

RECONCILIATION IN SRI LANKA: HARDER THAN EVER

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RECONCILIATION IN SRI LANKA: HARDER THAN EVER

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Two years since the defeat of the Liberation Tigers of Tamil Eelam (LTTE), Sri Lanka is further from reconciliation than ever. Triumphant in its successful “war on terror”, the government of President Mahinda Rajapaksa has refused to acknowledge, let alone address, the Tamil minority’s legitimate grievances against the state. The regime destroyed the Tigers by rejecting the more conciliatory approach of prior governments and adopting the insurgents’ brutality and intolerance of dissent. Now, contrary to the image it projects, the government has increasingly cut minorities and opponents out of decisions on their economic and political futures rather than work toward reconciliation. As power and wealth is concentrated in the Rajapaksa family, the risks of renewed conflict are growing again. Partners, especially India, Japan, the U.S., UK, European Union (EU) and UN, should send a strong message against increasing authoritarianism, condition aid on transparency and restored civilian administration in north and east and support accountability, including an international inquiry into alleged atrocities by both sides in the war’s final stages.

Much has improved with the end of the war in May 2009. The paralysing threat of suicide attacks on civilians in the south has ended with the destruction of the LTTE, while Tamil families no longer fear the Tigers’ forced recruitment of their children and other abuses. Economic and political security is better for some segments of society. But decades of political violence and civil war have polarised Sri Lanka’s ethnic communities and undermined institutions, particularly those involved in law and order. Each of the major ethnic groups – Sinhalese, Tamils and Muslims – has suffered immensely. Conflicts have not just left hundreds of thousands dead, injured or displaced but have also entrenched fears and misunderstandings in each community.

Progress toward reconciliation in this environment was always going to be difficult. It has been made much more so by the post-war policies of President Rajapaksa and his powerful brothers. With emergency and anti-terrorism laws still in place, they continue to violently repress the media and political opponents, while manipulating elections and silencing civil society. Constitutional reforms strong-armed through parliament have removed presidential term limits and solidified the president’s power over the attorney

general, judiciary and various “independent” commissions. Northern areas once ruled by the LTTE are now dominated by the military, which has taken over civil administration and controls all aspects of daily life – undermining what little remains of local capacity. Democratic political activities in the north and east have been suppressed through the use of violent and corrupt ethnic Tamil proxies and other Rajapaksa loyalists. Development of those areas has been conducted without local consultation; indeed many Tamil residents feel that it is more like the extraction of the spoils of war than a real effort to improve livelihoods and build trust.

To deflect criticism of its unlawful conduct in the final stages of the war the government established a Lessons Learnt and Reconciliation Commission (LLRC). Promoted as a mechanism for both accountability and reconciliation, it will produce neither. In April 2011, a UN panel of experts found that the LLRC lacks the independence, mandate and witness protection capacity to serve as an accountability process for the many credible allegations of war crimes and crimes against humanity committed by both sides and recommended an international investigation. Correcting the LLRC’s flaws would require not only a new commission or other mechanism but also a reversal of the Rajapaksa’s core post-war policies. While the LLRC has served as a platform for airing some grievances, it has failed to win confidence domestically and can do little to aid reconciliation. Sri Lankans know better than anyone that such a commission is ultimately powerless.

Despite Sri Lanka’s long history of failed and ignored ad hoc inquiries, the international community seems willing to gamble on another. While India, the U.S. and UK have recently signalled greater scepticism of the government’s efforts, so far they and other supporters are repeating the mistake they made during the war. There was little real effort to prevent the atrocities at the end of the fighting, in part because the LTTE was so reviled but also because it was convenient to believe President Rajapaksa’s assurances that there would be political reform and conciliatory policies after a military victory. Now they risk falling again for the government’s delaying tactics and promises of accountability through the LLRC and political compromise

through talks with Tamil political parties. So long as there continues to be no progress on either issue, large portions of the Tamil diaspora will remain convinced their community needs the protection that only a separate state can offer and will continue to ignore the LTTE's share of responsibility for the atrocities at the end of the war and for the destruction of Tamil political society.

While the government tries to sell its "reconciliation" plans, the realities on the ground in the north and east are ominous. Many households are now headed by women, who are extremely vulnerable under military rule. Much of the aid promised has not arrived, and all is strictly controlled by the military. Over two thirds of the nearly 300,000 displaced civilians interned in the north at the end of the war have been sent home, but mostly to areas devoid of the most basic amenities. Another 180,000 of those and others displaced in prior stages of the war are still in camps or other temporary settings. Of the 12,000 or more alleged LTTE cadres detained at the end of the war, 3,000 are still undergoing "rehabilitation". Hundreds more LTTE suspects, many detained for years without charge, are held separately. There is little transparency about the numbers or identities of post-war detainees, and upon release, many are closely monitored and harassed or pressured to act as informants. Families throughout the north and east are still searching for missing relatives.

Tamils are not the only community to find themselves marginalised. There have been no official efforts to address the conflicts that flared within Sinhalese communities in the south. Many disappearances have not been investigated; few families have been adequately compensated. No one has been held accountable. Similarly, Muslims expelled from the north or relatives of those murdered in the east by the LTTE have seen little in the way of resettlement, compensation or justice. Land disputes exacerbated by the conflicts affect all communities, but little has been done to design sustainable solutions. Concerns about corruption and increasing cost of living only add to the wounds of the past.

Reconciliation will slip further out of reach if the government maintains its policies. As part of broader efforts to counter false narratives put forth by it and by Tiger apologists alike and to restore the badly damaged rule of law, Sri Lanka's partners should take immediate steps. Aid money should not be delivered without firm knowledge of how it will be spent, which requires extensive monitoring. Assertions that the government is moving towards reconciliation must be tested against realities on the ground, which means insisting on access. The Rajapaksas' authoritarianism must be challenged directly and publicly, with strong messages against retrograde constitutional changes and centralisation of power. An international inquiry into alleged atrocities by both the government and LTTE is needed; UN member states should actively work to establish one, unless the government shows by the end of 2011 that it is willing

and able to ensure accountability on its own. Sri Lanka eventually should also have an independent, inclusive truth commission to examine injustices suffered by all communities. It requires a fair accounting of its violent history to avoid repeating it.

RECOMMENDATIONS

To the Government of Sri Lanka:

1. Immediately revisit policies that are exacerbating minority grievances:
 - a) end the state of emergency and revise anti-terrorism legislation to comply with international law;
 - b) make available to family members the names and locations of all individuals detained for suspected involvement in the LTTE;
 - c) issue accurate death certificates or declarations of absence for those who were killed or went missing in the conflict, without compromising the rights of family members to seek further information or remedies;
 - d) allow public and open mourning of the deceased, including the establishment of memorials, and assist in the recovery of human remains;
 - e) permit all displaced persons and returnees full freedom of movement and assembly, expedite the opening of remaining restricted areas in the north and empower local officials and civil society actors to mediate land disputes in a transparent, credible process;
 - f) reduce restrictions on and improve access for humanitarian and civil society actors, allowing them to increase levels of assistance, including in areas such as psycho-social support and gender-based violence, and determine priorities with input from local communities;
 - g) return land, houses, vehicles and other property seized by the military and implement a single scheme for compensating victims of all ethnic groups with equal payments and a transparent process; and
 - h) remove the military from civilian activities, reduce its security role and take immediate action to end all harassment of and attacks on Tamil women by military personnel.
2. Deliver on promises to provide greater autonomy for the north and east:
 - a) expedite elections for the Northern Provincial Council;

- b) decentralise decision-making on economic development, giving local government leaders control over resources and projects; and
 - c) commit publicly to the goal of reaching a political settlement on devolution in talks with the Tamil National Alliance (TNA), which should be followed by a process that includes independent representatives of Muslims in the north and east to finalise a settlement acceptable to all communities in those regions.
3. Create the conditions needed to pursue meaningful reconciliation among all ethnic communities:
- a) acknowledge that the war with the LTTE was not only a war against a ruthless terrorist organisation but also part of a larger ethnic conflict driven by grievances and prejudices of all communities;
 - b) recognise that a broad, inclusive national reconciliation process, including a truth commission to examine the injustices suffered by all communities, will be needed to sustain peace;
 - c) end all attacks on and threats against journalists and civil society actors, and stop using state media resources to perpetuate false narratives of the past and present;
 - d) reverse the consolidation of power in the presidency and military, including by proposing legislation to repeal the Eighteenth Amendment to the constitution and restore constitutional limits on the president's term in office and power over the attorney general and judiciary, as well as commissions on human rights, police, elections, corruption, finance and public service; and by removing from military control all oversight of non-governmental organisations (NGOs) and decision-making on economic development;
 - e) break with Sri Lanka's long history of impunity, including by making public the reports of all presidential commissions of inquiry into human rights abuses, especially those established by President Rajapaksa, and by implementing credible accountability processes for past and present abuses; and
 - f) request that the LLRC complete its report as soon as possible and release it to the public.

To Sri Lanka's International Partners, including India, Japan, the U.S., UK, EU and UN:

4. Encourage the conditions needed for longer-term reconciliation and to reduce the risk of a return to violence:
 - a) endorse and urge swift implementation of the recommendations of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka (see

Appendix B), including the establishment of a complementary international inquiry into alleged war crimes and crimes against humanity (see Recommendations 5a and b);

- b) evaluate all aid and engagement in light of the risks of a return to conflict and insist on the highest levels of transparency, external monitoring and non-discriminatory community participation in setting priorities;
- c) highlight consistently the issues that affect all communities, including growing authoritarianism, militarisation, emergency laws, weak rule of law, impunity, corruption and repression of dissent;
- d) review military-military ties and suspend assistance until there is a credible investigation of the alleged violations of international humanitarian and human rights law identified by the UN panel of experts; and
- e) convene a high-level meeting of donors and other development partners, including the World Bank and Asian Development Bank, before the end of 2011 to agree upon and ratify with the government a strong set of principles for the delivery and monitoring of assistance; those principles should incorporate a) to d) above and emphasise the need for the government to commit its own funds to benefit its war-affected populations; in advance of the meeting, the government should be required to propose an assistance strategy and timeline for demilitarisation and return to civilian administration in the north and east.

To the UN and Member States:

5. Support processes to establish accurate accountings of past and present violations of international law:
 - a) work to establish an international inquiry – pursuant to any lawful authority including the Secretary-General's or the UN Human Rights Council's – into the credible allegations of war crimes and crimes against humanity by both the LTTE and government forces, unless the government demonstrates convincingly by the end of 2011 that it is willing and able to hold accountable those responsible for alleged crimes;
 - b) ensure that the international inquiry is complementary to any credible domestic accountability mechanism that may emerge by, for example: focusing sequentially on certain incidents or categories of crimes and shifting to the next set of incidents or crimes only when the inquiry is complete or parallel domestic processes with respect to those incidents or crimes are proven to meet international standards; the international inquiry could start with alleged attacks on hospitals and humanitarian

operations by government forces and child recruitment and suicide attacks by the LTTE;

- c) use all available mechanisms – including the involvement of the Office of the High Commissioner for Human Rights, the UN Human Rights Council, the Working Group on Enforced or Involuntary Disappearances and UN special rapporteurs or representatives on extrajudicial executions, torture, violence against women, the protection of human rights while countering terrorism, the human rights of internally displaced persons (IDPs), and children and armed conflict – to press the government to end impunity, improve the situation for current and former IDPs and detainees and open up access for humanitarian and development actors;
- d) follow through on commitments to review UN conduct during the war, as recommended by the panel of experts; but separately from any review immediately revisit the UN’s failed policy in Sri Lanka of holding back on public criticism to maintain humanitarian access; and
- e) review Sri Lanka’s contributions to UN peace-keeping operations and refrain from accepting the participation of its troops until there is a credible investigation of the allegations against the military in the UN panel of experts report.

To Tamil Diaspora Groups:

- 6. Help create the conditions needed to pursue meaningful reconciliation among all ethnic communities:
 - a) renounce the LTTE’s brutality against Sinhalese, Muslims and Tamils and repression of dissent within the Tamil community;
 - b) acknowledge that the LTTE shares responsibility for the suffering and massive loss of Tamil life in the north in the final stages of the conflict; and
 - c) support and cooperate with the investigation and prosecution of alleged war crimes and crimes against humanity by the LTTE throughout the conflict.

Colombo/Brussels, 18 July 2011

RECONCILIATION IN SRI LANKA: HARDER THAN EVER

I. INTRODUCTION

Sri Lanka has been at war with itself for decades.¹ Conflicts have taken many forms, from the pogrom against Tamils in 1983 to the crushing of left-wing Sinhalese insurgencies in the 1970s and 1980s. The final months of the civil war in 2009 were particularly violent, with tens of thousands of Tamil civilians, Sinhalese soldiers and Tamil fighters (many forcibly recruited) killed, adding to an already enormous toll from a quarter century of war.² Each of the three main ethnic communities – Sinhalese, Tamils and Muslims – has suffered from endemic violence. The government’s declaration of victory over the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 offered the hope of reconciliation and the chance that some of the baggage of history could at last be dealt with.

Two years later there is only a hard, unhappy peace in Sri Lanka. The communities are perhaps more divided than ever and less aware of each others’ grievances. There is certainly relief that the fighting and the LTTE’s vicious

attacks on civilians are over. But with peace come expectations, and few of those have been met.

This report examines the experiences and hopes of each of the main ethnic communities.³ It assesses the performance of the government in building a sustainable peace and the promise of a more equitable and inclusive political system once the fighting ended. There is a long history of civil wars restarting when they are not followed by a process of reconciliation. Sri Lanka still faces the risks of renewed violence.

Post-conflict efforts to bring societies together are always fraught with difficulties, particularly in cases of deep ethnic division. In Sri Lanka the challenge is even greater, because the government denies that ethnicity was the driving factor behind the civil war. Instead it appropriated the language of the “war on terror”, dehumanising its enemies and dismissing the possibility that they, or those they claimed to represent, have legitimate grievances. It has controlled the narratives of the conflict both within and outside the country, reacting furiously to any challenge to

¹ For previous Crisis Group reporting on Sri Lanka, see Asia Reports N°124, *Sri Lanka: The Failure of the Peace Process*, 28 November 2006; N°134, *Sri Lanka’s Muslims: Caught in the Crossfire*, 29 May 2007; N°135, *Sri Lanka’s Human Rights Crisis*, 14 June 2007; N°141, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, 7 November 2007; N°146, *Sri Lanka’s Return to War: Limiting the Damage*, 20 February 2008; N°159, *Sri Lanka’s Eastern Province: Land, Development, Conflict*, 15 October 2008; N°165, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, 16 April 2009; N°172, *Sri Lanka: Politicised Courts, Compromised Rights*, 30 June 2009; N°186, *The Sri Lankan Tamil Diaspora After the LTTE*, 23 February 2010; N°191, *War Crimes in Sri Lanka*, 17 May 2010; N°206, *India and Sri Lanka After the LTTE*, 23 June 2011; also Asia Briefing N°99, *Sri Lanka: A Bitter Peace*, 11 January 2010.

² There has never been any attempt by the government or any independent authority to compile accurate figures for the number of deaths – civilian or combatant – during the civil war. At the start of the 2002 peace process, the consensus was that 65,000-70,000 had been killed since fighting broke out in 1983. It is quite possible that the same or almost the same number were killed in the final four years of active insurgency and counter-insurgency, bringing a fair estimate of the total to well over 100,000.

³ Accurate statistics for Sri Lanka’s current population do not exist. The first island-wide census in 30 years is to be completed in 2011. “Sri Lanka launches 2011 census of population and housing”, *ColomboPage*, 5 April 2011. In the 1981 census, Sinhalese were 74 per cent of a total population of 14.8 million, while the other ethnic categories – Sri Lankan Tamils, Indian or Up-country Tamils, and Muslims – were around 13 per cent, 6 per cent and 7 per cent, respectively. For more on these groups, see Section II below. In general this report uses “Tamils” to refer to Sri Lankan Tamils and discusses Up-country Tamils separately, though there has been some mixing of the population especially in the Vanni. (The Vanni is the region in the north that was largely under LTTE control for most of the civil war and was the Tigers’ last stronghold. It consists of the administrative districts of Kilinochchi and Mullaitivu and large parts of the districts of Vavuniya and Mannar.) While the island’s total population is now estimated to be around 21 million, the percentages of the communities will have shifted, due in large part to 30 years of Tamil emigration, movements into and out of the north and east, and massive loss of life in the war and other political violence. But the degree of change and its distribution across regions is uncertain. Whether the government will conduct a sufficiently transparent and credible census in 2011 to counter minorities’ fears that their population numbers may be misrepresented, remains to be seen.

the official version. Its hand is strengthened by the unwillingness of much of the million-strong Tamil diaspora to recognise the brutality of the LTTE and its share of responsibility for a largely broken Tamil society.⁴

After all conflicts, issues of reconciliation and accountability arise. In Sri Lanka the government has tried to collapse the two and has said that both can be dealt with through domestic mechanisms, starting with its ongoing Lessons Learnt and Reconciliation Commission (LLRC).⁵ But these concepts are distinct. Accountability is a process of holding individuals and groups responsible for abuses, ideally to mark a decisive break with a culture of impunity. Reconciliation is a more forward-looking process of healing divisions between and within communities. It requires recognition of others' grievances and experiences and changes in policies that may have worsened the conflict or prevented greater cohesion. It often takes years. Both require a truthful accounting of the past, something most of Sri Lanka's leaders – and especially the government of President Mahinda Rajapaksa – have refused to undertake.

This report was researched in Sri Lanka in early 2011. Most of those interviewed requested that their names not be used, as is now the norm given the climate of fear that pervades the country. There is almost no space for publicly discussing the aftermath of conflict and current political developments. As has been the case since the final stages of the war, either you are for the Rajapaksa government or you are an enemy of the state.⁶ While this report addresses

post-war developments in the north and east, it covers the latter in less detail given Crisis Group's previous reporting on that area.⁷ This is not to suggest that the situation in the east is any less important to Sri Lanka's prospects for reconciliation. A careful study has been made of the government's public statements, but officials in the country were not interviewed.

⁴ Crisis Group Report, *The Sri Lankan Tamil Diaspora after the LTTE*, op. cit.

⁵ See Section III.D below. The LLRC invited Crisis Group to appear before it, noting that "some of the issues published in [Crisis Group's] reports fall within the ambit of the warrant of the LLRC". Letter from the LLRC Secretary, 31 August 2010 (unpublished). Crisis Group, Amnesty International and Human Rights Watch jointly declined invitations in light of the commission's inadequate mandate, and lack of independence and witness protection. Letter to the LLRC Secretary, 14 October 2010, at www.crisisgroup.org. For the LLRC's reply, see "Judge us on performance, not prejudice – LLRC to AI, HRW and ICG", 16 October 2010, at www.news.lk/index.php?option=com_content&task=view&id=16470&Itemid=44.

⁶ President Rajapaksa said in his address to parliament at the end of the war: "We have removed the word minorities from our vocabulary three years ago. No longer are the Tamils, Muslims, Burghers, Malays and any others minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group". "Address by His Excellency President Mahinda Rajapaksa at the ceremonial opening of Parliament, Sri Jayawardhanapura – Kotte", www.president.gov.lk, 19 May 2009. His brother, Defence Secretary Gotabaya Rajapaksa, expressed a similar sentiment as the humanitarian crisis escalated in early 2009: "I have only two groups ... the people who want

to fight terrorism and the terrorists. Two groups. Either you are a terrorist or you are a person who's fighting the terrorist". Interview, BBC News, 3 February 2009. That same "with us or against us" mentality was echoed in the government's response to the April 2011 report of the UN Secretary-General's panel of experts on accountability in Sri Lanka, see Section III.E below, with the president insinuating that witnesses had been bribed and warning individuals and non-governmental organisations (NGOs) "not to betray the country for a few thousand dollars". "No force will be allowed to rob our hard-won freedom and peace – President", *News Line*, priu.gov.lk, 2 May 2011.

⁷ See Crisis Group Reports, *Sri Lanka's Eastern Province*, and *Development Assistance and Conflict in Sri Lanka*, both op. cit.

II. DEALING WITH THE PAST

Sri Lanka has much more to deal with than the legacy of the long civil war between the government and the Tamil Tigers. There have been three major insurgencies over 40 years, and much of the worst violence has been based on divisions within ethnic groups. Each of the main communities has suffered injustice at the hands of those from their “own” community as well as from others.

The bloodshed in the last phase of the war (2006-2009) is now receiving some attention, thanks largely to the efforts of the UN Secretary-General and the recent report of his panel of experts.⁸ Those years took an immense toll on Tamil civilians as well as on young Sinhalese soldiers and their families. Despite the limited and worryingly fleeting focus on accountability for abuses in that period, most grievances are being ignored.

The history of political violence in Sri Lanka holds lessons for the future. Nearly all the violence was a product of not only different visions for the country and its diverse communities, but also the centralised and authoritarian nature of the state. Since the introduction of the 1978 constitution, there has been some ebb and flow in political power, but the overall trend has been toward its consolidation in the presidency. As discussed in Section III, President Rajapaksa has taken that trend even further in the two years since the end of the civil war.

The following brief survey highlights the distinct histories of suffering and injustice that colour how each community and segments within it view themselves and others today. While lingering grievances from these experiences are often suppressed, they are just under the surface. Together these histories have contributed to prejudices, fears and anger that run deep in Sri Lankan society and risk erupting, again, in violence.

A. TAMILS

The Tamil-speaking population consists of three distinct groups: Sri Lankan Tamils (referred to simply as “Tamils” herein), Up-country or Indian Tamils and Muslims. Each has had a different relationship with the state and successive governments over the last century. Although they share the same language – and a history of discrimination on that basis – their identities and experiences are distinct.

⁸“Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka”, 31 March 2011, available at www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (hereinafter “UN Panel Report”). The executive summary of the report is reproduced in Appendix B. For further discussion see Section III.E below.

