", said a lawyer. "We know we won't get good judges, whether foreign or local. We've shown we can't do effective investigations of this sort ourselves. We need outside help". Crisis Group interview, January 2016.
[143] Lawyers working on investigations report enormous caseloads for investigators and state counsels and the absence of adequate computers. Crisis Group interviews, Colombo, April 2016.
[144] On "Trinco 5" and ACF, see Crisis Group Report, *Sri Lanka's Human Rights Crisis*, op. cit.
[145] Successful prosecutions on corruption, fraud and other crimes not directly related to the war's final stages would weaken the Rajapaksas' claim to be heroes and make it easier to raise the difficult issues about the illegal policies they ordered some troops to follow.

E. *Legislative Package to Combat Impunity*

Legislation is needed to address institutionalised impunity for all serious abuses, not just war-related crimes. Key steps would be to strengthen the weak witness and victims protection law;[146] establish command responsibility as a mode of criminal liability; and create an independent special prosecutor for "systems" crimes by state personnel.[147]

F. *Legislation for Sequenced Transitional Justice Mechanisms*

The office of missing persons (OMP), expected to be established first, will be an important test of the government's intentions. While its humanitarian functions are essential, the OMP must be designed to assist, not undermine, criminal investigations and prosecutions, including any to be taken up by the special court.[148] Draft legislation should be submitted to the national consultations process, as should all future proposed transitional justice legislation.[149] Parliament should approve a truth commission and the special court – including criminalising war crimes and crimes against humanity – before the March 2017 HRC. The government should launch the truth commission first, while building capacity for the special court. A well-designed truth commission could begin to shift attitudes, particularly among Sinhalese, and increase acceptance that atrocities were committed by troops on military and political leaders' orders. It could also help foster Tamil introspection about crimes of the LTTE and its role in both the suffering of the Tamil people and injustices against Muslims.

G. *Asserting Civilian Control of the Military*

Much clearer messages are also needed for military leaders and anti-terrorism police and intelligence agency officials if the government is to bring the national-security state under effective civilian control. While expressing their respect for wartime sacrifices, the president, prime minister and other key ministers must make clear that the civilian leadership is in charge, and the security and intelligence services must fundamentally change how they relate to society, especially in the north, during peacetime. Civilian leaders should assert themselves first on important but less controversial measures: releasing land and detainees, investigating disappearance cases and replacing the PTA. They should also begin developing a plan for security sector

[146] With international aid, the government should put serious resources into an independent witness protection program, for example to enable video-conference testimony from abroad, as the Udalagama Commission used briefly in 2008 before President Rajapaksa stopped it. On witness protection, see Crisis Group Report, *Sri Lanka Between Elections*, op. cit., p. 26.

[147] For law reforms and prosecutions to be credible and free of conflicts of interest, the government should exclude from involvement in related policymaking or prosecutions senior government lawyers who had lead roles in politically compromised investigations, eg, those covered by the Udalagama Commission, or lobbied internationally against war crimes investigations.

[148] Valuable proposals for the design of the OMP can be found in Arulingam, de Silva et al, "Memorandum to the consultation task force: The Office of Missing Persons", April 2016, and Isabelle Lassee, "'Criminal' and 'Humanitarian' Approaches to Investigations into the Fate of Missing Persons: A False Dichotomy", South Asian Centre for Legal Studies, 3 May 2016.

[149] The OMP could also take the first steps toward a national reparations policy, which should include expanded livelihood and psycho-social support for war-affected communities in the north and east and "border villages" at the edges of former LTTE-held areas.

reform – including procedures for screening personnel for human rights violations, as called for in the HRC resolution.

H. *International Support*

Sri Lanka is not yet the success story its partners frequently praise. To become that, critical international engagement is essential. In addition to funding to build technical capacity for rule-of-law reforms and continued HRC attention beyond its March 2017 session, donors need to use their leverage – including the European Union's GSP+ trade benefits and the prospect of additional deployments of Sri Lankan troops as UN peacekeepers – to encourage the lasting, structural reforms needed for Sri Lanka to make good on its democratic promise.

Rebuilding democratic institutions, reestablishing rule-of-law and addressing the legacy of war and ethnic conflict was never going to be easy. There are no quick fixes to deeply institutionalised governance problems. That patience is required is all the truer as Sri Lanka's "transition" is less a clear regime change than a reshuffling of the political deck. Key institutions, notably the security and intelligence agencies, remain unchanged and undiminished. If the president and prime minister are to preserve their partnership long enough to achieve their promises of creating a new constitution, addressing past injustices and restoring rule-of-law, however, they must distance themselves more boldly from the old political culture as they push for reforms.