1. Anti-Tamil attacks, the civil war and intra-Tamil violence⁹

From 1956 onwards, Sri Lanka saw a series of increasingly violent attacks on Tamils with growing government complicity, culminating in the July 1983 pogroms in Colombo and explosion of full-scale war between the government and the LTTE and other Tamil militant groups. The anti-Tamil attacks paralleled a series of discriminatory government policies, starting with the 1956 Sinhala Only language law, the 1972 constitution according Buddhism the “foremost place”, reforms to the education system and civil service that disproportionately harmed Tamils, and government programs to settle Sinhalese peasants in the Tamil-majority east. From the 1980s through May 2009, the civil war raged, interrupted by occasional cease-fires, and the government along with the increasingly powerful LTTE engaged in widespread atrocities, often against unarmed civilians. Government forces are believed responsible for thousands of disappearances of Tamils, mostly in the north and east, through 2008. War crimes by both sides in the last year of fighting may have contributed to as many as 40,000 Tamil civilian deaths.¹⁰

Tamil militants have been responsible for much of the violence suffered by Tamils. Militant groups fought each other through the 1980s, with the LTTE prevailing by 1987. The Tigers murdered hundreds of dissidents labelled as “traitors” and forced civilians – including children – to take up arms.¹¹ The final year of the war saw the LTTE’s suicidal politics end in spectacular fashion, as they held hostage hundreds of thousands of Tamil civilians, who were shelled and bombed by government forces or shot by the LTTE if they tried to leave for government-controlled areas.¹²

Since the early 1990s, the government’s counter-insurgency strategy made use of former Tamil militants, realigned with it against the LTTE – most notably Douglas

⁹Much has been written about this history. Particularly useful contributions include: R. Hoole, D. Somasundaram, K. Sritharan and R. Thiraganama, *The Broken Palmyra: The Tamil Crisis in Sri Lanka – An Inside Account* (Claremont, 1990); M.R. Narayan Swamy, *Tigers of Lanka: From Boys to Guerrillas* (Colombo, 2006); and K.M de Silva, *Reaping the Whirlwind* (Delhi, 2000).

¹⁰UN Panel Report, op. cit., p. 41, The panel noted: “Two years after the end of the war, there is still no reliable figure for civilian deaths, but multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage. Only a proper investigation can lead to the identification of all of the victims and to the formulation of an accurate figure for the total number of civilian deaths”.

¹¹Many of the Tigers’ original leaders joined the movement as teenagers. See *Tigers of Lanka*, op. cit.

¹²UN Panel Report, op. cit., p. 41.

Devananda's Eelam People's Democratic Party (EPDP), which has worked on behalf of the government in Jaffna since 1990, and former LTTE commander "Colonel" Karuna's faction, which split from the LTTE's founder and leader, Prabhakaran, in the east in 2004. Both Devananda and Karuna are now government ministers.¹³ This has had grave consequences for Tamil civilians; both groups are implicated in extrajudicial killings, abductions, extortion, prostitution and child trafficking (and, at least with respect to Karuna, recruitment of child soldiers).¹⁴

Legal and political responses to this violence have been half-hearted at best. There was no accountability for or acknowledgment of wrongdoing by the LTTE, and now there is no LTTE. The refusal by much of the Tamil diaspora to publicly criticise the LTTE's cruel methods has given the government another excuse to ignore its own wrongdoing. Five separate presidential commissions of inquiry between 1991 and 1998 identified thousands of Tamils forcibly "disappeared" by government forces and the LTTE.¹⁵ However, the inconsistent compensation and

information resulting from those commissions has often increased frustration.¹⁶

There have been a handful of prosecutions when public pressure or the international outcry has been strong.¹⁷ But instead of galvanising broader efforts to address similar abuses, they remain isolated episodes. There have been no credible investigations and prosecutions of hundreds of extrajudicial executions and reprisal attacks from the 1990s, or of the serious alleged abuses by the security forces since President Rajapaksa came to power in 2005.¹⁸ Former

¹³ Devananda entered politics in 1994 and was first appointed to the cabinet in 2000 under President Chandrika Kumaratunga. After losing his post in 2001, he was again appointed in 2004, when the ruling United People's Freedom Alliance (UPFA) came to power. Karuna first became a member of parliament in October 2008, appointed by the UPFA. His Tamil Makkal Viduthalai Puligal (TMVP) party had won a majority in the Eastern Provincial Council elections in May 2008, with the TMVP's deputy leader Sivanesathurai Chandrakanthan (aka Pillayan) becoming chief minister. The following year saw a split between Karuna and Pillayan. In March 2009, Karuna joined President Rajapaksa's Sri Lanka Freedom Party (SLFP) – along with some 1,750 cadres – and was appointed to the cabinet. The violent rivalry between Karuna and Pillayan continues. See fn 143 below. Factions of other former Tamil militant groups, including the People's Liberation Organisation of Tamil Eelam (PLOTE) and the Tamil Eelam Liberation Organisation (TELO), have also been aligned with the government since the early 1990s and credibly accused of human rights violations. See, eg, "Sri Lanka: 2011 country report on human rights practices", U.S. State Department, 4 March 2002.

¹⁴ These allegations – including the government's involvement – were outlined in detail by then U.S. Ambassador Robert Blake in a diplomatic cable from May 2007 released by Wikileaks. See "Sri Lanka: GSL complicity in paramilitary factions' human rights abuses", U.S. embassy Colombo, 18 May 2007.

¹⁵ The work of these commissions is examined in detail in Kishali Pinto-Jayawardena, *Still Seeking Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry Since 1977* (International Commission of Jurists, Bangkok, January 2010); and Law & Society Trust (Kishali Pinto-Jayawardena, ed.), *A Legacy to Remember: Sri Lanka's Commissions of Inquiry 1963-2002; A Reference Guide to Commission Reports with a Tabulated List of Recommendations* (Colombo, September 2010).

¹⁶ For example, according to a 2007 report by University Teachers for Human Rights, Jaffna (UTHR-J): "The Ministry of Rehabilitation used to pay Rs. 50 000 [\$450] to a family in the event of the violent death of a breadwinner. This amount was raised to Rs. 100 000 (1 lakh) by a cabinet decision of 24th October 2001, based on a paper presented by Douglas Devananda then Minister of Development, Rehabilitation and Reconstruction for the North, and Tamil Affairs, North and East But a circular was apparently not issued and soon afterwards Devananda ceased to be a minister. Inquiries made by [UTHR-J] revealed that the Jaffna Kacheri has been paying Rs. 1 lakh since at least January 2006, after Devananda was back as a minister, but the Tamils in the East were entitled to only Rs. 50 000 and were experiencing almost infinite delays even for this reduced sum". "Sri Lanka's humanitarian crisis or the crisis of a majoritarian polity?", UTHR(J), Information Bulletin no. 45, 27 March 2007. See also Law & Society Trust, *A Legacy to Remember*, op. cit., pp. 122-125.

¹⁷ The most notable is the conviction of eight soldiers and several police officers in the 1996 rape and murder of eighteen-year-old Krishanthi Kumarawamy and murder of her mother, brother and neighbour who had gone looking for her. No senior officers were prosecuted. Kishali Pinto-Jayawardena, *Still Seeking Justice*, op. cit., pp. 46-48. Other cases of rape of Tamil women by Sinhalese security forces have resulted in impunity. See *ibid.*, pp. 52-53; also "Three army men sentenced to death", *Daily Mirror*, 31 March 2011; and "Death sentence for Sri Lankan soldiers", BBC Sinhala, 31 May 2011, reporting that the three were planning to appeal their sentences and convictions for the rape and murder of a Tamil woman in Jaffna in 1996 – fifteen years prior. Court proceedings in a case of four soldiers accused of raping one woman and sexually abusing another on 6 June 2010 near the northern town of Visuamadhu have been repeatedly postponed. The four soldiers, identified by the victims, have been released on bail, and one has reportedly absconded. Crisis Group email interview, rights activist, Colombo, July 2011.

¹⁸ President Rajapaksa established a commission of inquiry in November 2006 to look into sixteen cases of human rights abuses. Government forces are implicated in ten and the LTTE in eight; allegations overlap in two cases. The most prominent of these cases, many of which are discussed further herein, include: the assassination of Foreign Minister Lakshman Kadirgamar, a Tamil, in August 2005; the killing of seventeen aid workers, one Muslim and sixteen Tamils, employed by the French NGO Action Contre la Faim (ACF) in Muttur in August 2006; the alleged execution of Muslim villagers in Muttur in August 2006; the assassination of Joseph Parasingham, a Tamil

President Chandrika Kumaratunga did issue a public apology and awarded compensation in 2004 for the 1983 pogroms,¹⁹ but this was rejected by the LTTE and then lost in the return to war and triumphalism that followed.

A favourite talking point for the Rajapaksa regime is that “54 per cent” of Tamils in Sri Lanka now live outside the north and east, primarily in Colombo, where they peacefully coexist with Sinhalese and Muslims.²⁰ This, the argument goes, shows that the demand for a separate state of Tamil Eelam was manufactured by the LTTE and Tamil politicians

parliamentarian, in December 2005; the killing of five Tamil youth in Trincomalee in January 2006; the assassination of the deputy director general of the Sri Lanka Peace Secretariat, Ketheesh Loganathan, a Tamil, in August 2006; the deaths of 51 Tamil girls at the Sencholai compound (Mullaitivu) in an air force bombing in August 2006; the disappearance of Rev. Nihal Jim Brown, a Tamil, of Philip Neri’s Church at Allaipidi in August 2006; the killing of five Tamil fishermen and another person at Pesalai beach and Pesalai Church in June 2006; the killing of ten Muslim villagers at Radella in Pottuvil police area in September 2006; the killing of 68 people, mostly Sinhalese, in a bus bombing at Kebithigollewa in June 2006; the killing of 98 security forces personnel in a bus bombing in Digampathana, Sigiriya, in October 2006; and the assassination of Nadaraja Raviraj, a Tamil parliamentarian, in November 2006. President Rajapaksa invited an International Independent Group of Eminent Persons (IIGEP) to monitor the proceedings, but it terminated its role in March 2008 after concluding that the commission failed to meet international standards. The commission investigated only seven cases and submitted reports to the president on only five, before its mandate expired in 2009. Those reports are not public. See Crisis Group Report, *Sri Lanka’s Human Rights Crisis*, op. cit.; and “Twenty years of make-believe: Sri Lanka’s Commissions of Inquiry”, Amnesty International, 11 June 2009. The IIGEP and commission of inquiry websites are archived at <http://sitesatrisksl.wordpress.com/>.

¹⁹“Speech by President Chandrika Kumaratunga at the 21st Anniversary of ‘Black July’”, Presidential Secretariat, Colombo, 23 July 2004, available at www.satp.org/satporgrp/countries/shrilanka/document/papers/BlackJuly2004.htm. This apology came nearly two years after the final report of her “Presidential Truth Commission on Ethnic Violence (1981-84)”, September 2002 (published 2003). “Though a useful historical record ... [the report] had, in fact, minimal positive impact on public opinion and did not serve as a mechanism for accountability or redress”. Kishali Pinto-Jayawardena, *Still Seeking Justice*, op. cit., pp. 95-96.

²⁰For some recent examples, see “‘Key factor in defeating terrorism was political leadership’- Secretary Defence”, defence.lk, 31 May 2011; and “Sri Lanka’s UN Envoy Kohona answers global critics on discrimination, reconciliation and feeding Tamil Tiger terrorists”, *Asian Tribune*, 17 March 2011. The government has used the “54 per cent” figure since at least 2007 but has never explained it. According to some calculations, the figure would seem to require combining Sri Lankan Tamils and Up-country Tamils. See Crisis Group Report, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, op. cit., p. 16.

to serve their own selfish ambitions; now that the Tigers are gone, there is no interest in or need for devolving power to the traditionally Tamil-speaking areas. Not only are the government’s statistics impossible to confirm,²¹ but its logic also too quickly dismisses the shared history of discrimination and violence Tamils across the island have endured. That history has solidified the Tamil community’s self-image as a distinct minority deserving of recognition and control over their economic and political security. It also strengthened the idea of the north east of the island as a homeland that offered refuge from violence.

2. Up-country Tamils

The Up-country Tamil community has been highly marginalised for two centuries. Originally brought from southern India in the early nineteenth century by the British for manual labour, especially on the island’s coffee, tea and rubber plantations, its members came to be resented by many Sinhalese nationalists, who mistakenly saw them as responsible for taking land from rural Sinhalese. They also suffered from discrimination from many Sri Lankan Tamils on the basis of their supposed lower caste and class status. Soon after independence in 1948, the government passed a series of laws that took citizenship and voting rights from some 700,000 Up-country Tamils (around 10 per cent of the island’s total population). Between 1964 and 1988, the Sri Lankan and Indian governments wrangled over the newly stateless community, with Delhi grudgingly accepting the gradual repatriation of around 400,000 between 1967 and 1983. Colombo granted citizenship to the rest in 1988 and 2003.²²

While the Sri Lankan Tamil leadership generally showed little interest in their plight, many Up-country Tamils were displaced north into the Vanni²³ by the anti-Tamil pogroms in the 1970s and 1980s and remained there throughout the war.²⁴ Those who stayed in the central highlands or moved to Colombo suffered as a result of the government’s campaigns against Tamil militancy, with many subjected to arbitrary arrest and harassment under emergency laws. Their economic status has gradually improved, in part due to the skilful political deal-making of the late Savumiamoorthy

²¹ See above fn 3.

²²The government’s version of this history is available on the immigration and emigration department website (www.immigration.gov.lk). Useful writings on Up-country Tamils include Patrick Peebles, *The plantation Tamils of Ceylon* (London, 2001); P.P. Devaraj, *Human security of Indian origin Tamils in plantation areas* (Colombo, 2005); and Daniel Bass, *Of Tea & Tigers: Citizenship and Tamil Culture in War-torn Sri Lanka*, forthcoming.

²³ See fn. 3 above for a description of the Vanni.

²⁴ See Valentine Daniels, *Charred lullabies: chapters in an anthropology of violence* (Princeton, 1996).

Thondaman, long-time leader of the Ceylon Workers Congress (CWC), but they remain the most underprivileged of Sri Lanka's ethnic communities.²⁵ Their current political power is negligible.²⁶

As a civil society activist said, "the government has incentives to at least build a road in the north and east. They have no incentive to help the Up-country Tamils".²⁷ Despite substantial mixing of the two Tamil populations in the Vanni, "the plantation issues are entirely different", explained a community leader. "The plantation Tamils can understand the Eelam cause, but the Eelam Tamils do not understand our concerns".²⁸

B. SINHALESE: LTTE TERROR, THE CIVIL WAR AND INTRA-SINHALESE VIOLENCE

Sri Lanka's Sinhalese majority has been steeped in nationalist rhetoric for generations.²⁹ This has cemented a belief that the island is a Sinhalese Buddhist country with ethnic minorities who regularly exaggerate claims of discrimination.³⁰ It also has bred deep paranoia about those

minorities teaming up with outsiders.³¹ That fear is particularly strong with respect to the nearly 70-million-strong Tamil Nadu in India to the north.³² As a result, many Sinhalese see themselves as a besieged regional minority in a perpetual struggle to control the island. This mentality has been reinforced by violence directed at and between segments of their community.

The LTTE destroyed the lives of thousands of Sinhalese civilians and spread fear across the island. It carried out suicide bombings and attacked civilian targets, especially in Colombo and the villages bordering the Tamil-speaking north and east.³³ These "border villages" suffered tremendously during the war. Prominent LTTE incidents include the 1985 attack at the Sri Maha Bhodiya in Anuradhapura, where it murdered more than 100 Buddhist pilgrims, the 1996 suicide truck bombing of the Central Bank in Colombo in which over 70 people died, the 1998 suicide truck bombing at the Buddhist Temple of the Tooth in Kandy, and the 2008 suicide bombing at the Colombo Fort railway station. The Tigers also killed many political leaders, including Deputy Defence Minister Ranjan Wijeratne in

²⁵ The CWC is now led by S. Thondaman's grandson, Arumugam Thondaman. According to a recent report by Minority Rights Group International, poverty levels in the Up-country community are 7 per cent higher than the national average, literacy rates are 6 per cent lower for males and 16 per cent lower for females, and over half of those in the plantation sector live in tiny shanties with poor sanitation and high rates of sexual assault, while the entire plantation sector suffers from high rates of domestic violence, alcoholism and caste-based attacks. "No war, no peace: the denial of minority rights and justice in Sri Lanka", 2011, p. 18.

²⁶ For useful discussions of the political and economic obstacles facing Up-country Tamils, see Kumar David, "Up-country Tamils recede into the shadows", South Asia Analysis Group, 9 May 2011, and Mythri Jegathesan, "Bargaining for a living wage: reflections on the economic rights of Tamil tea plantation workers in Sri Lanka", *Himal Southasian*, February 2010, at www.himalmag.com. The two major parties representing Up-country Tamils, the CWC and the Upcountry People's Front (UPF), have each been pressured to support the government. "Sri Lanka's upcountry Tamil party pledges support to government", *Colombopage*, 24 June 2011.

²⁷ Crisis Group interview, Europe, April 2011.

²⁸ Crisis Group interview, Kandy, March 2011. This community leader also described how the plantation community has been divided and sidelined politically: "The political structure of the country does not allow Tamils to be united. The plantation [parliamentarian] joined the government. He said they did it because they'll get what the community needs. But really, personally they will gain, that's what they want".

²⁹ For background, see Crisis Group Report, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, op. cit.

³⁰ In the words of an international development worker commenting on the lack of understanding in the Sinhalese community of the experiences of the Tamil population in the north and

east, "the Sinhalese are fed a diet of lies and hate. How could they think anything else?" Crisis Group interview, Colombo, April 2011.

³¹ For many Sinhalese, Sri Lanka is seen as an outpost of Buddhism in need of protection against outside threats. In part a reaction to 500 years of Western colonialism, these beliefs are also an effect of the *Mahavamsa*, an important Buddhist chronicle still widely taught and discussed in Sri Lanka. The text recounts a series of medieval invasions of the island by South Indian kingdoms and propagates the idea of Sri Lanka as a *Dhammadipa*, an island chosen by the Buddha for the protection of his teachings. For useful analyses of Sinhala nationalism, see Michael Roberts, "Sinhala-ness and Sinhala Nationalism", Marga Monograph Series on Ethnic Reconciliation, no. 4, Colombo, 2001; and *Burden of History: Obstacles to Power Sharing in Sri Lanka* (Colombo, 2001).

³² See Crisis Group Report, *India and Sri Lanka After the LTTE*, op. cit. Tamil Nadu is also home to over 100,000 Sri Lankan Tamil refugees.

³³ The South Asian Terrorism Portal (SATP) publishes data-sheets on terrorism-related incidents in Sri Lanka, including a list of "Suicide attacks by the LTTE since 1987". See satp.org. The defence ministry website (defence.lk) also contains many articles chronicling LTTE atrocities. Unfortunately, because the government has also blamed the LTTE for some incidents in which its own forces are implicated – such as the 17 June 2006 attack on a church and fishermen in Pesalai, see fn 18 above – and used its websites to promote false versions of events, it has undermined the credibility of its reports on the LTTE. On the Pesalai attack, compare "Report of the fact finding mission to Pesalai", Centre for Policy Alternatives (CPA) and INFORM, 28 June 2006, to "The road to Pesalai attack", MOD News, defence.lk, 27 June 2006.

1991, President Ranasinghe Premadasa in 1993 and Foreign Minister Lakshman Kadirgamar in 2005.³⁴

Another segment of Sinhalese society affected by LTTE violence were those who served in the security forces and were killed or injured by the Tigers, including many who were executed after capture. These were overwhelmingly young Sinhalese men from impoverished, rural communities. According to the government, more than 26,000 soldiers were killed through 2005, with another 6,000 killed and many more injured in the final four years of the war.³⁵

The government has responded to some of the needs of these Sinhalese victims, but for the most part only to the extent that doing so is politically expedient. Most have received some compensation. However, for civilians, there is a perception that the amounts are determined arbitrarily, and many feel the funds are insufficient.³⁶ While the government continues to pay soldiers' salaries after death or disability,³⁷

payments often fall short of what is needed to address the serious medical and psychological issues they face, and their widows and families receive little support.³⁸

Sinhalese victims also have been recognised in other ways, such as war memorials and public commemorations of specific terror attacks. While there is significantly more memorialisation for the Sinhalese than for Tamils or Muslims, these gestures are often seen as self-interested. As the mother of a missing soldier said about the war heroes monument on the grounds of parliament, "they put it there because they do not want to go out to the people. The people cannot get there to see it".³⁹ Some of the worst-affected Sinhalese "border villages" have few if any official memorials, while Jaffna and Kilinochchi have many.⁴⁰ Finally, the government has shown little interest in prosecuting alleged war crimes or human rights abuses by the LTTE, in part because most of those responsible are now dead or in the government.⁴¹

While thousands of Sinhalese died at the hands of the LTTE, as many have been killed by other Sinhalese. The 1971 and 1987-1990 uprisings by the nationalist-Marxist Janatha Vimukthi Peramuna (JVP, People's Liberation Front) and brutal counterinsurgency efforts in response were two of the deadliest periods in modern Sri Lankan history. At least 2,000-3,000 people were killed in the 1971 uprising against the Sri Lanka Freedom Party (SLFP) government of the time, and as many as 40,000 in the late 1980s, when the United National Party (UNP) was in power, most through murder and disappearance by security forces and government death squads.⁴² These episodes reflected the deep fault-lines of class and caste in an outwardly

³⁴ The LTTE's political assassination list is long and includes many Tamils, such as Foreign Minister Kadirgamar, as well as Indian Prime Minister Rajiv Gandhi. See SATP's list of "Prominent political leaders assassinated by the LTTE". There were also a number of failed assassination attempts, including on the president's brother, Defence Secretary Gotabaya Rajapaksa.

³⁵ See V.K. Shashikumar, "Winning wars: political will is the key", interview with Defence Secretary Gotabaya Rajapaksa, *Indian Defence Review* 25, no. 2 (April-June 2010). In testimony before the LLRC, Army Commander Jagath Jayasuriya provided the following figures for the army (presumably separate from the navy, air force and other forces involved in the war): 14,177 killed, 54,071 wounded and 333 missing up to 2005; and a further 5,628 killed, 30,600 wounded and 140 missing (now declared dead) through the end of the war. See LLRC transcript, 8 September 2010. See fn 162 below on LLRC transcripts. Despite these statements, there have been persistent rumours that the actual figure for military deaths from 2005-2009 is higher. The military has estimated that up to 22,000 LTTE cadres were killed in the last three years of the war. "Sri Lankan army and Tamil Tiger death tolls reveal grim cost of years of civil war", *Financial Times*, 23 May 2009.

³⁶ Crisis Group interviews, Trincomalee District, Kandy, Colombo, March-April 2011. During the LLRC sessions in Monaragala, widows who lost breadwinners in LTTE attacks complained that compensation was insufficient to care for children. "LLRC visits Buttala and Siyambalanduwa in Monaragala District", Centre for Human Rights Sri Lanka (CHR), 5 April 2011.

³⁷ The take-home pay for a private in the army as of 2007 was approximately Rs.17,000 to 20,000 per month (\$155-\$180), very good earnings for a rural family, especially because the salary is still paid to the soldier if disabled and to next of kin if killed. Neloufer de Mel, "Gendering the new security paradigm in Sri Lanka", in "Transforming security and development in an unequal world", *IDS Bulletin*, vol. 40, no. 2, March 2009, p. 41. Also, Crisis Group interview, Kandy, March 2011. Family members of dead or missing soldiers also reportedly receive an immediate insurance payout of approximately \$750 to \$1200.

"Sri Lanka war wounded face long fight to recovery", Agence France-Presse, 18 April 2010.

³⁸ Army Commander Jagath Jayasuriya told the Agence France-Presse that the army does not have enough funds or facilities to accommodate the hundreds of disabled veterans in need of specialised care. *Ibid.* See also Dr Ruwan M Jayatunge MD, "War trauma in the military, their families and communities", *Lanka-web*, 30 May 2011; and "Families of dead Sri Lankan soldiers speak with WSWS", World Socialist Web Site, 14 May 2009.

³⁹ Crisis Group interview, Kandy, March 2011.

⁴⁰ Crisis Group interviews, Trincomalee District, April 2011. Scores of Sinhalese civilians were killed in LTTE attacks on border villages in the north and east. Throughout rural areas in southern Sri Lanka, however, one finds numerous bus shelters that feature the photos and names of local Sinhalese soldiers killed fighting in the war. The government memorials in Jaffna and Kilinochchi tend to emphasise the defeat of the LTTE over the sacrifice of Sinhalese soldiers and civilians.

⁴¹ The government did obtain convictions (some in absentia) in the 1996 Central Bank bombing, and a criminal trial has been proceeding fitfully in the Lakshman Kadirgamar assassination case.

⁴² Mick Moore, "Thoroughly modern revolutionaries: the JVP in Sri Lanka", *Modern Asian Studies*, vol. 27, no. 3 (1993), p. 593, fn. 2.

cohesive group and the propensity of the Sinhalese-majority government to react to any threat with violence and human rights violations.

The state's response to the victims of the JVP uprisings and government repression was reluctant from the beginning, and the issue is now rarely discussed publicly. Many of the JVP cases were presented to the commissions of inquiry on disappearances appointed between 1991 and 1998, which also investigated disappearances in the context of the armed conflict with the LTTE. Despite well-documented flaws in many of those inquiries, the 1994 and 1998 commissions appointed by President Chandrika Kumaratunga confirmed over 21,000 cases of enforced disappearance between 1988 and 1997, made extensive recommendations, including for investigations, arrests, legal reform and victims relief, and identified some of those responsible.⁴³ Unfortunately, other than a limited and bureaucratically challenging compensation scheme and a few flawed prosecutions, the recommendations have not been implemented.⁴⁴

The fact that President Rajapaksa made his name as a parliamentarian by representing families of the disappeared in the JVP uprisings does not settle well with many of those families now.⁴⁵ As a human rights advocate who works

closely with those families recounted, "when they heard what the president was doing, that people were disappearing again, they were so disappointed. They kept saying how can it be in 'our country' with 'our president'.... But those families – at least the mothers – will never vote with the UNP no matter how bad the government".⁴⁶ This history and the continuing distrust between the JVP and UNP have weakened the political opposition. The fact that neither the JVP nor the UNP has ever acknowledged or apologised for its own brutality and human rights abuses has further undermined their ability to criticise the Rajapaksas' alleged violations and silencing of critics from all ethnic communities.

C. MUSLIMS: ANTI-MUSLIM ATTACKS, EXPULSION AND INTRA-MUSLIM VIOLENCE

Sri Lanka's Muslims are a diverse and fractured yet highly visible community across the island, with dense settlements and an especially large political presence in the Eastern Province.⁴⁷ The identity of Muslims in Sri Lanka as a single collective "ethnicity", long grounded in their Islamic beliefs and culture, was consolidated in response to the LTTE's insurgency and demand for a separate state that would have included Muslim-majority areas in the north and east. But the history of discrimination and violence against this mostly Tamil-speaking minority goes back many years before the Tigers.

The first major inter-communal violence in modern Sri Lankan history was the 1915 anti-Muslim riots, when

⁴³ See Kishali Pinto-Jayawardena, *Still Seeking Justice*, op. cit. Over 16,000 cases of alleged disappearances did not fall under the mandate of any of these commissions and remain uninvestigated.

⁴⁴ One recommendation was the construction of a monument to the disappeared. Some activists groups (not the government) did pursue this, establishing a monument at Raddoluwa north of Colombo where annual commemorations are held on 27 October. See Law & Society Trust, *A Legacy to Remember*, op. cit., especially pp. 122-125 on monuments and compensation. One of the only successful prosecutions of these crimes was the case of the enforced disappearance of more than 50 Sinhalese students from Embilipitiya between September 1989 and January 1990. Six soldiers and the school principal were convicted, but the most senior officer involved was acquitted. See Kishali Pinto-Jayawardena, *Still Seeking Justice*, op. cit., pp. 48-49. There is a state-sponsored "Shrine of the innocents" for the Embilipitiya victims located near parliament. Law & Society Trust, *A Legacy to Remember*, op. cit., p. 122. Although some of the commission reports (or portions of them) are now public, details on specific cases generally are not, leaving families without information about the fate of their loved ones.

⁴⁵ As a member of parliament from Hambantota District in the south, Rajapaksa famously travelled to Geneva in September 1990 to present evidence of human rights violations by both the JVP and the UNP government to the Working Group on Enforced or Involuntary Disappearances (WGEID) at the UN Commission on Human Rights. At the airport on departure, an assistant superintendent of police confiscated hundreds of documents and photographs about missing persons that Rajapaksa was taking to Geneva. This incident is detailed in the court proceedings on the fundamental rights petition he subsequently

filed as well as in WGEID reports. See *Mahinda Rajapaksa v. Kudahetti and Others*, Supreme Court, 18-19 June 1992, at www.lawnet.lk/docs/case_law/slr/HTML/1992SLR2V223.htm; WGEID Report, EC/CN.4/1991/20, 17 January 1991, p. 74; and "Report on the visit to Sri Lanka by three members of the [WGEID] (7-18 October 1991)", WGEID Report Addendum, E/CN.4/1992/18/Add.1, 8 January 1992. In Geneva, Rajapaksa called for donors to condition aid on human rights and invited international observers to visit the island; on his return he defended his actions and the right to free speech in parliament. "Mahinda wanted aid linked to human rights", *The Sunday Leader*, 8 June 2008; and "Mahinda 'invited' HR observers in 89", BBC Sinhala, 4 April 2007. He now denies calling for any halt to international aid and accuses the opposition of fabricating allegations of human rights violations by his government. "President Mahinda reminds the 89/90 horror unleashed by UNP government", *Asian Tribune*, 14 March 2011.

⁴⁶ Crisis Group interview, Europe, April 2011.

⁴⁷ For background on the Muslim community, see Dennis B. McGilvray and Mirak Raheem, "Muslim perspectives on the Sri Lankan conflict", Policy Studies 41, East-West Center Washington, 2007; and Crisis Group Report, *Sri Lanka's Muslims*, op. cit.

groups of Sinhalese attacked Muslim shops and traders.⁴⁸ Since then, violence by Sinhalese against Muslims has been relatively rare, but nevertheless uncomfortably frequent for a minority still burdened by ethnic and religious prejudice.⁴⁹ While deadly incidents often stemmed from minor local disputes, Sinhalese nationalists have often manipulated them for political gains.⁵⁰

Muslim suffering at the hands of the LTTE was far worse. While the shared experience of discrimination led some Muslim youth early on to join the struggle of “the Tamil-speaking people” in the north and east, Muslim support soon fell off as militancy was increasingly defined in narrower Tamil nationalist terms. By the mid- to late-1980s, tensions between Tamils and Muslims in the north and east were running high amid LTTE attempts to extort Muslim businesses and frequent clashes, with the security forces reportedly backing Muslims in some incidents.⁵¹ As mutual distrust grew, the Tigers launched a campaign of ethnic cleansing in 1990.

From July to August 1990, the LTTE carried out devastating attacks on Muslims in the east. Many were particularly brutal, with gunmen massacring worshippers in crowded mosques and going village to village killing Muslims and burning their homes.⁵² Up to 1,000 Muslims were killed. Muslims associated with the LTTE were expelled or fled, while others left Tamil-majority rural areas for Muslim towns on the coast, abandoning valuable agricultural land.⁵³ Mass expulsions from the north followed in October. The LTTE gave Muslim villages at most 48 hours’ notice; Muslims in Jaffna town were given only two hours. Some 75,000 Muslims from all northern districts were forced to leave homes, lands, businesses and possessions behind, and many were robbed by the LTTE of jewellery, cash and

other valuables as they departed. Most settled in displacement camps in Puttalam on the west coast.

Additional episodes of violence against Muslims occurred in the east after the war resumed in 2006. In August, the Muslim town of Muttur was caught between the government and LTTE, with neither side making efforts to avoid civilian casualties. At least 50 Muslim civilians were killed and 45,000 displaced.⁵⁴ In September, ten bound and blindfolded Muslim labourers were massacred in Pottuvil.⁵⁵ Although the government immediately blamed the LTTE, the local community accused the security forces. Serious irregularities in the government’s response have fuelled concerns of a cover-up.⁵⁶ The year ended with violent intra-Muslim clashes in Kattankudy, as increasingly popular fundamentalist groups attacked Sufi mosques and supporters of a recently deceased Sufi leader.⁵⁷ This sectarian violence took a turn for the worse in 2009, with deadly attacks on Sufis in the south-western coastal town of Beruwala.⁵⁸

Despite a widespread belief among Tamils in the north that the government has provided for the Muslims expelled by the LTTE, these internally displaced persons (IDPs) have been largely ignored.⁵⁹ There has been no government inquiry into the LTTE’s massacres and expulsions of Muslims or meaningful apology (let alone compensation) from the LTTE.⁶⁰ Government assistance to the IDP population in Puttalam has been largely limited to dry rations. A World

⁴⁸ See Crisis Group Report, *Sri Lanka’s Muslims*, op. cit., p. 4, for further discussion of the complex causes of this incident and the British colonial power’s brutal response.

⁴⁹ Many Muslims resent the widespread perception among Sinhalese and Tamils that Muslims are businesspeople who are faring well while other communities continue to face hardships, a perception that ignores the serious poverty and poor levels of education affecting much of the Muslim population.

⁵⁰ See *ibid.*, p. 4. See also K. Ratnayake “Sinhala extremists stir up anti-Muslim violence in Sri Lankan capital”, World Socialist Web Site, 12 November 2002.

⁵¹ Many Tamils believed that Muslims were playing it safe and making deals with the government. The government’s creation of Muslim home guards in the east in 1990, some of which were later allegedly involved in attacks on Tamils, deepened the divisions between the communities.

⁵² See *ibid.*, p. 7. These attacks followed the LTTE’s June 1990 execution of over 600 surrendered Sinhalese and Muslim police officers in the east.

⁵³ Land disputes in the eastern province, some a direct legacy of LTTE-forced displacement, continue to cause tensions between Muslims and Tamils. See Section IV for more.

⁵⁴ McGilvray and Raheem, “Muslim Perspectives on the Sri Lankan Conflict”, op. cit., p. 47.

⁵⁵ Crisis Group Report, *Sri Lanka’s Muslims*, op. cit., pp. 20-21; and Crisis Group Report, *Sri Lanka’s Human Rights Crisis*, op. cit., pp. 9, 17.

⁵⁶ This case was among those before President Rajapaksa’s now-defunct 2006-2009 commission of inquiry. See fn 18 above.

⁵⁷ For an overview of intra-Muslim disputes and the growth of particular sects, see Crisis Group Report, *Sri Lanka’s Muslims*, op. cit., pp. 22-25; also McGilvray and Raheem, “Muslim perspectives on the Sri Lankan conflict”, op. cit., pp. 12-14.

⁵⁸ “The divided brotherhood”, *The Sunday Times*, 2 August 2009; see also Dennis B. McGilvray, “Sri Lankan Muslims: between ethno-nationalism and the global ummah”, *transcurrents.com* (courtesy: *Nations and Nationalism*, Journal of the Association for the Study of Ethnicity and Nationalism), 26 February 2011.

⁵⁹ For a good overview of issues facing this community, see “LLRC submission: the citizens’ commission on the expulsion of Muslims from the North by the LTTE in October 1990”, available on *groundviews.org*, 4 November 2010; also “No war, no peace”, *Minority Rights Group International*, op. cit., pp. 9-11.

⁶⁰ The Tigers issued an apology in 2002, with Prabhakaran even declaring “the Tamil homeland belongs to the Muslim people”, but this was widely perceived as a political ploy to lessen resistance from Muslims, especially those in the east, to government negotiations with the LTTE. “The tiger comes out of his lair”, *The Economist*, 12 April 2002.

Bank program has been in place since 2007 to provide some permanent housing there, but not all IDPs will benefit, and not all want to stay. Those who want to return to the north receive little support in negotiating the complex land and livelihood issues they face. The lack of any systematic program for the return of Muslim IDPs has contributed to a sense of discrimination and fuelled tensions with returning Tamil IDPs.

III. THE GOVERNMENT'S POST-WAR AGENDA

The government's post-war policies have prevented Sri Lankans from dealing with the past. Except for a few issues on which concerted international pressure has helped improve outcomes – such as the pace of resettling⁶¹ the nearly 300,000 IDPs interned in camps at the end of the war – most of the government's policies have increased ethnic polarisation between and within groups and closed space for reform. The government tells a very different story, claiming that it already has made “significant progress” on various issues in the north and east, including demining, resettling IDPs, reintegrating former LTTE combatants and child soldiers, closing military high-security zones (HSZs), returning confiscated land to its owners and developing local economies.⁶² It also points to the LLRC and talks with Tamil political parties to demonstrate its commitment to “truth, justice and reparation” and “constitutional, legal and democratic reform”.⁶³

This narrative does not reflect reality. What the regime deems “progress” on many issues is in fact undermining communities and reducing the chances of a sustainable peace. “Processes” such as the LLRC and talks on a political settlement cannot on their own produce changes in policy. That power rests solely in the hands of the Rajapaksa family, which it shows no signs of using it to accommodate minority grievances or to do anything that would detract from the Sinhalese nationalist vision that it has embraced fully, as both means to stay in power and an end in itself. Indeed, the most consequential government actions since the end of the war have been to remove the few remaining checks on its power, giving it free rein to shape the country's future and to destroy the material basis for a successful Tamil nationalist struggle.

⁶¹ The Sri Lankan government – and as a result most international agencies and NGOs working in Sri Lanka – use the term “resettle” and “resettlement” to refer to the return of displaced persons to their original homes or lands. It is thus at odds with the standard international terminology, which uses “resettlement” to mean the settling of the displaced in new locations.

⁶² See the 15 June 2011 statement by the external affairs ministry in response to the British government's reaction to the 14 June documentary by Channel 4, “Sri Lanka's killing fields”, available at www.mea.gov.lk; also Statement of Minister of Plantation Industries Mahinda Samarasinghe at the 17th Session of the UN Human Rights Council (UNHRC), 30 May 2011.

⁶³ Statement of Mahinda Samarasinghe, 30 May 2011, *op. cit.* The language used by Minister Samarasinghe at the UNHRC, and generally by the external affairs ministry, regularly goes further than anything President Rajapaksa and his brothers say.

A. DENYING THE ETHNIC CONFLICT

A central pillar of the government's strategy since 2005 has been to recast the civil war as another front in the global "war on terror" and deny its ethno-political context. This was an effective way to squeeze the LTTE's funding and access to weapons. While during the war, since the Tigers' defeat it has been an excuse for the government to reject the need for any meaningful power sharing or state reforms designed to address the political marginalisation of minorities.

The LTTE was a brutal organisation whose leadership had no qualms about killing Sinhalese civilians or Tamil political opponents to serve its own political and personal aspirations. At the same time it was widely perceived by many Tamils in Sri Lanka and abroad as the only organisation that stood up for them and presented their demands to a government and Sinhalese majority that had repeatedly lashed out with violence and discrimination. The complex 30-year relationship between the LTTE and the Tamil people cannot be collapsed into the government's simple "with us or against us" paradigm, particularly after such a brutalising and humiliating victory.

The second anniversary of the end of the war, like the first, saw the government continuing its refusal to recognise longstanding Tamil grievances and the government's share of responsibility for civilian suffering in the north. President Rajapaksa made this clear in his Victory Day address on 26 May 2011:

After uniting the country with the defeat of the most ruthless terrorism in the world, today we were able to hoist our national flag with dignity and honour. Today we celebrate the victory of ensuring the right of every citizen of the country to live in harmony. It is the victory of freeing thousands of civilians in the north, who were held as hostages.... I will recall what I said in the past that our troops went to the battlefield carrying a gun in one hand, the Human Rights Charter in the other, food for the innocent displaced on their shoulders, and love of their children in their hearts. They did not target any communities or religions, and did not march ahead with hatred towards anyone.... Today we do not hear a single incident of communal disharmony in this country. Two years ago, we celebrated the victory over terrorism without hurting the feelings of any community.⁶⁴

This denial of reality and history was echoed in the speech of his brother, Defence Secretary Gotabaya Rajapaksa, in an address to an international military seminar promoting the "Sri Lankan Experience" in defeating terrorism. He claimed:

While it is true that the LTTE's first major attack on an Army convoy in 1983 sparked riots in the south during which the Tamil community suffered at the hands of violent mobs, Sri Lanka as a nation grew up very rapidly after that incident and left those dark days far behind. The progress made in national reconciliation and integration since 1983 has been very encouraging for a long time. Even at the height of terrorist activity in the 1990s, when thousands of innocent men, women and children were killed on a yearly basis by the LTTE's bomb blasts and attacks, there were no more backlashes against the Tamil community....

The bane of the Tamil community in Sri Lanka was not the Sinhalese, nor the Armed Forces, nor the Government: it was in fact the LTTE. That is ultimately why we called our efforts to liberate the North and East a Humanitarian Operation – we were not just liberating territory from the LTTE's control; we were rescuing hundreds of thousands of innocent civilians from its cruel grip. By combating the LTTE and conclusively defeating it, we were not just winning a long drawn-out war against an old enemy; we were rescuing an entire nation from the constant threat and hellish horrors of terrorism.⁶⁵

This narrative is misleading and dangerous. The Tamil community in the north and east will never accept the assertion that there "were no more backlashes against the Tamil community" after the 1983 pogroms.⁶⁶ Counterinsurgency campaigns under the UNP government in 1989-1990 and then under President Chandrika Kumaratunga in the late 1990s killed thousands of Tamil civilians with impunity and were largely perceived by that community as a continuation of the violence of 1983. Government efforts to censor those atrocities and military missteps had

2009. The 2011 celebrations were postponed to 26 May because of inclement weather.

⁶⁵ "Key factor in defeating terrorism was political leadership" - Secretary Defence", defence.lk, 31 May 2011.

⁶⁶ This claim is most directly contradicted by the October 2000 massacre by a Sinhalese mob of 27 Tamil men held in a low-security "rehabilitation centre" in the central town of Bindunuwewa. The massacre was sparked by rumours of an imminent LTTE attack. After a commission of inquiry and a trial of 41 suspects, no one was convicted. See Alan Keenan, "Bindunuwewa: justice undone?", in "Sri Lanka: state of human rights 2004", Law and Society Trust (Colombo, 2004); and "Making sense of Bindunuwewa: from massacre to acquittals", Law and Society Trust Review, vol. 15, issue 212, June 2005.

⁶⁴ "Only we can solve our own problems, and none other, President at Ranaviru Day celebrations", priu.gov.lk, 26 May 2011. In 2010, the government announced that Ranaviru Day (Heroes Day) – more broadly referred to as Victory Day – would be celebrated annually on 18 May, the day the government announced Prabhakaran's death and declared the war over in

little impact on those perceptions. More importantly, for many Tamils in the north and east, the human rights crisis starting in 2005 and culminating in the massive destruction of civilian life in 2009 was perhaps the worst “backlash” of all. Given the Tamil community’s experiences, the president’s suggestion that the country “celebrated the victory over terrorism without hurting the feelings of any community” is absurd. But that has not stopped the regime from selling its narrative to the Sinhalese majority and international community and suppressing any public expression of “hurt feelings”.

The government has prevented public grieving in the north in part through intimidation, simply by ensuring that the military is watching over civilians’ every movement. When initiatives at the village level have tried to create space for local dialogue on what happened, the military has shut them down.⁶⁷ The military has been particularly concerned to restrict public grieving in the month of May, and while the government triumphantly celebrates its victory many Tamils want to mourn the thousands of civilians – and cadres – killed. In 2010, ceremonies in Jaffna and Mannar were mostly derailed by the military or by the sudden imposition of onerous permit processes.⁶⁸ In 2011, students at the University of Jaffna managed to hold an event on 17 May to remember the dead and call for a political solution,⁶⁹ but overall, and especially in the areas in Kilinochchi and Mullaitivu most affected by the conflict, silence was enforced.