Colombo/Brussels, 18 May 2016

Appendix A: Map of Sri Lanka

Appendix B: Glossary of Terms

HRC
The UN Human Rights Council.

JVP
Janatha Vimukthi Peramuna (People's Liberation Front): a leftist Sinhala nationalist party that led violent insurgencies in 1971 and 1987-1990 but since the late 1990s has pursued an electoral path.

LTTE
Liberation Tigers of Tamil Eelam (Tamil Tigers): a militant group that was the dominant force in Sri Lankan Tamil politics from the late 1980s until its military defeat in May 2009.

OHCHR
UN Office of the High Commissioner for Human Rights.

OISL
OHCHR Investigation on Sri Lanka: mandated by the Human Rights Council (HRC) in March 2014 to investigate and report on alleged violations of international humanitarian and human rights law by government forces and the LTTE from 2002 to 2011; its report was due to be presented to the HRC in March 2015 but was deferred six months to September 2015.

ONUR
National Unity Office, led by ex-President Chandrika Kumaratunga.

SCRM
Secretariat for Coordinating Reconciliation Mechanisms, established 2015 and reporting to the prime minister.

SLFP
Sri Lanka Freedom Party: the main left-of-centre partyand constituent of the UPFA, headed by Mahinda Rajapaksa until January 2015 and now by President Maithripala Sirisena.

TNA
Tamil National Alliance: led by veteran politician R. Sampanthan, a coalition of four parties: Illankai Tamil Arasu Kachchi (ITAK), Eelam People's Liberation Front (EPRLF), PLOTE (People's Liberation Organisation of Tamil Eelam) and TELO (Tamil Eelam Liberation Organisation). Originally formed in 2001 under pressure from the LTTE to support its claims to leadership of the Tamil people, it currently supports a political solution under a federal system in a united Sri Lanka.

TPC
Tamil People's Council: a Tamil civil society group formed in December 2015 and co-chaired by Northern province Chairman C.V. Wigneswaran. It unites groups and activists dissatisfied with the positions of the leadership of the Tamil National Alliance.

UNP
United National Party: the traditional centre-right party, headed by Prime Minister Ranil Wickremesinghe.

UNFGG
United National Front for Good Governance: a coalition formed in July 2015, led by the UNP and including the Jathika Hela Urumaya (JHU, National Sinhala Heritage party); the Sri Lanka Muslim Congress (SLMC); the All Ceylon Muslim Congress (ACMC); the Tamil Progressive Alliance (TPA, a grouping of small parties representing Upcountry Tamils); a section of the pro-Sirisena faction of the SLFP; and the United Left Front (ULF).

UPFA
United People's Freedom Alliance: a party coalition led by the Sri Lanka Freedom Party, headed by President Mahinda Rajapaksa until replaced by Maithripala Sirisena in March 2015. Its diverse coalition of parties ranges from the Sinhala nationalist National Freedom Front (NFF), Mahajana Eksath Peramuna (MEP) and PHU (Pivithura Hela Urumaya), through small leftist ones – the Communist Party, Lanka Sama Samaja Party (LSSP) and Democratic Left Front (DLF) – to the Ceylon Workers' Congress (CWC), representing Upcountry Tamils, and the former Tamil militant group Eelam People's Democratic Party (EPDP).

Appendix C: About the International Crisis Group

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Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown, and professor of International Relations at Sciences-Po (Paris) and founding dean of its Paris School of International Affairs, Ghassan Salamé. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Jean-Marie Guéhenno, served as the UN Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013. Crisis Group's international headquarters is in Brussels, and the organisation has offices in nine other locations: Bishkek, Bogota, Dakar, Islamabad, Istanbul, Nairobi, London, New York, and Washington DC. It also has staff representation in the following locations: Bangkok, Beijing, Beirut, Caracas, Delhi, Dubai, Gaza City, Guatemala City, Jerusalem, Johannesburg, Kabul, Kiev, Mexico City, Rabat, Sydney, Tunis, and Yangon.

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Appendix D: Reports and Briefings on Asia since 2013

As of 1 October 2013, Central Asia publications are listed under the Europe and Central Asia program.

Special Reports

Exploiting Disorder: al-Qaeda and the Islamic State, Crisis Group Special Report, 14 March 2016 (also available in Arabic).

North East Asia

China's Central Asia Problem, Asia Report N°244, 27 February 2013 (also available in Chinese).