The government has also destroyed anything it considers to be a monument to Tamil nationalism. While there is a long history of the Sri Lankan military destroying LTTE cemeteries,⁷⁰ it continued with determination after the end of the fighting in 2009, when the military regained control of territory previously held by the Tigers. Two of the most visible incidents in 2011 have been the relocation of the army’s 51st Division headquarters to the site of a former

LTTE cemetery in Kopay outside Jaffna⁷¹ and the desecration of the ashes of Prabhakaran’s mother, allegedly with military involvement.⁷² Such incidents have alarmed the Tamil community, particularly when the government has continued to erect war memorials, Sinhala language signs and Buddhist shrines in many areas in the north and east.⁷³

In this context, the government has essentially rejected the need for any political solution or power sharing with the Tamil-speaking-majority north and east. This is a marked change from previous governments, both SLFP and UNP-led, which explicitly recognised the existence of an ethnic conflict that required negotiations leading to power sharing between the central government and representatives from the north and east.⁷⁴ While the government has been in talks with the Tamil National Alliance (TNA) since January 2011, prospects for a credible, negotiated settlement have never been good given the Rajapaksas’ clear preference for authoritarian, centralised decision-making.⁷⁵ They dimmed even further when the president announced in June 2011 his intention to establish a parliamentary select committee

⁶⁷ For example, in one village affected by both government shelling and LTTE recruitment, a local organisation had started convening village residents weekly to share experiences – telling stories, singing songs – but the military stopped them. Crisis Group interview, Vavuniya, March 2011.

⁶⁸ Crisis Group interviews, Mannar, April 2011.

⁶⁹ “‘The week of pains’ the Jaffna University [sic] students mourned ‘May 18’”, *Eelanatham*, 17 May 2011. Student representatives said that after a similar event in 2010, military intelligence had visited them at their houses. They also said the 2011 event had been scheduled to take place in a university auditorium but had to be moved to the student union hall after the administration came under pressure from the “paramilitary hierarchy in Jaffna”. Ibid.

⁷⁰ See, for example, “Sri Lanka builds police station on LTTE cemetery”, *Tamil Guardian*, 28 November 2007. For an analysis of the erection and destruction of LTTE memorials, see Michael Roberts, “Symbolic postscript: a terrible violence”, 3 January 2010, at tupahi.wordpress.com.

⁷¹ “The desecration of graves in Jaffna – path to reconciliation?”, *groundviews*, 8 March 2011; “Military HQ in LTTE graveyard”, BBC News, 7 March 2011; and “51 Division new headquarters relocated after vacating Jaffna’s famous ‘Subash’ Hotel”, *army.lk*, 4 March 2011. The army had been occupying the Subash Hotel since December 1995; with the new headquarters in Kopay, the hotel was to be turned back over to its owners.

⁷² “Prabhakaran’s mother’s ashes desecrated”, *The Sunday Leader*, 27 February 2011. The night after she was cremated, unidentified men reportedly killed and left the bodies of three dogs on the scattered ashes. The military and government denied any involvement in the incident.

⁷³ Crisis Group interviews, Mannar, Vavuniya, Colombo, March–April 2011. As a civil society activist said, “it’s like discrimination of the dead”. Crisis Group interview, Colombo, March 2011. See also Ranga Jayasuriya, “Sinhalaisation of the Tamil North amidst increased militarisation”, *TransCurrents*, 4 June 2011.

⁷⁴ President Chandrika Kumaratunga’s extensive plans for a new federal constitutional structure in 1995 and 2000 were the most far-reaching proposals designed by any Sinhalese leader in power to address the ethnic problem. While her 2000 proposals were blocked in parliament by the UNP, an acceptance of the need for power sharing was central to the UNP-led peace process of 2002–2004. What JHU leader Udaya Gamanpila called “the decade of federalism” came to an abrupt end with the election of Mahinda Rajapaksa in 2005. Crisis Group interview, Colombo, December 2006. For an encyclopedic catalogue and analysis of proposals for power sharing, see Rohan Edrisinha, Mario Gomez, V.T. Thamilmaran and Asanga Welikala, *Power-sharing in Sri Lanka: Constitutional and Political Documents, 1926–2008* (Colombo, 2008).

⁷⁵ For background on the government-TNA talks, see Crisis Group Report *India and Sri Lanka after the LTTE*, op. cit.

with the responsibility of formulating a consensus political solution.⁷⁶

Rather than applying his popularity and extraordinary executive powers in an attempt at forging a lasting political settlement, the president seems more interested in continuing to parlay his military victory over the LTTE into a full political victory for Sinhala nationalism, which is as much a means to consolidate power as an end in itself. In continuing down this triumphalist path, the Rajapaksas risk ignoring not only the deep-seated grievances of the Tamil community, but also the concerns that cut across all ethnic communities, including the Sinhalese, such as over the increasing cost of living, consolidation of wealth in Colombo and the overall culture of corruption and unaccountable authorities.

B. ELUSIVE PROGRESS IN THE NORTH AND EAST

To the extent that the government recognises any minority grievances at all, economic development has been the post-war mantra and supposed solution. The government proudly promotes its “comprehensive development program, targeting [the Northern and Eastern Provinces], to enable their rapid reintegration and contribution to the national economy”.⁷⁷ A critical issue for any country coming out of a long civil war, economic development has to be managed carefully with particular sensitivity to its impact on populations most affected by the conflict.⁷⁸ Unfortunately, this has not been the government’s approach for the last two years in the north and four years in the east. Instead, it has tightly controlled all development from Colombo, favoured its local political allies and left much of the implementation to the military. Worse, the government has in many ways replaced the LTTE’s repressive and violent rule of the north and east with its own systems of control based on militarisation, deprivation and fear.⁷⁹

⁷⁶ In announcing the select committee, the president reportedly cast doubt on his many promises to implement existing provisions for devolved powers under the Thirteenth Amendment. “President insists solution only through PSC”, *The Sunday Times*, 26 June 2011. See also “Sri Lanka says Parliament Committee on political solution will strengthen Parliament”, news.lk, 28 June 2011.

⁷⁷ Statement of Mahinda Samarasinghe, 30 May 2011, op. cit.

⁷⁸ See Crisis Group Reports, *Development Assistance and Conflict in Sri Lanka* and *Sri Lanka’s Eastern Province*, both op. cit.

⁷⁹ On 7 July 2011, the TNA tabled in parliament a document alleging a range of malpractices in the north and east, including military interference in civil administration, illegal occupation of land, imposition of Sinhala names and culture and political killings and abductions. See M.A. Sumanthiran, “Issues and

1. Resettlement and development: centralised, militarised, without consultation

It is true that the overall economies of the north and east have expanded,⁸⁰ but the government’s focus has largely been on big infrastructure projects – roads, railroads, ports, power plants⁸¹ – to the neglect of more urgent needs, especially among the nearly 300,000 survivors of the final battle in the Vanni and the rebuilding of their lives and communities.

The government regularly points to the “rapid resettlement” of the vast majority of the nearly 300,000 IDPs originally detained after the war, claiming that “95 per cent have been resettled” as of 30 May 2011.⁸² But that is misleading because over 60,000 of those displaced in the last year of the war are still in temporary settings – living with host communities or in transit situations – while over 10,000 are still in camps.⁸³ The IDPs who have remained in the camps the longest are almost entirely from Mullaitivu District, which bore the brunt of the final weeks of fighting and is where the bulk of civilians were killed and many war crimes are alleged to have been committed. Those areas are closely guarded by the military and reportedly not open to returns because of uncleared landmines.⁸⁴ In addition to

problems facing people of northern and eastern provinces”, at dbsjeyaraj.com.

⁸⁰ The Central Bank recently reported that the Northern and Eastern Provinces had shown the highest nominal growth for 2009, at 14.1 and 14.0 per cent respectively, with similar results expected for 2010. “Sri Lanka war-torn regions to show highest nominal growth: CB Governor”, Lanka Business Online, 21 May 2011.

⁸¹ With Indian government support, the government is rebuilding railroads in the north and is due to start constructing a new port at Kankasanthurai and a power-plant near Trincomalee. China has helped fund and build a power-plant near Puttalam. Significant reconstruction of roads in the north has been funded by various donors, including the World Bank. For more on Indian and Chinese projects, see Crisis Group Report, *India and Sri Lanka after the LTTE*, op. cit., pp. 9-10 and 19.

⁸² Statement of Mahinda Samarasinghe, 30 May 2011, op. cit.

⁸³ Government data as of 30 June 2011 shared with donors show that over 66,000 were with host families, and over 1,700 were in transit situations. The government announced in July that the population of Menik Farm – the main internment camp at the end of the war – was down to 10,860. “IDPs dropped to 10,956”, News Line, priu.gov.lk, 8 July 2011. There are worrying reports that the government may be planning to close Menik Farm and move the remaining residents to a temporary location in Mullaitivu District. “Joint humanitarian and early recovery update, May 2011 – Report #32”, UN Office for the Coordination of Humanitarian Affairs (OCHA), 24 June 2011.

⁸⁴ While some of these areas are actually being cleared, others have yet to be released by the military to start mine clearance, including nine local administrative divisions (Grama Niladhari Divisions) in Mullaitivu District and fifteen in Jaffna. “Report #32”, OCHA, op. cit.

the IDP population detained in 2009, hundreds of thousands of civilians were displaced before that – including the Muslims expelled from the north in 1990 – and have seen much slower returns.⁸⁵ Around 100,000 such individuals are still in camps, with host families or in transit situations.⁸⁶ Resettlement and freedom of movement for all remaining IDPs are urgent needs.

For those who have returned home, there has been some limited progress: roads have improved, landmines have been cleared from large areas,⁸⁷ and some basic public infrastructure has begun to be rebuilt. But this progress is easily overstated, and evidence is uneven – conditions are far worse away from the highways. The starting point for the north was also exceptionally low, particularly in the Vanni. The final two years of hostilities destroyed much of the area physically and separated hundreds of thousands of people from their homes and livelihoods. “They lost everything” is a frequent refrain among the still limited local and international aid workers who have access to the population. Little has been rebuilt, and returnees are dependent on often insufficient assistance.⁸⁸ “They do not have water, safety, the basics”, says a Sri Lankan working with resettled villagers – an observation confirmed by broader assessments. Most in the Vanni are living in makeshift shelters, with little in the way of jobs, other livelihood opportunities or access to basic infrastructure. Food insecurity and poverty are particular problems in Kilinochchi district.⁸⁹

⁸⁵ For a good overview of the issues faced by these “old IDPs”, see Mirak Raheem, “The end of displacement in Sri Lanka?”, *Groundviews*, 10 August 2010.

⁸⁶ Government data as of 30 June 2011 shared with donors show that over 85,000 of those displaced before April 2008 are with host communities, over 3,800 in transit situations and over 8,500 in camps. The 85,000 includes a reduction of over 40,000 IDPs from Puttalam compared to 30 May 2011 data, reportedly a statistical correction to reflect the predominantly Muslim IDPs in that area who have voluntarily returned over the last year. It is not clear whether these returns have been sustainable or the individuals remain displaced.

⁸⁷ “Demining on fast-track in Kilinochchi”, News Line, priu.gov.lk, 18 June 2011.

⁸⁸ Returnees are eligible for a cash grant of Rs. 25,000 [\$225], dry rations, tin roofing and some non-food relief items. There have been reports of difficulties obtaining the cash grants and dependence on dry rations. See, for example, “Commentary on returns, resettlement and land issues in the North of Sri Lanka”, Centre for Policy Alternatives, September 2010, p. 13.

⁸⁹ Crisis Group interviews, Colombo, March-April 2011. A recent World Food Programme (WFP) assessment of the North, North-Central and Eastern Provinces “concluded that widespread food insecurity persists due to limited food production and high food prices”. The situation in the Northern Province is especially insecure: “The Northern Province, in particular, is characterised by severe and widespread poverty consequent to

Part of the problem is the government’s tight control over all humanitarian and development activities in the north. Local residents, community leaders and elected Tamil representatives are excluded from nearly all decisions affecting their livelihoods. In the north, most of those decisions are made by the Presidential Task Force for Resettlement, Development and Security in the Northern Province (the PTF), headed by the president’s brother, Minister of Economic Development Basil Rajapaksa. The PTF controls what services are provided, to whom and by whom. Its reporting obligations for providers are onerous, and many say that it is difficult to get approval to do anything beyond building houses – despite the desperate need for local capacity and support to those who have lost family members.⁹⁰ The central government exercises similar control over development in the east, which compared to the north has received less domestic and international attention in the last two years, compounding minorities’ views that they are not consulted, and their needs are not being met.⁹¹

In implementing programs, the government, particularly the PTF in the north, works closely with the local military commanders. They not only screen and approve beneficiaries,⁹²

poorly developed livelihoods, a lack of employment opportunities (including delayed livelihood assistance) and high food prices combined with low purchasing power. While income levels have seen some improvement (except in Kilinochchi District), the majority of the population lives below the poverty line, surviving on less than US\$1 daily. Food security conditions for returnees have improved in Mannar, Mullaitivu and Vavuniya District but deteriorated in Kilinochchi District. Reduced food assistance has caused deteriorations in food consumption, with Kilinochchi District in particular again a cause for concern”. “Joint humanitarian and early recovery update, April 2001 – Report #31”, OCHA, 13 May 2011. See also “Report #32”, OCHA, op. cit.

⁹⁰ Crisis Group interviews, Vavuniya, Mannar, Colombo, March-April 2011. Even in terms of housing, needs far outstrip what is available and progress is slow. In the Northern Province, the UN estimates that 110,000 houses will be required, while pledges to date are for only 32,937 plus 50,000 promised under a long-delayed Indian government program. By the end of April 2011, just over 15,000 units were in progress. “Joint humanitarian and early recovery update, April 2001 – Report #31”, OCHA, 13 May 2011. For more on Indian-sponsored housing, see Crisis Group Report, *India and Sri Lanka After the LTTE*, op. cit., p. 9.

⁹¹ For discussion of development issues in the east through 2009, see Crisis Group Reports, *Sri Lanka’s Eastern Province* and *Conflict in Sri Lanka*, both op. cit. For more recent reporting on views in the east, including on development, land seizures and fears of Sinhalsation, see “No war, no peace”, Minority Rights Group International, op. cit.

⁹² PTF documents shared with Crisis Group require that all beneficiary selection lists are “finalised by a committee comprising of the Divisional Secretary, the Divisional Coordinator and a representative of the Brigade Commander”. They warn that “[v]ulnerability of a family should not be the sole criteria for

but also closely monitor all activities of aid organisations, deciding, for example, when it is appropriate to convene a group of villagers to discuss the distribution of goods, and when it is not. In effect, “the civilian and military structures in the north are being blended”.⁹³ In addition, many of the senior government officials now in civilian posts in the north and east, including the two provincial governors and the government agent for Trincomalee District, are retired Sinhalese army officers appointed by the president.⁹⁴ One of the most pernicious effects of this way of doing development, is that it completely undermines the authority and capacity of local elected leaders and Tamil government employees posted in the north and east. This is aggravated by the president’s continuing delay in calling the long-promised election to the Northern Provincial Council.⁹⁵ All this belies the government’s many promises to devolve power.

The military is also increasingly engaged in its own economic activities. Army-owned and managed shops line the main A-9 highway through the north, to the detriment of local, Tamil-owned businesses, and the army has begun to grow large quantities of vegetables in the north and east for markets in the south.⁹⁶ Military support for Sinhala

selection as sustainability is the primary concern” and instructed that “[a]nother category which deserves priority are the families who were chased out or compelled to leave their villages by the LTTE”. Conspicuous among the individuals copied on certain PTF documents is the president’s son, Namal Rajapaksa, who as a parliamentarian for Hambantota District in the south would seem to have little reason to be kept so closely apprised of the PTF’s activities. He has also made several high-profile visits to the north, appearing at ceremonies to open buildings and distribute aid. See, for example, “Foundation stone for two storey building at Mu/Thirumurukandy Hindu Vid. - 22 April 2011”, Northern Provincial Council website, 23 April 2011; and “Hon. Namal Rajapaksa opened the new building at Mu/Kalaimahal vidyalayam, Mulliyawalai - 25 March 2011”, *ibid*, 4 April 2011.

⁹³ Crisis Group interview, Colombo, April 2011.

⁹⁴ The governor of the Northern Province is Major General G.A. Chandrasiri; the governor of the Eastern Province is Rear Admiral Mohan Wijewickrama; and the government agent for Trincomalee is Major General Ranjith de Silva.

⁹⁵ The president promised in his January 2010 election manifesto that he would call an election to the Northern Provincial Council “with immediate effect”. *Mahinda Chintana: Vision for the Future*, p. 57, at www.srilankanelections.com. In a June 2011 interview with newspaper editors, he promised the election would be held “next year”. “Elections for Northern Provincial Council of Sri Lanka next year”, *Colombo Page*, 28 June 2011.

⁹⁶ “‘Hadabima’ helps to push cultivation drive”, *defence.lk*, 24 February 2011, noting that the security forces would be used to cultivate 1,000 acres in the north and east and quoting an official working under the agriculture ministry: “After eradicating terrorism, soldiers are free of their major duties. Their labour can be used to grow crops in the country”.

businesses and fishermen moving into the north, along with rumours that families of soldiers will soon be migrating north, has fed widespread fears of a hidden plan for demographic change to undermine the Tamil character of the north. While there is as yet no sign of Sinhalese civilians moving north in large numbers, the lack of transparency of government development plans and the other forms of Sinhalese of the region make such fears impossible to disprove.

2. Militarisation and insecurity

In other more visible ways, life in the north is dominated by the military.⁹⁷ Despite government claims that it is regularly dismantling “high-security zones” (HSZs), particularly in Jaffna,⁹⁸ there has been no meaningful reduction in the military’s overall presence. Instead, it has increased and become more permanent, often without any formal process for residents and property owners.⁹⁹ Instead of scattered HSZs, the government says it now has a “single peace zone”¹⁰⁰ – which in fact means military camps and installations are everywhere. This infusion of soldiers is part of the government’s strategy to repress any revival of insurgency, but it is taking a significant toll on the civilian population. “The army is using informants, giving them favours. Nothing is transparent, especially regarding the militarisation. It breeds suspicion”.¹⁰¹ In the words of another local development worker: “The militarisation makes you accept

⁹⁷ A few determined journalists have managed to write detailed pieces on life in the north. For example, “Peace a battle”, *Sydney Morning Herald*, 14 May 2011; and “Jaffna and the Vanni today: the reality beneath the rhetoric”, *groundviews*, 17 March 2011.

⁹⁸ The government claims to have opened nearly all areas formerly designated as HSZs in Jaffna. See “Subash Hotel handed back to Owner; no more HSZs in Jaffna”, *defence.lk*, 18 March 2011. But many of these areas were HSZs for nearly twenty years and are in need of significant demining, infrastructure and services before the original residents can safely and sustainably return. On 9 May 2011, the government began the process of returning more than 12,000 people to their lands in former HSZs in the Valikamam areas of Jaffna district. “Resettling civilians in HSZ begins”, *Daily Mirror*, 12 May 2011.

⁹⁹ For further discussion of the many “ad-hoc” HSZs established by the military since May 2009 without following legal procedures such as gazetting, and the effect on residents who return to find their houses or land occupied, see “Commentary on returns, resettlement and land issues in the North of Sri Lanka”, CPA, *op. cit.* Crisis Group interviews and observations in the north and east in early 2011 confirm the pervasive presence of military camps and personnel.

¹⁰⁰ “Resettling civilians in HSZ begins”, *op. cit.*, quoting the president’s brother, Basil Rajapaksa.

¹⁰¹ Crisis Group interview, civil society activist working in the north, Colombo, March 2011.

vulnerability as a lifestyle.... The people feel like they [the military] are acting like the victors, not liberators".¹⁰²

This environment is particularly threatening for the tens of thousands of Tamil women who are now heading up households or are single.¹⁰³ "Many women in the north say they felt more secure in the Vanni before. The government, by deploying the military there, is making these women more vulnerable".¹⁰⁴ Women have to negotiate much of their daily lives with male Sinhalese soldiers. This has been linked with increased prostitution, sexual assaults and sexually transmitted diseases.¹⁰⁵ Especially given the deeply patriarchal nature of Tamil society, many Tamil women are at best stigmatised for trying to get by, and at worst victimised even after the war.¹⁰⁶

While the militarisation in the east is somewhat less pervasive, the impact is equally devastating, especially for women.¹⁰⁷ A recent study on "war widows" in Trincomalee found:

¹⁰² Crisis Group interview, Vavuniya, March 2011. Many people in the north also take offence at the government's repeated insistence that the final stage of the war was a "liberation" or "hostage rescue" effort. An elderly resettled person said to the same local development worker: "Those were my children. How can they say they liberated me from my children".

¹⁰³ While the true number of "war widows" will not be known unless and until the final stages of the war are credibly investigated, the government already acknowledges that there are nearly 90,000 in the north and east. Deputy Minister for Child Development and Women's Affairs M.L.A.M. Hizbullah said the ministry has lists of 49,000 widows in the east and 40,000 in the north, and that of those in the east, 25,000 are from Batticaloa (approximately half below the age of 40 and one third with three or more children). "Sri Lankan government says some 89,000 war widows in the north and east", *Colombo Page*, 29 September 2010; and "Programme to rehabilitate war widows", priu.gov.lk, 30 September 2010. In May 2011, Sri Lanka's ambassador to the UN, Palitha Kohona, claimed "the needs of over 80,000 war widow are being addressed", in a debate on the protection of civilians. "SL drew clear distinction between civilians and terrorists – Kohona", priu.gov.lk, 11 May 2011.

¹⁰⁴ Crisis Group interview, human rights activist, Colombo, March 2011.

¹⁰⁵ Crisis Group interviews, Mannar, Vavuniya, Colombo, March-April 2011.

¹⁰⁶ For an important document alleging a range of rights violations against women in the north and east, including rape, harassment and trafficking, see "Two years on: no war but no peace for women still facing the consequences of the war", Coalition of Tamils and Muslims for peaceful coexistence, 15 July 2011, at cmtpc.wordpress.com/author/cmtpc.

¹⁰⁷ Post-war military control over the development of the east has taken a more subtle and complicated form in part because of the multi-ethnic character of the province and the long presence of elected political leaders from all three main communities, including on the Eastern Provincial Council. Large portions of

Widowed mothers spoke about their need for protection from sexual violation and harassment from men in the general public, in positions of authority, in the army, the navy, and in the military police. Quantitative data showed that 68 per cent of [the 40] interviewees reported that pressure to have sexual relationships commonly arises for widowed mothers when they are trying to get work done.... [One interviewee] described intimidation and sexual advances by the military police during frequent forced inquiries in the military camp [She] explained that she is fearful of the manner in which she is unduly stereotyped as a widow of a "terrorist".¹⁰⁸

The breakdown of the sense of community and social safety nets is a serious concern. As an aid worker commented, "the identity of Tamils in the north is being eroded. Their dignity has been taken away at so many levels – the war, then the camps, then being screened so many times. They have had no dignity or safety for the last three years. You see a real loss of values. Now you have prostitution, kids are hard to discipline, alcoholism".¹⁰⁹ Domestic violence is also on the rise.¹¹⁰

This situation has made some Tamils romanticise the relative security provided by the LTTE. A woman from Kili-nochchi said, "there is a Tamil view now ... in light of what is happening now in the north – killings, abductions, rapes, injustices – that it is better for the LTTE to appear again and that the LTTE is needed now. Because they feel that when the LTTE was in control, there was discipline. There was no prostitution, women were safe – unlike now".¹¹¹ A similar sentiment was expressed in Mannar: "Prabhakaran was a great man. In the next ten years, we will have 200 Prabhakarans. We felt safe under the LTTE. Especially women, we could go out at night".¹¹² This view is far from universal – especially among those whose children and other family members were abducted or killed by the Tigers – but it is real.

Despite this nostalgia, there is little appetite for a return to violence now. The sense in the Tamil community was summed up by an experienced international aid worker:

... in one word, resigned; resigned to being second-class citizens. They have no expectations, no hope. They

the east remained under government control throughout the war, and the LTTE administration was always weaker there than in the north.

¹⁰⁸ "Sri Lanka Supporting Regional Governance program (SuRG) post-war support for widowed mothers: a gender impact assessment", prepared for the U.S. Agency for International Development (USAID), May 2011.

¹⁰⁹ Crisis Group interview, Colombo, March 2011.

¹¹⁰ Crisis Group interviews, Mannar, Colombo, April 2011.

¹¹¹ Crisis Group interview, Colombo, March 2011.

¹¹² Crisis Group interview, Mannar, April 2011.

are focused on “how do we get by”. There is some sense of normalcy returning. It’s further along in the east than in the north. But overall, there is huge demoralisation and sense of resignation. People gave up at the end of the war. The detainees, the last few months, the IDPs, all of it – it just squashed it out of them. You could feel it. They have this sense of being pushed aside and not relevant.¹¹³

3. Detention, “rehabilitation” and “reintegration”

Equally pressing is the status of some 3,000 suspected LTTE cadres still in “rehabilitation” camps and the 8,000 who have been released from those camps and “reintegrated”.¹¹⁴ While the government proclaims its “rehabilitation” program a “complete success” equalled “nowhere in the world”, the remaining detainees, like all those since released, are being held without charge or access to lawyers and without the most basic legal rights such as habeas corpus.¹¹⁵ Despite international and domestic outcry, the

government refuses to make available the names and locations of detainees so families whose loved ones went missing at the end of the war – many of whom were last seen in military custody – can know if they are alive.¹¹⁶ The government ended International Committee of the Red Cross (ICRC) access to this population in July 2009 and forced the organisation to close its last sub-delegation office in the north in early 2011.¹¹⁷ By the end of May 2011, most of the remaining detainees had been held for more than two years, beyond what even Sri Lanka’s emergency laws allow for a “rehabilitatee” in the absence of judicial review or legal representation.¹¹⁸

Despite the restriction on ICRC access and lack of due process and transparency about who is being held and why, the International Organisation for Migration (IOM), funded by the British, Dutch and U.S. governments, has been cooperating with the government’s “rehabilitation” program by assisting with the “reintegration” of released “ex-combatants” since 2009.¹¹⁹ There are worrying signs

¹¹³ Crisis Group interview, international development worker, April 2011.

¹¹⁴ It is difficult to know how many suspected cadres were detained at the end of the war, how many have since been released and how many are still detained in “rehabilitation centres” or in other facilities. In December 2009, Sri Lanka’s ambassador to the UN, Palitha Kohona, said, “over 12,700 former combatants have been identified among the IDPs so far”. “The ‘Elders’ statement on IDPs in Sri Lanka – sadly outdated and inaccurate – Dr. Kohona”, *Asian Tribune*, 5 December 2009. Since then, public statements have put the number at around 1,000 fewer. Reporting on a February 2011 briefing on rehabilitation efforts by Commissioner General of Rehabilitation Brigadier Sudantha Ranasinghe, *The Hindu* stated: “When the Sri Lankan Army overran the North in early 2009, as many as 11,696 fighters of the LTTE were segregated from 300,000 internally displaced persons, and profiled depending on their involvement with the militant organisation. Of the combatants held, 9,078 were male and 2,024, female. According to Army statistics, 594 were underage (between 12 and 16). A vast majority of those detained were single (7,407) while 122 were widows”. “Former LTTE combatants rehabilitated”, *The Hindu*, 4 February 2011. Information the government provided to the UN panel of experts suggests that, as of February 2011, around 5,800 had been released, some 4,500 were detained in rehabilitation centres, and another 1,300 were detained elsewhere apparently for possible prosecution. UN Panel Report, op. cit., p. 47. On 6 July, the government said 7,965 had been “reintegrated”, and 2,950 remained in rehabilitation centres. “Another batch of rehabilitated ex-LTTE combatants reintegrated”, news.lk, 6 July 2011. The confusion and lack of transparency about these numbers, coupled with the large number of people missing in the north, have contributed to concerns that more people are detained in undisclosed locations or were killed after being taken into custody. Crisis Group interviews, Colombo, March-April 2011.

¹¹⁵ R. K. Radhakrishnan, “Former LTTE combatants rehabilitated”, *The Hindu*, 4 February 2011 and “Rehabilitation, a complete success – Brigadier”, *The Sunday Observer*, 9 May

2010. Many of those being held as “combatants” in need of “rehabilitation” were in fact forced to undergo military training and serve with the LTTE or worked in low-level non-combatant positions. For a detailed overview of what it considered “may be the largest mass administrative detention anywhere in the world”, see “Beyond lawful constraints: Sri Lanka’s mass detention of LTTE suspects”, International Commission of Jurists (ICJ), Briefing Note, September 2010, p. 5.

¹¹⁶ Photos and video that appear to show surrendered LTTE members being interrogated and some tortured by the security forces, and separate photos, videos or government statements confirming their deaths have heightened families’ concern substantially. See “Sri Lanka’s killing fields”, Channel 4, documentary, 14 June 2011, available at www.channel4.com/programmes/sri-lankas-killing-fields; and “Sri Lanka: new evidence of war-time abuses”, Human Rights Watch, media release with photos, 20 May 2010.

¹¹⁷ “Sri Lanka: ICRC closes its offices in the north”, News Release 11/68, 25 March 2011.

¹¹⁸ “Beyond lawful constraints”, ICJ, op. cit., p. 6. The preventive detention under the emergency laws is also designed for “surrendeers”, presumably based on a voluntary surrender, which would not apply to many of the detainees.

¹¹⁹ IOM’s willingness to work with the government, and in particular the defence ministry, on this controversial issue undermined diplomatic efforts to secure ICRC access, but won IOM praise from government supporters. Shamindra Ferdinando, “Dancing ex-Tigers at IOM function: from Vanni to Cinnamon Grand Hotel”, *The Island*, 25 March 2011. IOM reports that it works inside the centres, but only to do the socio-economic profiling of detainees who are about to be released. “Based on what staff have seen during visits (often made on very short notice), conditions in the PARCs [Protective Accommodation and Rehabilitation Centres] appear to be humane and there have indeed been no complaints to us by those released about the material conditions inside”. IOM insists it “is not in any way involved with the rehabilitation process”, but nonetheless “has advocated at the highest level in the GoSL for access to the

the government's treatment of this population will increase tensions. After release from their arbitrary detention, many former detainees are regularly re-arrested, harassed or used as informants by the military, with no system of independent monitoring of their treatment or protection in place.¹²⁰ The government also appears to be looking to put even more people into the "rehabilitation" system,¹²¹ including by transferring to those centres some of the nearly 2,000 detainees held under the Prevention of Terrorism Act (PTA) who have yet to be tried.¹²²

C. CO-OPTING OPPONENTS AND CONSOLIDATING POWER

President Rajapaksa has made no secret of his desire to shape Sri Lanka for years to come.¹²³ To further that goal, he has pursued multiple unlawful and undemocratic tactics to consolidate power for himself and his family. While so far he has been successful, the balance of loyalties he

PARCs by an independent human rights monitoring body". IOM states it has not screened any detainees to determine whether they were combatants or implicated in any war crimes or human rights abuses, nor has it ever "had formal or informal access to a register of names of those held in government detention centres or PARCs". Crisis Group email interview, IOM Sri Lanka DDR Programme Manager, July 2011.

¹²⁰Crisis Group interviews, Mannar, Vavuniya, Colombo, March-April 2011. For a detailed and disturbing account of the treatment of former detainees, see: "Threats, harassments and restrictions on former detainees and their families in the Vanni", *TransCurrents*, 12 May 2011. For more on the treatment of released detainees, see Section IV.B.

¹²¹The commissioner of rehabilitation recently announced that any cadres who have not yet gone through the rehabilitation process should report to the nearest centre. "Former LTTE cadres requested to report for rehabilitation", MOD News (courtesy: Independent Television Network), defence.lk, 16 May 2011.

¹²²In February 2011, the attorney general's department "recommended the immediate release or transfer for rehabilitation of 676 LTTE suspects held in Boossa and Omanthai camps". "LTTE suspects to be released", BBC Sinhala, 15 February 2011. In early March, acting on that recommendation, a magistrate sent 118 LTTE suspects to rehabilitation for one year. "118 LTTE activists sent for rehab", *Daily Mirror*, 7 March 2011. The number of individuals detained under the PTA is difficult to confirm. Over the years the government has cited conflicting figures. In May 2010, the media reported: "Over 1900 suspects arrested under the Prevention of Terrorism Act (PTA) will remain in custody despite some of the emergency regulations being relaxed recently, Prime Minister D.M. Jayaratna told *Daily Mirror* online". "PTA detainees to remain", *Daily Mirror* (online), 17 May 2010. Several hundred of these individuals have been detained for years.

¹²³For example, his decision to put his image – in the now familiar white robe and red scarf with hands raised in victory – on the country's currency. "Sri Lanka's currency: A new 1000-rupee note", *The Economist*, 4 February 2010.

has created requires constant attention and may be more brittle than it appears. The union protests and deadly police crackdown in Colombo on 30 May 2011¹²⁴ are an important reminder of potential fault lines, especially if the Rajapaksas fail to deliver on the many promises they have made.

1. Repressing dissent

A core component of governance under the Rajapaksas has been constant pressure on critical media outlets and other civil society actors. Between the time the president first came to power as prime minister in April 2004 and the end of the war in May 2009, at least fifteen journalists and media workers were killed – mostly Tamils but also Sinhalese and Muslims – while even more left the country for fear of persecution.¹²⁵ The lasting effect of this kind of violence and subsequent impunity should not be underestimated.¹²⁶ Even so, journalists are regularly reminded of the threat that they are under, cementing widespread self-censorship and the dominance of state-owned and pro-government news outlets. Those outlets have been particularly powerful in reinforcing the government's narrative of the final stages of the war and the two years since.¹²⁷

A main target since the war's end has been the online news website LankaeNews, a frequent regime critic and supporter

¹²⁴Hundreds of factory workers in the Katunayake Free-Trade Zone (FTZ) protested against a proposed pension law on 30 May. The police fired into the crowds killing one person and wounding many others. The crackdown triggered further protests by unions and also by Buddhist monks in Colombo. The police inspector general resigned and was then nominated ambassador to Brazil. The government withdrew the pension bill, and the president appointed a one-person commission to investigate the incident. That report has not been released, reportedly because a criminal investigation is underway. "The limits of the Mahinda Chintanaya: FTZ workers and Buddhist monks rise up against government", *Groundviews*, 5 June 2011; and "Sri Lankan court examines police shooting of FTZ worker", *World Socialist Website*, 23 June 2011.

¹²⁵Fifteen is a conservative figure based on cases confirmed as "work-related" by the Committee to Protect Journalists (CPJ). See <http://cpj.org/killed/asia/sri-lanka>. These include nine murders, with government forces suspected in at least four and the LTTE suspected in at least three. Another group, Journalists for Democracy in Sri Lanka (JDS), has reported higher figures – as of August 2009, three Sinhalese, two Muslims and 29 Tamils killed, another ten abducted and over 50 departed from the country. See "Sri Lanka: thirty-four journalists & media workers killed during present government rule", press release, JDS, 1 August 2009.

¹²⁶CPJ ranks Sri Lanka as fourth worst in the world in terms of impunity for journalist murders. "Getting away with murder: CPJ's 2011 impunity index", CPJ, 1 June 2011.

¹²⁷See "The continuing disinformation campaigns in Sri Lanka: is mainstream media complicit?", *Groundviews*, 25 May 2011.

of former army commander and presidential candidate Sarath Fonseka. The government has detained and prosecuted Fonseka for various offences – using military and emergency laws – since he lost the election to President Rajapaksa in January 2010.¹²⁸ Two days before that election, Prageeth Eknaligoda, a writer and cartoonist for LankaeNews and supporter of his campaign, disappeared. He has not been seen since, and there has been no serious investigation. In January 2011, the LankaeNews offices were burned down in an arson attack, shortly after publication of an article critical of testimony given by the president's defence secretary brother, Gotabaya, in Fonseka's trial. Its news editor was arrested in March for allegedly threatening people connected to a suspect in the arson; he was later released on bail. He and other LankaeNews employees were threatened and called "Sinhala Tigers". Another of its journalists was arrested in April for insulting a magistrate in an erroneous article, resulting in the website's temporary suspension.¹²⁹

¹²⁸ Fonseka has been detained since 8 February 2010. Despite initial rumours about a coup plot, he was charged before two courts martial with corruption in military procurement and engaging in politics while serving in the military. Those cases resulted in a sentence of 30 months' hard labour. In April 2010 he was elected to parliament but eventually stripped of his seat in a series of decisions culminating in a controversial Supreme Court ruling. See "Statement by the Centre for Policy Alternatives on the Supreme Court's ruling recognising courts martial to be 'courts' within the meaning of the constitution", 1 February 2011. The government has also used emergency regulations to press criminal charges pending against him in civil court over the "white flag" incident, when in December 2009 he reportedly told a journalist that Gotabaya Rajapaksa had ordered soldiers to kill surrendering LTTE cadres. Fonseka has since denied making that statement. The U.S. State Department's 2010 Human Rights Report on Sri Lanka designated Fonseka a "political prisoner" and noted that: "Many independent observers concluded that Fonseka was detained, prosecuted, and sentenced for political reasons, because of the initial lack of clarity in the allegations against Fonseka, the fact that no formal charges were brought against him for more than a month after his detention, the selective way in which laws were ultimately applied (some pro-government military officers spoke publicly in favour of the president during the campaign and were not similarly charged or punished), and the disproportionate nature of the sentences in the courts martial, which appeared to be designed to humiliate Fonseka and to deprive him of his seat in parliament". As army commander through the end of the war, Fonseka is also implicated in the alleged war crimes and crimes against humanity identified by the UN panel of experts.

¹²⁹ "Sri Lanka news website suspended, journalist held in custody", International Federation of Journalists, 28 April 2011. The magistrate ordered the website suspended after it had publicly taken responsibility for the erroneous report and apologised. "Suspension on e news website lifted", *Daily Mirror*, 13 May 2011. Other websites are often blocked in Sri Lanka, including

Also under attack – by way of police investigations and a smear campaign by the government media¹³⁰ – are NGOs that have received significant international funding and support over the last ten years, including the National Peace Council, the Centre for Policy Alternatives and the local branch of Transparency International. There are serious concerns that they may face physical threats or be shut down or crippled by legal actions taken in the name of fighting fraud or corruption.¹³¹ Much of this crackdown has occurred since April 2010, when the president transferred the national secretariat for NGOs to Gotabaya's defence ministry. On 16 June 2011, in an unprecedented move, the defence ministry took over the Community Trust Fund (CTF) in Puttalam. CTF's managing trustee and well-known human rights defender, Pattani Razeek, has been missing since February 2010.¹³² Until recently, the police investigation into the disappearance had seen little progress, and there have been allegations of political interference.¹³³

While enforced disappearances are down from the levels experienced during the last years of the civil war,¹³⁴ they are still occurring, mostly in the north and east.¹³⁵ There was also an assassination attempt on TNA parliamentarian Sivagnanam Sritharan of Kilinochchi on 7 March 2011,¹³⁶

the pro-LTTE TamilNet, although the government has denied playing a role in these restrictions.

¹³⁰ See "Time for civil society to recover lost or robbed identity card", *Daily News*, 17 March 2011; "Exclusive! The CPA's millions!", *The Island*, 18 March 2011; "Sri Lanka probes the activities of certain foreign funded NGOs", *Asian Tribune*, 24 March 2011; and "Financial reporting criteria for NGOs", *The Island*, 12 May 2011.

¹³¹ "Sri Lanka and war crimes: Keep quiet and carry on", *The Economist*, 14 April 2011.

¹³² See "Disappearance of Mr. Pattani Razeek on 11th February 2010, update", *transCurrents*, 8 February 2011; and "Still no police investigation", statement by Sri Lankan civil society activists, *Sri Lanka Guardian*, 28 June 2011.

¹³³ The chief suspect, Shahabeen Noushadh, a former CTF employee, claimed in his anticipatory bail application that he was an associate of Minister for Industries and Commerce Rishad Bathiudeen, whose reputation and work would suffer if Noushadh were convicted. See "Still no police investigation", op. cit. On 8 July, Noushadh was arrested in Kilinochchi by the police. See "Update on disappearance of human rights defender Mr. Pattani Razeek: arrest of chief suspect Nowsaadh", 11 July 2011, at <http://blog.srilankacampaign.org/2011/07/dear-friends-see-below-attached-brief.html>.

¹³⁴ In March 2008, Human Rights Watch reported that hundreds of enforced disappearances had been reported since 2006, putting Sri Lanka among the countries with the highest numbers of new cases. "Recurring nightmare: state responsibility for 'disappearances' and abductions in Sri Lanka", March 2008, p. 3.

¹³⁵ See "2010 human rights report: Sri Lanka", U.S. State Department, 8 April 2011, citing an estimate of 77 missing in the year.

¹³⁶ D.B.S. Jeyaraj, "Assassination attempt on TNA parliamentarian Sritharan", *dbsjeyaraj.com*, 11 March 2011.

reportedly involving white vans similar to those used in many alleged abductions and killings by state agents during the war.¹³⁷

2. Buying elections

With critical journalists and civil society largely silenced, the Rajapaksas have focused on continuing to divide political opponents through threats and financial inducements, while removing the few remaining checks on presidential power. Much of the most recent dividing was achieved in the three elections (presidential, parliamentary and local) in 2010 and 2011.¹³⁸ While each was marred by violence and irregularities, the most damage was done by the apparently massive mobilisation of state resources in support of the president and his party.¹³⁹ A civil society activist described the choice for many would-be politicians and voters: “The message from the government has been – work with us, and at least you’ll get something”.¹⁴⁰ Even the election commissioner had had enough by the time of the first round of local polls in March 2011, commenting: “The manner in which some political parties and groups

conducted themselves, both before the day of the poll and on the day of the poll, and also the misuse of State resources and State-owned media is regrettable”.¹⁴¹ That did not, however, prevent him from signing off on the results, then promptly retiring.

Coupled with the government’s high-profile campaign against the once-powerful army commander, there is little incentive for politicians to do anything except fall in line with the regime and benefit accordingly.¹⁴² A number of former Tamil militants have taken advantage of this opportunity, pledging their loyalty to the president in exchange for impunity. The series of events following the 11 May 2011 murder of the coordinating secretary for former LTTE leader Karuna and subsequent arrest of associates of Karuna’s rival, Pillayan, suggests the president’s guarantee is still good.¹⁴³

Despite the ruling party’s power, the TNA has benefited from distrust of the government among Tamils, winning important contests in both the parliamentary and local elections in the north and east, with substantial margins especially in the north.¹⁴⁴ These victories are all the more notable because they were achieved without the Tiger machinery to ensure votes or the Tigers’ separatist cause, which the TNA has dropped from its platform in favour of a federal solution. The army’s violent crackdown on a TNA meeting in Jaffna on 17 June does not bode well for the second round of local elections, scheduled for 23 July.¹⁴⁵ The president’s continued postponement of even more local polls under the emergency laws – including in Colombo, a traditional UNP stronghold – is also concerning.

3. Rewriting the constitution

This combination of corruption, co-option and intimidation has culminated in a series of constitutional changes and power plays. In September 2010, President pushed the

¹³⁷ “Recurring nightmare”, Human Rights Watch, op. cit., p. 44.

¹³⁸ President Rajapaksa won the presidential polls against former Army Commander Sarath Fonseka (the UNP candidate, also backed by the JVP and the TNA) with 58 per cent of the vote. In the April 2010 parliamentary elections, the ruling UPFA won 144 of 225 seats, the main opposition UNP won 60 seats, the TNA won 14 seats, and the newly formed Democratic National Alliance (DNA) of Sarath Fonseka and the JVP won seven seats. In the first round of local government elections on 17 March 2011, the ruling UPFA won control of 205 of 234 local authorities, the TNA won twelve, the UNP won nine, the Sri Lankan Muslim Congress (SLMC) (a member of the UPFA but contesting separately in some locations) won four, and independents (UPFA-supported) won one. No party gained overall control in the remaining three local authorities, but the UPFA had the strongest showing in two and the Up-country People’s Front in one. Elections for 67 local authorities (including all of Jaffna and Kilinochchi) were postponed because of court challenges to the election commission’s decision to reject various nominations, while another 23 (including Colombo and Kandy) were postponed under the emergency regulations initially because of the 2011 Cricket World Cup, which Sri Lanka co-hosted, but then again until 31 December 2011. Of the 67 polls, 65 are now due on 23 July 2011, while two are postponed because of uncleared landmines in Mullaitivu.