Dangerous Waters: China-Japan Relations on the Rocks, Asia Report N°245, 8 April 2013 (also available in Chinese).

Fire on the City Gate: Why China Keeps North Korea Close, Asia Report N°254, 9 December 2013 (also available in Chinese).

Old Scores and New Grudges: Evolving Sino-Japanese Tensions, Asia Report N°258, 24 July 2014 (also available in Chinese).

Risks of Intelligence Pathologies in South Korea, Asia Report N°259, 5 August 2014.

Stirring up the South China Sea (III): A Fleeting Opportunity for Calm, Asia Report N°267, 7 May 2015 (also available in Chinese).

North Korea: Beyond the Six-Party Talks, Asia Report N°269, 16 June 2015.

Stirring up the South China Sea (IV): Oil in Troubled Waters, Asia Report N°275, 26 January 2016 (also available in Chinese).

South Asia

Pakistan: Countering Militancy in PATA, Asia Report N°242, 15 January 2013.

Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013.

Drones: Myths and Reality in Pakistan, Asia Report N°247, 21 May 2013.

Afghanistan's Parties in Transition, Asia Briefing N°141, 26 June 2013.

Parliament's Role in Pakistan's Democratic Transition, Asia Report N°249, 18 September 2013.

Women and Conflict in Afghanistan, Asia Report N°252, 14 October 2013.

Sri Lanka's Potemkin Peace: Democracy under Fire, Asia Report N°253, 13 November 2013.

Policing Urban Violence in Pakistan, Asia Report N°255, 23 January 2014.

Afghanistan's Insurgency after the Transition, Asia Report N°256, 12 May 2014.

Education Reform in Pakistan, Asia Report N°257, 23 June 2014.

Afghanistan's Political Transition, Asia Report N°260, 16 October 2014.

Resetting Pakistan's Relations with Afghanistan, Asia Report N°262, 28 October 2014.

Sri Lanka's Presidential Election: Risks and Opportunities, Asia Briefing N°145, 9 December 2014.

Mapping Bangladesh's Political Crisis, Asia Report N°264, 9 February 2015.

Women, Violence and Conflict in Pakistan, Asia Report, N°265, 8 April 2015.

The Future of the Afghan Local Police, Asia Report N°268, 4 June 2015.

Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls, Asia Report N°271, 22 July 2015.

Sri Lanka Between Elections, Asia Report N°272, 12 August 2015.

Winning the War on Polio in Pakistan, Asia Report N°273, 23 October 2015.

Nepal's Divisive New Constitution: An Existential Crisis, Asia Report N°276, 4 April 2016.

Political Conflict, Extremism and Criminal Justice in Bangladesh, Asia Report N°277, 11 April 2016.

South East Asia

Indonesia: Tensions Over Aceh's Flag, Asia Briefing N°139, 7 May 2013.

Timor-Leste: Stability At What Cost?, Asia Report N°246, 8 May 2013.

A Tentative Peace in Myanmar's Kachin Conflict, Asia Briefing N°140, 12 June 2013 (also available in Burmese and Chinese).

The Philippines: Dismantling Rebel Groups, Asia Report N°248, 19 June 2013.

The Dark Side of Transition: Violence Against Muslims in Myanmar, Asia Report N°251, 1 October 2013 (also available in Burmese and Chinese).

Not a Rubber Stamp: Myanmar's Legislature in a Time of Transition, Asia Briefing N°142, 13 December 2013 (also available in Burmese and Chinese).

Myanmar's Military: Back to the Barracks?, Asia Briefing N°143, 22 April 2014 (also available in Burmese).

Counting the Costs: Myanmar's Problematic Census, Asia Briefing N°144, 15 May 2014 (also available in Burmese).

Myanmar: The Politics of Rakhine State, Asia Report N°261, 22 October 2014 (also available in Burmese).

A Coup Ordained? Thailand's Prospects for Stability, Asia Report N°263, 3 December 2014.

Myanmar's Electoral Landscape, Asia Report N°266, 28 April 2015 (also available in Burmese).

Southern Thailand: Dialogue in Doubt, Asia Report N°270, 8 July 2015.

Myanmar's Peace Process: A Nationwide Ceasefire Remains Elusive, Asia Briefing N°146, 16 September 2015 (also available in Burmese).

The Myanmar Elections: Results and Implications, Asia Briefing N°147, 9 December 2015 (also available in Burmese).

Thailand's Lengthening Roadmap to Elections, Asia Report N°274, 10 December 2015.

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