¹³⁹ The few independent election observers willing and able to operate in Sri Lanka found serious deficiencies in the elections. See, for example, “Election observation report local government elections March 17th 2011”, Campaign for Free & Fair Elections (CaFFE), 26 April 2011; “Parliamentary elections, 8th and 20th April 2010, final election observation report”, CaFFE, 26 April 2011; and “Report of the Commonwealth Expert Team, Sri Lankan presidential election 26 January 2010”, Commonwealth Secretariat, 27 January 2010.

¹⁴⁰ Crisis Group interview, Colombo, March 2011.

¹⁴¹ “Polls chief lashes out at UPFA”, *The Island*, 18 March 2011.

¹⁴² As an astute analyst said, “there is no opposition. Sarath Fonseka split from the government for no ideological reason whatsoever. If Fonseka can be in jail, would you start a political party?” Crisis Group interview, Europe, April 2011.

¹⁴³ The police initially conducted a search of Pillayan’s office and residence and arrested some of his TMVP associates in connection with the killing. Pillayan threatened to stop supporting the government in protest but withdrew the threat after a meeting with the president in which the president called on the inspector general of police to cooperate with the TMVP and assured Pillayan that he would receive a police report about the arrests. “TMVP will continue to support Govt.”, *The Sunday Times*, 22 May 2011.

¹⁴⁴ D.B.S. Jeyaraj, “T.N.A. Performs creditably in parliamentary elections”, *dbsjeyaraj.com*, 16 April 2011.

¹⁴⁵ “The attack on TNA Parliamentarians in Jaffna: A timeline of outrageous denials (Updated)”, *Groundviews*, 5 July 2011.

Eighteenth Amendment to the constitution through parliament as an “urgent” bill, obtaining a two-thirds majority amid widespread speculation that members of the opposition and minority parties were crossing over for their own personal gain.¹⁴⁶ The amendment removes most of the few remaining checks on the president’s powers, as well as the two-term presidential term limit, which gives Rajapaksa a very real chance of remaining in power indefinitely. It also gives him powers to appoint directly members of the already weakened judiciary¹⁴⁷ and the “independent” commissions on police, human rights, elections, corruption and bribery, finance, and public service. Reports of further amendments under consideration, including a term-limit for the chief justice, suggest the president is not ready to stop at what is already a far-reaching constitutional coup.¹⁴⁸

4. The Rajapaksas: dynasty in the making?

The president’s brothers, Gotabaya and Basil, and son Namal are active partners and direct beneficiaries in the government’s post-war agenda, and there are plans to expand their domains. In addition to the PTF, Basil is reportedly due to take control of a proposed new unelected local governance layer (*jana sabhas*, people’s councils).¹⁴⁹ Touted as a way to increase local input on development decisions under central government control, it most likely will further erode elected local officials’ power. Gotabaya is reportedly slated to take charge of a proposed new Colombo Metropolitan Corporation to oversee five municipal councils in the capital region, including the traditionally UNP-dominated Colombo Municipal Council, which has not functioned for over a year.¹⁵⁰ The new corporation would have a “wide scope of powers and functions to govern and

develop”¹⁵¹ and is expected to continue contentious urban development initiatives Gotabaya already is pursuing.¹⁵² His Sinhalese-dominated military is continually extending its reach into civilian affairs, including requiring university entrants to attend mandatory “leadership training” at army camps.¹⁵³

Namal was elected to parliament in April 2010 from the president’s home district, Hambantota, and clearly is being groomed to follow in his father’s footsteps.¹⁵⁴ Namal and his youth organisations, the Nil Balakaya (Blue Battalion) and Tarunyata Hetak (A Tomorrow for the Youth), are regular presences at government events.¹⁵⁵

¹⁵¹ “Facelift for Colombo’s city administration”, *Sunday Observer*, 27 March 2011.

¹⁵² Those include plans to move up to 75,000 people out of their homes in Colombo, most of which are shanty houses on state land according to the government. Gotabaya, who already controls the Urban Development Authority (UDA) and the Land Reclamation and Development Board, has taken the lead in defending and implementing these efforts. Some residents have been evicted, and many more have received notices of eviction. Few have been resettled or compensated, despite government promises. See “Mews Street residents will get houses: AG”, *Daily Mirror*, 31 March 2011; “Survey on to identify squatters in Colombo”, *The Island*, 25 March 2011; also the 23 May 2011 media release by Friday Forum, a multi-ethnic group of prominent citizens, calling for transparency in city planning and urban development and noting their particular concern “at the use of uniformed services personnel to deliver communications of the UDA to citizens in matters which are not of a military nature”.

¹⁵³ For a detailed critique of the leadership program, including its curriculum which includes a history course that “focuses exclusively on the majority community, undermin[ing] all the official statements on national reconciliation after three decades of civil strife” and overall “seems to discourage tolerance for viewpoint difference, and sensitivities for the pluralism and diversity of our country”, see “Leadership training for university entrants”, press release, Friday Forum, 9 June 2011. Other recent “military” activities include selling vegetables, running hotels, offering whale-watching tours and renovating cricket stadiums. “Sri Lanka’s army: In bigger barracks”, *The Economist*, 2 June 2011. An analyst explained: “This is how they grow. This is the nature of this government”. Crisis Group interview, Colombo, March 2011.

¹⁵⁴ “The son also rises”, *The Economist*, 17 May 2011. Namal cut his foreign policy teeth with a trip to Libya in January 2011 to meet Muammar Gaddafi. See also fn 92 on Namal’s frequent appearances in the north.

¹⁵⁵ An early April 2010 article interviewing the then-candidate for parliament reported that the Nil Balakaya had 500,000 members. “The youngest contestant in the fray”, *Daily News*, 5 April 2010. Although it is reportedly engaged in some development and social welfare work – see “Nil Balakaya to develop villages”, *Sunday Leader*, 4 May 2011 – it has also been described, along with the Tarunyata Hetak, as “goon squads that he puts to use to mobilise support and crush rivals”. Sudha Ramachandran,

¹⁴⁶ It was widely reported in the Sri Lankan media that SLMC leader, and current justice minister, Rauff Hakeem, decided to join the government and support the Eighteenth Amendment only after his party’s parliamentarians had already been induced to cross over. He issued a strong rebuttal. See Rauff Hakeem, “Why we rose to the occasion”, *Sunday Times*, 5 September 2010.

¹⁴⁷ See Crisis Group Report, *Sri Lanka’s Judiciary*, op. cit.; and Basil Fernando, “A new chief justice for a dying judiciary”, *Sri Lanka Guardian*, 19 May 2011.

¹⁴⁸ “A government full of bright ideas”, *Hindustan Times*, 10 May 2011.

¹⁴⁹ “Wide powers for Basil’s Jana Sabhas”, *The Sunday Times*, 20 March 2011; and “Elusive efficiency”, *DailyFT*, 22 March 2011.

¹⁵⁰ “Govt to set up a Metropolitan Corporation for the Greater Colombo core area”, news.lk, 24 March 2011. The Colombo Municipal Council (CMC) was dissolved by the Western Provincial Council chief minister and put under a special commissioner in June 2010 because of alleged corruption. The CMC is now working with Gotabaya to implement a “city beautification program” he initiated. The CMC special commissioner noted that “[t]he Defence Secretary is keen on developing foot-walks and pavements”. “Program to develop Colombo roads, intersections”, *The Sunday Observer*, 15 May 2011.

D. THE “LESSONS LEARNT AND RECONCILIATION COMMISSION”

President Rajapaksa appointed the LLRC in May 2010 in the wake of domestic and especially international pressure to address allegations that government forces and the LTTE had committed war crimes and crimes against humanity in the final stages of the war.¹⁵⁶ Its mandate is to inquire into “the facts and circumstances which led to the failure of the ceasefire agreement operationalised on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009”.¹⁵⁷ The government made clear from the outset its expectations for what the LLRC would find, peremptorily ascribing all responsibility for “the difficulties and troubled times Sri Lanka had to undergo ... to the terrorist inspired, manoeuvred and created conflict situation in recent years”.¹⁵⁸ The president’s message to the commissioners at the start of their work underlined the limits of their task – “act in a forward looking manner, through focus on restorative justice” – and warned them not to embarrass the nation.¹⁵⁹

Operating in this environment, even a truly independent commission would have had difficulty gathering information that implicates government forces in atrocities or counters the government’s narrative of the conflict as solely a “war on terror”. But this commission is far from impartial. Its key members have deep conflicts of interest that restrict the LLRC’s capacity to make meaningful contributions to accountability or reconciliation. That capacity is reduced even further by the fact that the LLRC has no power of enforcement or implementation. Regardless of

what the LLRC recommends, government policy will not change unless the president and his brothers decide it has to. In these circumstances, the LLRC process promises little and risks compounding the grievances placed before it.

In April 2011, a panel of experts established by the UN Secretary-General (discussed below) found that the LLRC fails to meet international standards for an accountability process, with no mandate for prosecution, no witness protection, and lack of impartiality in the manner of its establishment and its members’ conflicts of interest. Following the panel’s report, the LLRC’s mandate was extended a second time, with its report to the president now due by 15 November 2011.¹⁶⁰ While much of the international community has decided to wait and see what the LLRC will produce, prospects are discouraging. A closer examination of the conflicts of interest at issue, along with Sri Lankans’ views of the LLRC¹⁶¹ and the impact of its work to date, shows that the real question in coming months is not what the LLRC will do, but whether the Rajapaksas are willing to change course.

To meet international standards in terms of an accountability process for alleged war crimes and crimes against humanity, the LLRC would have to be fundamentally transformed. Among other things, at least three of its eight commissioners would have to be replaced, because their conflicts of interest undermine the commission’s independence.¹⁶² These are not marginal conflicts. They directly compromise the commission’s ability to render a credible

“Feuds start in Sri Lanka’s first family”, *Asia Times* (Online), 11 November 2010.

¹⁵⁶ For background on developments leading up to the establishment of the LLRC, see Crisis Group Report, *War Crimes in Sri Lanka*, op. cit., pp. 6-8, 31-33. The LLRC was appointed under the 1948 Commissions of Inquiry Act, no. 17 of 1948 (as amended). According to an authoritative study of Sri Lanka’s commissions of inquiry, the act does not “contemplate anything other than executive fiat in establishing commissions”. Kishali Pinto-Jayawardena, *Still Seeking Justice in Sri Lanka*, op. cit., p. 107, and, for further discussion of the act’s shortcomings, pp. 105-123.

¹⁵⁷ The full mandate in English, Sinhalese and Tamil can be found on the LLRC’s official website, www.llrc.lk.

¹⁵⁸ “President to initiate study on post-conflict Lessons Learnt and Reconciliation”, News Line, priu.gov.lk, 6 May 2010.

¹⁵⁹ “The Commission has, therefore, the President said, the responsibility of acting in a forward looking manner, through focus on restorative justice designed to further strengthen national amity. The President expressed his strong confidence that the Commissioners who have been selected on [the basis of] their integrity and eminence would utilise their wide ranging mandate to fulfill this objective, while always safeguarding the dignity of Sri Lanka”. “Lessons learnt Commission commenced work from Kadirgamar Institute”, News Line, priu.gov.lk, 4 June 2010.

¹⁶⁰ The LLRC’s initial six-month mandate was first extended in November 2010. “President extends mandate of LLRC: Many more await to give evidence”, News Line, priu.gov.lk, 8 November 2010. The government confirmed the second extension in its address to the seventeenth session of the UNHRC. “Desist from arriving at hasty conclusions – Sri Lanka tells the world”, News Line, priu.gov.lk, 31 May 2011.

¹⁶¹ Crisis Group has assessed these views in interviews in Sri Lanka in early 2011 and through a review of LLRC transcripts and submissions. In addition to the LLRC’s official website (www.llrc.lk), which includes a large but incomplete collection of the LLRC’s own transcripts of its sessions, extensive collections of news reports, written submissions, audio recordings and other materials are available from the Centre for Human Rights Sri Lanka (CHR) on its LLRC Report page (http://chr.srilanka.com/LLRC_Report-3-2.html), from *groundviews* on its LLRC Media Coverage and Submissions page (<http://groundviews.org/llrc-media-coverage-and-submissions>) and at LLRC Archives (www.llrcarchive.org), moderated by the International Center for Ethnic Studies (ICES). Citations to LLRC transcripts herein are to those available on www.llrc.lk.

¹⁶² UN Panel Report, op. cit., p. 85. The three commissioners whose conflicts of interest the UN panel discussed are the chairman, C.R. de Silva; H.M.G.S. Palihakkara, the government’s representative to the UN through the end of the war in 2009; and Amrith Rohan Perera, legal adviser to the foreign ministry during the period covered in the LLRC’s mandate.

accounting of what happened during the war and to recommend relief that would effectively address the concerns of those Sri Lankans who were able to testify before it.¹⁶³ That testimony covered mass displacements and land disputes, as well as thousands of disappearances, abductions and unlawful killings by government forces and allied Tamil paramilitary groups, as well as by the LTTE.¹⁶⁴ Even though the LLRC provided an important but limited opportunity for Sri Lankans to start discussing grievances that have driven decades of violence,¹⁶⁵ it is unlikely to do more.

Conflicts of interest. The president's choice for chairperson of the LLRC, C.R. de Silva, demonstrates this most clearly. De Silva is widely recognised as a friend of the president and served under him as attorney general (AG) from April 2007, and before that as solicitor general in charge of the criminal division, until retiring in October 2008.¹⁶⁶ In these

roles, he was responsible for enforcing Sri Lanka's draconian Prevention of Terrorism Act (PTA) and emergency regulations. The AG's office was criticised – by the Supreme Court, among others – for alleged misconduct under de Silva's leadership, including politicised handling of cases and covering up police abuses.¹⁶⁷

One of the most controversial cases pursued by de Silva's office was the prosecution of Tamil journalist J.S. Tissainayagam, who was indicted under the PTA and emergency regulations in August 2008.¹⁶⁸ As grounds for the charges, the indictment excerpted passages from two 2006 articles in which Tissainayagam essentially accused the government security forces of acts that could amount to serious violations of international humanitarian and human rights law.¹⁶⁹ Despite widespread condemnation of the case, Tissainayagam was convicted in August 2009 and sentenced to twenty years hard labour, though he was pardoned in June 2010.

De Silva was also an integral part of the Rajapaksa government's efforts to defend its human rights record in international forums, including before the UN Human Rights

¹⁶³ Thousands of ordinary Sri Lankans came forward to provide information to the LLRC, particularly during its field visits to the north and east. In addition to public sittings in Colombo, the LLRC held hearings of varying lengths in Vavuniya, Kilinochchi, Mullaitivu, Batticaloa, Jaffna, Trincomalee, Puttalam, Mannar, Weli Oya, Galle, Matara, Kandy, Ampara and Monaragala between August 2010 and April 2011. Many people were not allowed to testify because of time constraints, and instead were instructed to submit their concerns in writing.

¹⁶⁴ For more on the testimony before the LLRC, see "When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission", Amnesty International, July 2011 (forthcoming). Individuals appearing before the LLRC raised cases of missing or disappeared persons and killings in nearly every hearing held outside of Colombo. The UN panel received at least 32 submissions alleging disappearances in May 2009 alone; it noted that some concerned groups of people and many concerned individuals who had surrendered to the army. UN Panel Report, op. cit., p. 44. The wife of a missing person believed to have surrendered said, "what I wanted was for them to listen to my story and give me an answer". Crisis Group interview, Colombo, March 2011.

¹⁶⁵ The UN panel of experts and many Sri Lankan civil society activists have recognised the importance of the LLRC in creating some opportunity for a national dialogue and in demonstrating that many Sri Lankans are eager to have their voices heard. See UN Panel Report, op. cit., p. v; and Crisis Group interviews, March-April 2011.

¹⁶⁶ De Silva joined the attorney general's department in 1975 and became solicitor general in 1999. He was head of the criminal division from 1997 to his appointment as attorney general in 2007. "President's Counsel C.R. de Silva, new AG", *Daily News*, 6 April 2007. This appointment itself was extra-constitutional. The AG's office was one of many critical functions that was supposed to be governed by the Seventeenth Amendment to the constitution, which required the appointment to be approved by a bipartisan Constitutional Council that President Rajapaksa never established and has now been repealed by the Eighteenth Amendment. De Silva retired in October 2008 after the Supreme Court turned back the president's attempt to extend his tenure beyond the age 60 retirement cut-

off. The president appointed Mohan Peiris as his successor on 18 December 2008. "New Attorney General appointed in Sri Lanka", *ColomboPage*, 18 December 2008.

¹⁶⁷ For example, in November 2008 in the case of Tiran Alles – a media outlet owner (and now member of parliament), who had fallen out with President Rajapaksa – the chief justice reportedly "took the government to task for its delaying tactics and said in open court that in the 17 months since the Fundamental Rights application was filed, the state had been postponing the case on the pretext of carrying out further investigations". Frederica Jansz, "Tiran: truth finally revealed", *The Sunday Leader*, 1 March 2009. On alleged covering up of police abuses, see "Arbitrary deprivation of life", statement by the Asian Human Rights Commission regarding the case of Sathasivam Sanjeevan, 28 August 2008.

¹⁶⁸ For a detailed overview of the case through September 2009, see "Trial observation report regarding proceeding before the high court of Colombo, Sri Lanka brought against Mr J.S. Tissainayagam", International Commission of Jurists, 11 September 2009.

¹⁶⁹ The indictment quoted a July 2006 editorial in which Tissainayagam wrote: "It is fairly obvious that the government is not going to offer them [Tamils] any protection. In fact it is the state security forces that are the main perpetrator of the killings", and a November 2006 article on the military offensive in the east: "Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel, with the hope of driving out the people of Vaharai and depopulating it. As this story is being written, Vaharai is being subject to intense shelling and aerial bombardment". Quotes reproduced in "Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression", Amnesty International, 1 September 2009.

Council (UNHRC) in both 2007 and 2008.¹⁷⁰ The government's position in September 2007, according to a government official was to be that "the incidence of disappearances has decreased, those who have disappeared have left the country and that Government forces are not responsible for unlawful killings".¹⁷¹ Having shielded the government from allegations of abuse for much of his career,¹⁷² de Silva should not be heading up the LLRC. The conflicts of interest of several other LLRC members only add to the distorting effect of his.¹⁷³

¹⁷⁰ "This week a high-powered delegation from the Government headed by Human Rights Minister Mahinda Samarasinghe and Attorney General C.R. De Silva argued against allegations that there was 'an increasing deterioration' of the human rights situation in Sri Lanka". "Lanka ready to face HR charges in Geneva", *The Sunday Times* (Online), 9 September 2007; and Basil Fernando, "The compromising position of Sri Lanka's Attorney General", commentary, UPIAsia.com, 15 June 2007.

¹⁷¹ "Lanka ready to face HR charges in Geneva", op. cit. For de Silva's role in the May 2008 UNHRC session, see "2008 human rights report: Sri Lanka", U.S. Department of State, 25 February 2009.

¹⁷² De Silva's public defence of the government and the attorney general's office deepens concerns, expressed by the UN panel and others, over the role of that office in acting as council to President Rajapaksa's 2006-2009 commission of inquiry. See fn 18 above; and UN Panel Report, op. cit., p. 85. The chairperson of the UN panel of experts, Marzuki Darusman, was also a member of the IIGEP, which repeatedly highlighted the AG's conflict of interest at that time. De Silva has also been accused of helping to cover up the state's role in one of the most serious incidents in Sri Lanka's ethnic conflict – the murder of over 50 Tamil political prisoners in the Welikada Prison in Colombo during the anti-Tamil pogroms of 1983. See Rajan Hoole, *Sri Lanka: The Arrogance of Power: Myths, Decadence & Murder* (UTHR(J), 2001), ch. 10, "The Welikade Prison Massacres"; Rajan Hoole, "Impunity, a debilitating fixture in state culture: 25 years after Welikada massacre", *transcurrents*, 19 July 2008; and Basil Fernando, "Sri Lanka's July terror", UPI Asia.com, 25 July 2008.

¹⁷³ For example, in February 2009 LLRC member H.M.G.S. Palihakkara, then Sri Lanka's representative to the UN, told CNN that government forces had confirmed they had not fired into the first government-declared "no-fire zone" or on the Puthukkudiyiruppu (PTK) hospital – two incidents that the UN panel identified as credible allegations of war crimes by the military. "Sri Lankan official on crisis", CNN, 3 February 2009. LLRC member Professor Karunaratne Hangawatte, who was not specifically identified by the UN panel for conflicts of interest, hosted a post-war fundraiser for a military housing project at his home in Las Vegas with the president's brother, Gotabaya Rajapaksa, see "Defense Secretary Rajapaksa launches fundraisers in Nevada-California, for armed forces housing project", *Asian Tribune*, 26 June 2009; and, in a lecture commemorating the president's father, publicly congratulated "his progeny [for leading] the way to finally free the nation from the grip of violent and vicious terror that has plagued Sri Lanka for several decades". Professor Hangawatte, "Building social capital

Distrust and fear. The LLRC's lack of independence has directly affected the experiences of those who testified before it, or chose not to. Many Sri Lankans, especially Tamils, have expressed distrust of the process. One of the hundreds of women¹⁷⁴ who went before the commission to testify about their missing husbands said, "the two Tamil officers did not speak a word. The commissioners did listen, but they did not seem to be sympathetic. It looked to us that coming there was only a formality, that there was no genuine concern for the issues we were placing there".¹⁷⁵ Another woman said, "I have no belief in the LLRC. I submitted a case – I didn't want to miss a chance – but I have no hope. Those people who went [to the LLRC] and those who didn't – they are all full of fear now".¹⁷⁶ A man from Mannar who had been displaced with his family seventeen times between 2007 and February 2009 (when he crossed over to government-held territory and was interned in the IDP camps) summed up his decision not to go to the LLRC hearings succinctly: "We have fear. How can we believe in them? So I didn't go".¹⁷⁷

While many saw the LLRC commissioners as unsympathetic and disrespectful to victims, especially in comparison to the deference shown to government officials in Colombo,¹⁷⁸ such sentiments are not universal. Indeed, many Sri Lankans who appeared before the LLRC expressed gratitude for a forum in which grievances might finally be heard and addressed. The distrust, however, is sufficiently widespread to warrant concern that, if the LLRC fails to result in meaningful redress, Sri Lankans' perceptions of their government as abusive and unresponsive will only grow.

Threats and intimidation. Some of those who testified before the LLRC have since been threatened by the mili-

on the foundation of national unity for a resurgent Sri Lanka", D.A. Rajapaksa annual memorial oration, 11 November 2009.
¹⁷⁴ Even though a significant majority of survivors of Sri Lanka's decades of civil war and political violence are women, only one of the eight commissioners is female. She is also one of the two Tamil members.

¹⁷⁵ Crisis Group interview, March 2011. Other issues contributed to her lack of confidence: "The commissioners' questions for me were mostly about the LTTE – did I meet the LTTE on the way, did the LTTE kill people or stop people. On one or two occasions I showed that I was uncomfortable with the questions. I got up to leave but they stopped me.... I saw one of the commissioners falling asleep. Also, my evidence was being recorded, but at one point the chairman told the note takers to take off their earphones. Some of them took them off, some of them didn't. It was hard to tell if they were still recording. I had the impression my testimony was not recorded".

¹⁷⁶ Crisis Group interview, Mannar, April 2011.

¹⁷⁷ Crisis Group interview, Mannar, April 2011. This man has returned to his original home with his family, but in his village up to fifteen people were killed in the fighting, around eight are missing and another fifteen are in detention.

¹⁷⁸ Crisis Group interviews, March-April 2011.

tary.¹⁷⁹ The hearings themselves were often intimidating. A woman in Kilinochchi saw what she believed were Terrorist Investigation Division (TID) officers outside the hearings and overheard them commenting that certain LTTE cadres' wives were present.¹⁸⁰ A person who attended the hearings in Trincomalee said the district secretary, Major General T. T. Ranjith de Silva – “the most threatening person in the district” – was there sitting next to the LLRC chairman, C.R. de Silva.¹⁸¹ This person also described seeing a Catholic priest waiting for hours to testify, only to have a Buddhist monk arrive and testify immediately.¹⁸² The UN panel of experts identified “the lack of adequate witness protection for those who want to give testimony to the LLRC” as one of its primary concerns.¹⁸³

Questions not asked. There are also many examples of bias in the commission's approach to certain witnesses, especially government and military officials who testified in the early public hearings in Colombo. Most often bias was reflected in questions not asked. For example, during the testimony of Defence Secretary Gotabaya Rajapaksa and Army Commander Jagath Jayasuriya, the LLRC chairman inquired about the ICRC's assessment of the government's actions during the war but failed to ask about any of the ICRC's many public statements raising concerns for excessive civilian casualties, violations of international humanitarian law and insufficient humanitarian access.¹⁸⁴ Instead, the chairman gave them multiple opportunities to claim that the ICRC had approved of the government's efforts and to deny that the organisation had ever complained about significant violations of law.¹⁸⁵

In support of its denials of any wrongdoing, the government has repeatedly highlighted a private letter from the ICRC to the Sri Lankan navy commander dated 14 February 2009 and thanking the navy for its “valuable and effective collaboration” in a medical evacuation.¹⁸⁶ While it is im-

portant for the LLRC to gather and analyse evidence of lawful conduct by the military, it is equally if not more important for it to gather and analyse evidence relating to the many incidents in which violations are alleged – including evidence from the ICRC and others who had access to the conflict zone. There is no indication that the LLRC has sought or considered the type of information needed, such as the military's extensive collection of surveillance videos, satellite images from foreign governments or information from frontline soldiers¹⁸⁷ and LTTE cadres. In a similar vein, the commissioners did not challenge questionable statements of the laws of war by well-known military legal advisers¹⁸⁸ and in many cases did not seek information that may have identified alleged perpetrators or indicated that the government was responsible for particular incidents.¹⁸⁹

Limited impact and unanswered grievances. The LLRC hearings, especially those outside of Colombo, did create an outlet for a number of Sinhalese, Tamils and Muslims to discuss their experiences during the war and since, often presenting information that contradicts the extreme narratives offered by the government and segments of the Tamil diaspora. Unfortunately there has been little opportunity for those discussions to extend beyond the communities where they were held. A striking feature of the media coverage of the LLRC is how little there has been – especially in the Sinhalese press and especially after the hearings left Colombo and moved to the north and east.¹⁹⁰ As a result, the impressive collections of LLRC transcripts, written submissions and English language press reports that are now available online¹⁹¹ represent far more infor-

¹⁷⁹ Ibid.

¹⁸⁰ Crisis Group interview, March 2011.

¹⁸¹ Crisis Group interview, Colombo, April 2011. Major General T. T. Ranjith de Silva was one of President Rajapaksa's first military appointees to a senior civil administrative post. He is well known for his combative style, close monitoring of the work of NGOs in Trincomalee and active promotion of the interests of Sinhalese residents.

¹⁸² Ibid.

¹⁸³ UN Panel Report, op. cit., pp. 92-93.

¹⁸⁴ ICRC's statements are highlighted throughout the UN panel report.

¹⁸⁵ See LLRC transcripts, Gotabaya Rajapaksa, 17 August 2010; and Jagath Jayasuriya, 8 September 2010.

¹⁸⁶ See LLRC transcripts, Gotabaya Rajapaksa, 17 August 2010; and Commander of the Navy Tisara Samarasinghe, 8 September 2010; also “Channel-4, Faceoff” - Exposing the appalling truth”, defence.lk, 20 June 2011. The ICRC letter is available at www.defence.lk/news/pdf/icrc_letter-14-february-20092.pdf.

¹⁸⁷ Indeed, young Sinhalese soldiers and their families were the segment of society perhaps most conspicuously absent from the LLRC proceedings, despite the degree to which the war affected them.

¹⁸⁸ For example, Gomin Dayasiri, who has acted as counsel for the security forces including before the 2006-2009 commission of inquiry, testified: “Till the LTTE leadership was eliminated the war would have gone on. That was a military target that we are entitled to take because once that target was eliminated the war stopped”. LLRC transcript, Gomin Dayasiri, 28 October 2010. In written notes submitted to the LLRC, Dayasiri wrote: “In that narrow stretch of land between the lagoon and the sea where the terrorist established every inch of land as a protective shield it was a live military camp where the terrorist leadership quartered holding the civilians against their will. That whole stretch of land was a military target required to complete the war against terrorism as it was the final headquarters of those mastering the terrorist war”. “Defeating LTTE terrorism: Gomin shows how to establish just war”, *The Island*, 1 November 2010.

¹⁸⁹ See “When will they get justice?”, Amnesty International (forthcoming), op. cit.

¹⁹⁰ The commissioners' participation in sessions also dropped off, with reports that only between three and five of the eight were present during the field visits in March and April 2011.

¹⁹¹ See fn 161 above.

mation than is available to most Sri Lankans. Indeed, the language barriers between communities and widespread bias across media outlets – both issues highlighted before the LLRC¹⁹² – mean that it is unlikely groups heard much about the experiences and grievances of others.

The government has claimed that the process already has produced positive results, highlighting the LLRC's September 2010 interim recommendations and the work of the Inter Agency Advisory Committee (IAAC) established to facilitate their implementation.¹⁹³ This is misleading for two reasons. First, the interim recommendations are strikingly limited. While the broad themes are relevant – detention, land, law and order, administration and language issues and socio-economic and livelihood issues – the sensible actions recommended are woefully inadequate.¹⁹⁴ The interim recommendations also fail to even mention alleged disappearances, abductions and unlawful killings, despite the fact that they featured prominently in LLRC sessions from the beginning.

The government's claim is misleading in another sense: the "progress" often cited – such as the reduction of HSZs, the release of ex-combatants or the recruitment of Tamil-speaking police officers – is nearly always overstated or offset by other policies the government is pursuing.¹⁹⁵ It

also has little to do with accountability for alleged violations of humanitarian and human rights law. Indeed, the one recommendation the LLRC made that could have some bearing on accountability – "publishing a list of names of those in detention" – has been ignored by the IAAC, or at least interpreted narrowly, to exclude the thousands of Tamils detained in "rehabilitation camps" and other settings.¹⁹⁶

The IAAC has also taken it upon itself to prejudice cases of missing persons presented to the LLRC. Its progress report noted: "[I]t was revealed that many of the people alleged to be missing were last seen with the LTTE forces. Hence, it can be assumed that such people may have been killed in the battle, either as a consequence of their acting as LTTE combatants, or due [to] their being fired upon by the LTTE when endeavouring to seek refuge with the Security Forces".¹⁹⁷ This not only further undercuts the LLRC's independence, but demonstrates that the government has no serious intention of determining how tens of thousands of people went missing in the final stages of the war.

E. AFTER THE UN PANEL OF EXPERTS' REPORT

UN Secretary-General Ban Ki-moon took the lead in pressing the issue of accountability after visiting Sri Lanka and touring the IDP camps just after the end of hostilities in May 2009. That visit concluded with a joint communiqué in which President Rajapaksa committed to accountability.¹⁹⁸ After a year without any government action on the is-

¹⁹² For example, a person in Ampara said, "if a Tamil person [takes state land for cultivation] the media and the journalists report and states Tamil people have invaded the Digavapi land. Similarly if a Muslim person does it they report in the newspapers and say that Muslim people have invaded the Digavapi land. But if a Sinhala person does it they say some innocent Sinhala people are cultivating these lands for their livelihood and the officials have taken action to evict them from their lands not allowing them to cultivate their lands. So this is the wrong way in which journalists report these things giving an ethnic flavour to what they write". LLRC transcript, Ampara District Secretariat hearing, 25 March 2011.

¹⁹³ The IAAC is headed by the attorney general and consists of the secretaries of the ministries of defence (Gotabaya Rajapaksa), public administration and home affairs, justice, economic development (under Basil Rajapaksa), rehabilitation and prison reforms, and external affairs, as well as the secretary to the PTF (also under Basil Rajapaksa). The IAAC produced a "progress report" in February 2011, which was published in an annex to the UN panel of experts report, *op. cit.*, Annex 2.15.3, pp. 171-176.

¹⁹⁴ For example, for land issues, the sole recommendation is "that a clear statement of policy be issued by the government that private lands would not be utilised for settlements by any Government agency".

¹⁹⁵ See Section III.B above on government claims regarding HSZs and "ex-combatants". Regarding recruitment of Tamil police officers, of the 600 or so reportedly hired in 2010 and 2011, the vast majority are in low-level positions with no real authority within the force. Reports that Tamil officers were told at the last minute they could not participate in the security forces' 2011 victory day parade – on the instruction of the president's

security officer – have also fuelled concerns about discrimination. "Tamil police 'hurt' after parade exclusion", BBC News, 30 May 2011.

¹⁹⁶ In early June 2011, the government announced that close family members could obtain information about persons detained by the Terrorism Investigation Division (TID) from information centres in Vavuniya, Boossa and Colombo. This does not include persons detained by the police or the military, or persons detained in "rehabilitation camps". By the end of June, up to 2,000 family members had visited or called the centres looking for missing loved ones, but very few were able to locate them. "Never ending search for the missing", BBC Sinhala, 22 June 2011.

¹⁹⁷ IAAC Progress Report, *op. cit.*, p. 5.

¹⁹⁸ The joint communiqué includes the following commitments: "Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances". The UN Human Rights Council's 27 May 2009 Special Session Resolution (A/HRC/S-11/L.1/Rev. 2), which was proposed by the government and for the most part praises its conduct, also "endorses the joint communiqué

sue and an aggressive government campaign to discourage him,¹⁹⁹ the Secretary-General established a three-member panel of experts in June 2010 to advise him on the government's accountability efforts, including the LLRC.²⁰⁰

The panel completed its report at the end of March 2011, with the LLRC having conducted eight months of public hearings and then due to present its findings to the president on 15 May. The panel report, which was shared with the government on 12 April and made public on 25 April, found credible allegations that both the government and the LTTE had committed serious international crimes.²⁰¹ It directly and cogently challenged the government's position that it "pursued a 'humanitarian rescue operation' with a policy of 'zero civilian casualties'".²⁰² It also presented a detailed assessment of the LLRC as an accountability mechanism, analysing its independence, capacity to provide witness protection and operations. The report's conclusions were unequivocal:

[T]he LLRC fails to satisfy key international standards of independence and impartiality, as it is compromised by its composition and deep-seated conflicts of interests of some of its members. The mandate of the LLRC, as well as its work and methodology to date, are not tailored to investigating allegations of serious violations of international humanitarian and human rights law, or to examining the root causes of the decades-long ethnic conflict.... [T]he LLRC has: not conducted genuine truthseeking about what happened in the final stages of the armed conflict; not sought to investigate systematically and impartially the allegations of serious violations on both sides of the war; not employed an approach that treats victims with full respect for their dignity and their suffering; and not provided the nec-

essary protection for witnesses, even in circumstances of actual personal risk.²⁰³

While the panel recognised the LLRC as "a potentially useful opportunity to begin a national dialogue on Sri Lanka's conflict",²⁰⁴ it made clear that it is not an accountability mechanism.

Based on those findings, the panel recommended, among other things, that the Secretary-General immediately establish an international mechanism to a) monitor and assess the government's domestic accountability efforts, b) conduct an independent investigation into the alleged violations and c) collect and safeguard relevant information.²⁰⁵ It also recommended that the government "immediately commence genuine investigations" and undertake a range of short- and longer-term efforts to address continuing human rights violations and the overall "climate of fear" in the country.²⁰⁶ In releasing the report to the public, the Secretary-General agreed to carry out the monitoring and repository functions, and to take up a separate recommendation that the UN review its own behaviour in the final months of the war, but declined to establish an investigation without Sri Lanka's consent or more support from UN member states.²⁰⁷

The government has responded with defiance and rejected all international efforts as a violation of national sovereignty. After selective portions of the report were leaked in a Sinhalese nationalist newspaper with close connections to the military,²⁰⁸ it condemned the full public release by the UN as "divisive" and criticised its contents as "fun-

issued at the conclusion of the visit and the understandings contained therein".

¹⁹⁹ That campaign included a government minister, Wimal Weerawansa, leading protesters in blockading the UN office in Colombo, calling for the Secretary-General to suspend plans for appointing a panel of experts. "Sri Lanka warned over UN protest", Al Jazeera, 10 July 2010; and "Sri Lanka protesters lay siege to UN compound", CBS News, 6 July 2010.

²⁰⁰ Background on the panel can be found at www.un.org/en/rights/srilanka.shtml. The panel members are Marzuki Darusman (Chair), former attorney general of Indonesia and member of the IIGEP, see fns 18 and 172 above; Yasmin Sooka, former commissioner on South Africa's Truth and Reconciliation Commission; and Steven Ratner, professor of international law in the U.S.

²⁰¹ See the executive summary to the panel report, reproduced in Appendix B; also UN Panel Report, op. cit., pp. 80-96.

²⁰² Ibid, pp. ii, 48-49.

²⁰³ Ibid, p. 117.

²⁰⁴ Ibid, p. v. "The LLRC represents a potentially useful opportunity to begin a national dialogue on Sri Lanka's conflict; the need for such a dialogue is illustrated by the large numbers of people, particularly victims, who have come forward on their own initiative and sought to speak with the Commission".

²⁰⁵ Ibid, p. viii.

²⁰⁶ Ibid.

²⁰⁷ The Secretary-General's 25 April 2011 statement releasing the report said he was "advised that [an investigation] will require host country consent or a decision from Member States through an appropriate intergovernmental forum". While the government has argued that even the panel was beyond the Secretary-General's authority, it is clear that the "advice" received by the Secretary-General was political not legal. (Both Russia and China had signalled their support for Colombo.) Article 99 of the UN Charter provides ample basis for the Secretary-General to conduct whatever investigations he needs in order to fulfil his responsibilities.

²⁰⁸ Edited excerpts of the report began appearing in *The Island* newspaper on 18 April 2011. See "The question of civilian deaths: extracts from the Ban-Ki-moon panel report (Part 1)", at www.island.lk.

damentally flawed” and based on “biased materials”.²⁰⁹ It argued that the panel’s conclusions “should not take precedence over the conclusions, still awaited, of the domestic process”, the LLRC.²¹⁰ The government levelled the charge of bias – further amplified by the media²¹¹ – despite the fact that the panel report made serious and detailed accusations against the LTTE, including that it held civilians hostage, shot civilians who attempted to flee to government-controlled areas, forcibly recruited children and perpetrated suicide attacks outside the conflict zone, including one resulting in the injury of a government minister.²¹² The report also criticised the Tamil diaspora for supporting and denying wrongdoing by the Tigers.²¹³

The government stepped up its campaign against the report by turning the 2011 May Day rallies in Colombo into a protest against international efforts to undermine the war victory.²¹⁴ It also conducted a signature drive for an anti-report petition, including in the north where regime

supporters backed by the military reportedly forced Tamils to sign,²¹⁵ despite the fact that only small portions of the report are available in either Sinhala or Tamil.²¹⁶ This orchestrated response seemed to be aimed primarily at further isolating the regime’s opponents and discouraging diplomats from taking up the panel’s recommendations. It also, presumably, reflects the Rajapaksas’ discomfort with allegations of wrongdoing that implicate them personally. The overall effect has been to polarise domestic discussion of the report without giving the Sri Lankan people an opportunity to hear, let alone judge, the findings for themselves.

There has been limited but significant resistance to the government’s rejectionist approach.²¹⁷ The TNA welcomed the panel’s recommendations and its findings of credible allegations against both the Tigers and the government, and urged the government to “constructively engage in a process [resulting in] genuine democracy, equality and justice”.²¹⁸ In contrast, certain Tamil diaspora groups ignored the allegations against the LTTE and used the report to support their claim that “genocide” has been committed against Tamils and that only an independent Tamil state can ensure their protection, despite the fact that the UN panel did not find credible allegations of genocide.²¹⁹

²⁰⁹ “Darusman Report: Public release of the report disrupts efforts to reinforce peace and security – Govt”, News Line, priu.gov.lk, 28 April 2011. The government has insisted on the term the “Darusman Report”, after the panel’s chair, to emphasise its position that the report “has no stature as a UN document”. “Sri Lanka to send delegation to discuss UN report with non-aligned members”, *Colombo Page*, 5 May 2011.

²¹⁰ “Darusman Report: Public release of the report disrupts efforts to reinforce peace and security – Govt”, News Line, priu.gov.lk, 28 April 2011.

²¹¹ For one of dozens of examples, “Darusman report exposes its LTTE bias and Sri Lanka’s failure to counter LTTE propaganda”, *Asian Tribune*, 27 April 2011.

²¹² UN Panel Report, op. cit., pp. 55-56. Minister Mahinda Wijesekara was among the 40 or more injured – with some fifteen killed – in a reported LTTE suicide attack outside a mosque in the south during the national Milad Festival on 10 March 2009. “LTTE suicide bomber attacks Milad Festival - Akurassa [Updated]”, MOD News, 10 March 2009.

²¹³ UN Panel Report, op. cit., p. 114. In fact, the report’s comment that Sri Lanka’s ethnic communities “share a common homeland” drew criticism from Tamil nationalists. “UN panel report oversteps by rejecting homeland of Eezham Tamils”, *TamilNet*, 26 April 2011.

²¹⁴ “Sri Lanka President Rajapaksa calls for UN report rally”, BBC News, 17 April 2011. In his May Day message, the president called on NGOs, other organisations and individuals “not to betray the country for a few thousand dollars”. “No force will be allowed to rob our hard-won freedom and peace – President”, NewsLine, 2 May 2011. The ruling UPFA and coalition partners marched with placards in English disparaging the Secretary-General with messages such as “Yankee Ban-Ki timid monkey” and “Hands off Sri Lanka”, and even a banner proposing a “New World Order” with President Rajapaksa pictured with embattled Libyan leader Muammar Gaddafi, as well as the leaders of Cuba, Venezuela, Russia and China. Namal Rajapaksa’s Nil Balakaya was also out in force. “Ban Ki-Moon’s report dominates UPFA May Day celebrations”, *The Sunday Leader*, 4 May 2011.

²¹⁵ Crisis Group communication, Jaffna resident, 8 May 2011. Also, “Anti-UN sentiment in Jaffna: fact or fiction”, *Groundviews*, 9 May 2011. There were numerous other reports of people being bused to the capital for the May Day rallies and signing petitions against the report without having an idea (or interest in) what they were signing.

²¹⁶ There have been only limited attempts to translate portions of the report into Tamil and Sinhalese (not by the UN, notably). “Sinhala and Tamil translations of the UN panel’s report on accountability”, *Groundviews*, 4 May 2011.

²¹⁷ Some trade unions were understandably circumspect about the government’s hijacking of May Day. “Trade Unions Will, Will Not Protest Against UN Report”, *Sunday Leader*, 24 April 2011. Certain Rajapaksa supporters were not pleased with the Gaddafi and Chavez comparisons pushed by the more extreme elements in the government and accused the foreign ministry of failing to respond effectively. “Last stages of the war, Darusman’s laxity, and UNP’s hopes”, *Asian Tribune* (reproducing and translating an article in the Sinhala daily *Lankadeepa*), 10 May 2011.

²¹⁸ “Tamil national alliance statement on the leaked UN report”, *Groundviews*, 18 April 2011.

²¹⁹ The Transnational Government of Tamil Eelam (TGTE) has focused exclusively on the allegations against the government. “UN urged to refer Sri Lanka to ICC – TGTE”, media release, 18 April 2011. The British Tamils Forum (BTF) responded similarly. “British Tamils Forum demands an independent international investigation into war crimes and crimes against humanity in Sri Lanka”, media release, 20 April 2011. However, the president of the Global Tamil Forum (GTF) (of which the BTF is a founding member) took a much more measured position, making it clear that the “LTTE too must be investigated”. “All sides must be investigated for real reconciliation to begin”, *The Sunday Leader*, 6 June 2011.

Although factions within the opposition UNP have sent mixed messages, its leader, Ranil Wickremesinghe, affirmed his support to the government in upholding the country's sovereignty but also recognised that "the Report has now a life of its own", and sovereignty requires that a government "address the human rights issue that arises within its territory".²²⁰

Reactions from Colombo human rights and civil society activists have varied, with some expressing concern about the international focus on war crimes while fully concurring in the UN panel's assessment of the LLRC.²²¹ One prominent group of Sri Lankans has called for the LLRC to wrap up its work and publish its report, and for the government to establish a new accountability mechanism while also addressing a series of governance and constitutional issues.²²²

The government is unlikely to follow this advice.²²³ Instead, it has continued to claim that it is making progress on both accountability and reconciliation and has insisted that the Secretary-General and UN member states hold off on any judgments until the LLRC has finished its work. In the short term, the government appears to have bought more time. The U.S., UK and European Union (EU) have welcomed the UN panel report and encouraged Colombo to "respond constructively". Russia and China have op-

posed any international inquiry, while Japan has mostly remained silent.²²⁴

But Sri Lanka's support in UN forums is not guaranteed. Already India has said the panel report needs to be "studied carefully"²²⁵ and, in a joint statement of the two countries' external affairs ministers in Delhi on 17 May, made an uncharacteristically strong call for "early withdrawal of emergency regulations" and "investigations into allegations of human rights violations".²²⁶ South Africa's ruling African National Congress (ANC) has also signalled support for the report's recommendations,²²⁷ which were derived in part from the panel's analysis of the contrast between Sri Lanka's efforts and reconciliation processes in South Africa and elsewhere.²²⁸

Pressure for the government to take concrete accountability action can also increase – as it has following a June 2011 television documentary by Britain's Channel 4 News

²²⁰ "Unite for reconciliation, peace – Ranil", *The Island*, 3 May 2011.

²²¹ For an overview of those responses, as well as from the government and various political parties, see "Positions and opinions of the political parties and civil society in Sri Lanka", *groundviews*, 3 May 2011.

²²² "The report of the United Nations Secretary-General's panel of experts on accountability in Sri Lanka", press release, The Friday Forum, 25 May 2011, at www.ft.lk/2011/05/27/friday-forum-on-darusman-report/. The Friday Forum is a multi-ethnic group of well-known Sri Lankans, including Jayantha Dhana-pala, a former UN Under-Secretary-General and Sri Lanka's official candidate for UN Secretary-General in 2006; Rt. Reverend Duleep de Chickera, retired Anglican Bishop of Colombo; and Manouri Muttetuwegama, a human rights lawyer and chairperson of two government disappearances commissions in the 1990s.

²²³ The announcement in late May that the recently reconstituted Sri Lankan Human Rights Commission would appoint a five-member panel of retired judges to initiate new investigations into human rights violations in the north and east is not promising, given the president's controversial appointments to that commission under the Eighteenth Amendment. How those investigations would relate to the LLRC's inquiries is also unclear. See "Govt. to launch fresh probe on HR violations", *Daily Mirror*, 26 May 2011; and "Friday Forum deeply concerned about recent appointments to Human Rights Commission", press release, The Friday Forum, 29 March 2011, at www.srilankabrief.org/2011/03/friday-forum-deeply-concerned-about.html.

²²⁴ The Sri Lankan government reported that, during his keynote speech at a meeting in Tokyo, Japan's special envoy, Yasushi Akashi, said the UN panel report was "improper" and that "professional study of the report submitted to the Secretary-General when compared with the documents of relevant INGOs [including Crisis Group] would show that there was much copying and passing off of other peoples writings as the views of the Commissioners". "Darusman report improper – Akashi", *Daily News*, 1 July 2011. Akashi's statement does not appear on the websites of Japan's embassy in Colombo or its foreign ministry.

²²⁵ "Report on Sri Lankan conflict by panel appointed by UNSG", statement of official spokesperson, High Commission of India, Colombo, 26 April 2011.

²²⁶ "Visit of EAM of Sri Lanka - joint press statement", Indian Ministry of External Affairs, New Delhi, 17 May 2011.

²²⁷ "ANC statement on the UN panel of experts' recommendations on Sri Lanka", issued by ANC Head of International Relations Dr Ebrahim Ebrahim, 6 May 2011.

²²⁸ "The Panel is obliged to comment on the Government's affirmation that ... it has drawn on the experiences of South Africa as well as other countries that implemented truth commissions, but did not proceed with prosecutions. Reliance on these experiences would, in fact, lead to a different model. The South African TRC conducted a full investigation into both institutional and individual responsibilities, highlighting many of the underlying causes that allowed the continuation of apartheid for many years. It required perpetrators to come forward to provide full information on their actions and apply for individualised amnesties if their crimes were politically motivated. Also, the process was inherently victim-centred, facilitating and supporting participation by victims to report violations to the TRC and to claim reparations. This is not the case with the LLRC in Sri Lanka In addition, in most countries where there have been truth commissions, these have not precluded criminal prosecutions; rather prosecutions have followed them, including in Argentina, Chile, Guatemala, Peru [whose truth commission followed the defeat of an insurgency], Sierra Leone, Timor-Leste and others". UN Panel Report, op. cit., p. 79; see also, pp. 76-77, 80, 87, 92, 93.

revealing further video evidence of alleged extrajudicial executions and possible sexual assaults by security forces, much of which the UN special rapporteur on extrajudicial, summary or arbitrary executions has found authentic.²²⁹ Subsequently, the UK has insisted that “progress on accountability must be made by the end of year”, and the U.S. has emphasised that “international accountability mechanisms can become appropriate in circumstances in which a state is unable or unwilling to meet its obligations [to ensure that those responsible for violations of international humanitarian law and human rights law are held accountable]” and urged the government “to quickly demonstrate that it is able and willing to meet these obligations as it seeks reconciliation”.²³⁰ The government’s angry response, claiming the videos are fake while marshalling evidence of victims’ links to the LTTE (undisputed in some cases), appear to have hardened international critics’ resolve.²³¹

The government has now announced that the LLRC will examine the Channel 4 documentary as part of its extended work to be completed by November 2011. The LLRC already had sought an expert opinion on videos Channel 4 had aired previously (the expert chose to provide this in camera in early May).²³² Whether the strong international

pressure on this particular issue will result in the LLRC rendering a fair analysis of the videos remains to be seen. But even if it does, there likely will be strong opposition within the regime to making such an analysis public or taking any action to hold those responsible accountable. A comment by LLRC Commissioner H.M.G.S. Palihakkara during a hearing in February 2011 does not instil confidence. In response to a witness’s question about “whether any steps would be taken regarding the information that we give”, he said:

The question which you asked is very important. All the Members of the Commission are aware that in this country there have been a lot of commissions. Like one of the gentlemen who spoke earlier said, the administrators of this country too are aware of all the problems and issues faced by the people of the country. We are aware of that. Even though Commissions are appointed, the reports of the Commissions are not implemented. That is the problem and we have understood this very well. So the question you raised is very important. What we are expected to do is to get the views of all the people in the country – from all districts in the north, south, east and west – and as an independent Commission we will extract the important matters raised and use it in our report. We hope to submit our recommendations in a straight forward manner to the rulers....

As you can see whatever we can do we are doing. And the next step is in the hands of the public. When the next election comes around the public should know what to do. On our part we hope to submit our recommendations. That is the reply.²³³

Given the Rajapaksas’ apparent manipulation of elections and overall consolidation of power, the ballot box is little consolation to Sri Lankans whose loved ones are dead, missing or detained, or for those who have lost land, houses and livelihoods.

²²⁹ See “Sri Lanka’s killing fields”, Channel 4, 14 June 2011, available at www.channel4.com/programmes/sri-lankas-killing-fields; and “Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Christof Heyns; Addendum, Summary of information, including individual cases, transmitted to Governments and replies received; Appendix I. Investigations into a video footage which allegedly documents members of the Sri Lankan army committing extrajudicial executions”, A/HRC/17/28/Add.1, 27 May 2011, pp. 423-482.

²³⁰ See “Honest friends”, opinion editorial on Sri Lanka by Alistair Burt, Foreign Office Minister for South Asia, 28 June 2011, at <http://ukinsrilanka.fco.gov.uk/en/news/?view=PressR&id=622454582>; and “Sri Lanka: accountability for alleged violations of international human rights law (taken question)”, U.S. State Department, Office of the Spokesperson, 28 June 2011

²³¹ Sri Lanka’s defence ministry has published some of the most disturbing responses. Its webpage ““Channel-4, Faceoff” - Exposing the appalling truth”, defence.lk, updated 30 June 2011, chastises Channel 4 for “reveal[ing] that one of the victims was a high profile member of the Tamil Tigers – but claim[ing] she was just a journalist rather than a direct fighter as a result of a heart condition”. The webpage also includes a picture of the victim, Issipriya, apparently dead with hands bound behind her back. While the webpage describes Issipriya’s involvement in the LTTE in detail, it does not address what the Channel 4 images appear to show – that she was killed after capture and possibly sexually assaulted. The defence ministry has also published the opinion of Siri Hewavitharana of Australia, reportedly “one of the world’s leading experts on digital video systems”, who concluded the video was fake. ““Channel-4 video a fake”, concludes video forensic analyst”, defence.lk, 13 June 2011.

²³² The expert who appeared before the LLRC is Dr Chathura De Silva, senior lecturer, Department of Computer Science and Engineering, University of Moratuwa.

²³³ LLRC transcript, Matara Kachcheri hearing, 18 February 2011.

The messages and actions of Sri Lanka's international partners in coming months are important. As outlined below, they should make clear that they expect concrete progress on accountability before the end of the year. They should also encourage the Secretary-General to make as robust as possible the mechanism he has promised to set up to evaluate and report on domestic accountability efforts. In the event there is no concrete progress – an all too likely outcome – they should establish an international inquiry into alleged crimes that is complementary to any genuine domestic efforts that may emerge. With respect to the LLRC, Sri Lanka's partners should encourage the swift completion of its work and publication of its report. Further delay or undue secrecy regarding its findings risks exacerbating the weighty grievances placed before it.

IV. COMMUNITIES' POST-WAR VIEWS

Two years of the Rajapaksas' post-war policies have left Sri Lanka's ethnic communities divided and fearful. They have had no opportunity to engage in an honest exchange of views about what happened in the past and what the country should look like in the future. Each believes that it has been victimised by others. Some traditions of inter-ethnic cooperation, influence and marriage continue to exist, but they rarely go beyond immediate relations or elite circles in Colombo. In the north and east, the communities lead separate lives in close proximity. In the predominantly Sinhalese south, nearly all information about other communities comes from the government, and most people have internalised its narrative of the defeat of "terrorists" and "liberation" of Tamil civilians.²³⁴ Intra-communal tensions are also a serious concern. Thousands of suspected LTTE combatants have now been released. The stigma that comes with having once been associated with the Tigers, or now being under the thumb of the military is divisive, and there is no support for individuals returning to villages where they may have perpetrated or been the victim of crimes.

The following survey of the communities' post-war views is by no means comprehensive. Instead, it highlights some of the beliefs and concerns that will need to be addressed for any eventual reconciliation. It also identifies certain groups within each community who are especially vulnerable now. How the government deals with these grievances and populations will affect the likelihood of a return to violent conflict.

A. SINHALESE

There is great relief among Sinhalese that the war and LTTE bombing campaigns are over. People are deeply grateful that they can get on a bus in the morning without fearing for themselves or their loved ones. Yet paranoia in the south persists. "Since 2005, there's been psychological warfare in the country", said a member of a military family. "They started making you doubtful, instilled fear... People are very insecure. They know that if you raise your voice, you will be crushed... The Sinhalese think the war was against Prabhakaran and the LTTE. But then how do people accept Karuna? The Sinhalese are very scared of Tamils and of the LTTE".²³⁵ To some degree, this is the result of the Rajapaksa government being out ahead of the population on the ethnic issue. Its response to the separatist Tigers was more extreme than what people were demanding,

²³⁴ As a person in Kandy said, "for us, it was just the media. We saw the war on TV". Crisis Group interview, March 2011.

²³⁵ Crisis Group interview, Kandy, March 2011.

so it worked hard to make the enemy more threatening. The regime keeps the paranoia alive by constantly raising the spectre of the LTTE organising abroad or influencing international actors, when it is quite clear that its leadership and capacity to carry out any organised violence have been destroyed.²³⁶

This culture of fear has also facilitated selective amnesia in the Sinhalese community about the years of ethnic violence and discrimination that drove the civil war and culminated in the government's devastating offensive in the Vanni. An analyst said:

Sinhalese people really do not know that being ordinary people they bear some responsibility for what happened.... Back then [in the early 1980s], there was a sense that yes, that was what the Sinhalese people did. There was a sense of responsibility. Now, it's the government, so there's no responsibility. How does a normal Sinhalese person – how do they even know?²³⁷

Convincing the Sinhalese to understand and acknowledge the suffering the Tamil community has endured, and the complex set of responsibilities for that suffering, is one of the biggest challenges for reconciliation in Sri Lanka.

Making that challenge even more difficult is the understandable resentment that has built up in the rural Sinhalese community over the government's long preoccupation with the civil war and neglect of its needs. While some of that resentment is directed at Tamils and at the international community – particularly over what is perceived as the West's double standards when it comes to accountability for alleged abuses of the laws of war – the government also receives its fair share. As a resident of a Sinhalese border village in the east explained, "people want the government to provide more. They don't know what they are entitled to. After so many years, there are such low expectations. Here the problem is not between the different ethnic communities. The problem is between the people and the government".²³⁸ Resolving the fundamental problem of unresponsive, unaccountable government authorities is essential. Otherwise, frustration with the government can quickly turn into frustration with neighbours.²³⁹

B. TAMILS

Tamils in the north and east are still haunted by the LTTE. Many feel that they gave up everything for the Tigers' promise of a separate state and a life free from discrimination. They are angry about the forced recruitment, the abductions and the refusal to allow people out of the Vanni. But many also look back to life under the LTTE as a time when they at least had some dignity and protection against the most blatant violations of their rights by the government and security forces. Now, under the thumb of the military, they feel they have nothing. "You're deluding yourself to think all Tamils have rejected the LTTE", says an analyst. "As time passes, and the government continues this way, they look at it differently. Yes, they're angry, but they also see why the LTTE did it. They had no other option".²⁴⁰

This sentiment is far from universal or static, but it reflects an important potential within the Tamil community not only to overlook the Tigers' abuses but also to improvise the story of their defeat. Many Tamils are reluctant to believe that the LTTE was defeated so quickly after so many years without some force "infiltrating" and deceiving the leadership.²⁴¹ As a local development worker explained, "they say the history of Tamils is always betraying each other".²⁴² Some also readily blame those "infiltrators", as opposed to loyal cadres, for firing on civilians trying to escape to government-held territory in the final months of the war.²⁴³ The more the government persists in its triumphalism and heavy-handed approach and the more the Tamil diaspora continues to ignore the Tigers' brutality, the more Tamils in Sri Lanka will be willing to excuse the LTTE's misdeeds.

The government's policies and Tamil suspicions are also increasing the vulnerability of certain members of the Tamil community, especially former or suspected LTTE cadres. Many of those caught up in the government's "rehabilitation" camps were not hardcore fighters. Some were forcibly recruited in the final days of the war; others had lived under Tiger rule for decades and had to cooperate with their orders to survive. Nonetheless, when detainees are released and returned to their communities, they are treated with suspicion. Some are more deserving than others of this reaction – those who helped to abduct children are often

²³⁶ The government recently told the UN Human Rights Council: "Finally, it is readily apparent to all that the military capability of the terrorists to launch any offensive against the people and Government of Sri Lanka has been completely degraded". Statement of Minister of Plantation Industries Mahinda Samarasinghe, 30 May 2011.

²³⁷ Crisis Group interview, Europe, April 2011.

²³⁸ Crisis Group interview, Trincomalee District, April 2011.

²³⁹ A resident of a border village expressed genuine openness to reconciling with Tamils but at the same time worried that much-needed economic support was not being distributed fairly: "The

Sinhalese are trusting now. We are hurrying to reconciliation.... We are ok to give them a settlement. We are not victimised by that. They already have the provincial council.... We hear Tamil families are receiving twice as much money as Sinhalese". Crisis Group interview, Trincomalee District, April 2011.

²⁴⁰ Crisis Group interview, Colombo, March 2011.

²⁴¹ Crisis Group interviews, Mannar, Vavuniya, March-April 2011.

²⁴² Crisis Group interview, Vavuniya, March 2011.

²⁴³ Ibid.

on the receiving end of mothers' anger. But those forcibly recruited have little to atone for. Still, when they are visited by the military and intelligence agents it creates problems, especially for women, who are vulnerable to sexual abuse, but also for their families and villages. "Society sees these people as those who brought bad things on the community", said a priest in the north.²⁴⁴

The resulting ostracism is dangerous. But instead of trying to build trust between people who have been associated with the LTTE (rightly or wrongly) and those who have not, the government is undermining those relationships. This is true of the military's widespread use of former detainees as informants, but also of the government's development policy. The PTF has an implicit policy of giving preference to people not associated with the LTTE. A government official told an international aid worker in the north: "If I have a widow of an LTTE cadre and a widow who is clearly just Tamil, I'll pick the latter".²⁴⁵ This approach will only increase levels of distrust that already are high.²⁴⁶

Finally, the decades of war in the north and east, and the LTTE's control of society have encouraged a selective amnesia within the Tamil community as well. There is little recognition among Tamils that the LTTE committed crimes against Muslims and Sinhalese in the name of the Tamil people. Indeed, many Tamils do not recognise that incidents, such as the expulsion of Muslims from the north or attacks on Sinhalese civilians in border villages, were crimes at all. Information within the Tamil community about what actually occurred in many of these incidents is, at best, incomplete. While many Tamils are now understandably consumed with recovering from the end of the war, greater understanding and some acknowledgement of responsibility for the Tigers' abuses will eventually be needed.

C. MUSLIMS

For Muslims from the north and east, the end of the war brought hope that their long-ignored displacement and losses would be addressed. While much of that community is now less vulnerable than its Tamil neighbours, it is receiving little help. Instead, its purported representatives are often seen as working for their own personal gain, while

the Muslim community in general is under pressure to toe the government line.²⁴⁷ Divisions among and within Muslim political parties further weaken the community's voice. All of this contributes to Muslims' fears in the north and east that a largely Tamil bureaucracy will continue to block their demands and rights and, in the worst case, actively resist their return to areas in which they once lived.

Despite Tamil perceptions that "the Muslims are going back [to the north] as government puppets, ... they are not being taken care of by anyone", says a Muslim civil society activist. "For a regular Muslim, it's very difficult to align with the government. There is no system when it comes to the Muslim community. For the Tamils, at least there is something".²⁴⁸ At the community level, Tamils are generally welcoming of Muslims returning to their original homes from Puttalam and elsewhere, but they are also fearful. This fear is most evident over land. The same person explained:

There are a few sparks of hope. People are coming together and helping each other. But then as soon as you say "that is my father's land", then you have a problem. Land is a huge problem. The Tamils were given title by the LTTE. There is no space to talk about it. Something is going to erupt. In the Tamil community, I see the young men rolling up their sleeves when someone comes to claim land.²⁴⁹

Some Muslims from Puttalam returning to the north, and activists who work with them, report that the mostly Tamil

²⁴⁴ Crisis Group interview, Mannar, March 2011.

²⁴⁵ Crisis Group interview, international aid worker, Colombo, March 2011. PTF documents shared with Crisis Group also instruct, with respect to beneficiary selection: "Another category which deserves priority is the families who were chased out or compelled to leave their villages by the LTTE. They did not have the opportunity to engage in usual economic activities for a long period of time and hence are desperate".

²⁴⁶ An international aid worker said, "the first thing a [Tamil] person does when we give them [building] materials is they go and put up a fence". Crisis Group interview, Colombo, March 2011.

²⁴⁷ This was particularly evident during the 2011 Cricket World Cup, which Sri Lanka co-hosted, when the community was warned not to support Muslim countries' teams over Sri Lanka's. On 10 February 2011, the All Ceylon Jamiyyathul Ulama issued a message asking all Sri Lankan Muslims "to avoid deliberate support and over joy in winning in Muslim Country when playing against Sri Lankan team arousing the feeling of hatred among our own Sri Lankan brothers". "Patriotism a religious obligation", *Muslim Guardian*, 10 February 2011. On 1 March, in launching a government housing program, former Sri Lanka cricket chairman and UPFA parliamentarian Thilanga Sumathipala urged all Sri Lankans to unite in support of the national team and highlighted that he had been saddened to see many Sri Lankan Muslims living in government housing supporting Pakistan in its victory over Sri Lanka. "Sri Lankans have to support Sri Lanka?", *The Sunday Leader*, 6 March 2011. Describing the statement from the Jamiyyathul Ulama, an international aid worker who works in the east said, "they did it to protect people. There was a real sense of threat". Crisis Group interview, Colombo, April 2011.

²⁴⁸ Crisis Group interview, Colombo, March 2011. In the northern province, almost all central government officials are Tamil, including areas where Muslims are returning after years of eviction. In the multi-ethnic eastern province, administrative divisions are largely divided on ethnic lines, with the chief administrator being from the ethnicity of the local majority.

²⁴⁹ Ibid.

civil administration is biased against them.²⁵⁰ The scepticism with which some Tamil officials in the north and east treat Muslim returnees and residents reflects broader residual inter-ethnic distrust – exacerbated by the tremendous recent suffering of Tamils in the Vanni and what Muslims have experienced. This sentiment comes through in conversation with some Tamils in the north:

Earlier they [Muslims] were good. But then, for money and other things, they started to betray us. They were passing information to the government. So the LTTE forced them out. They now feel and say that the Tamils sent them away, so no, this is their time. But this is also created by the Muslim politicians. Now, there are [Tamil-speaking] Muslims in all of the intelligence branches. We cannot open our minds fully to them. We can deal with them, but only with doubt. We are fearful to talk about the missing or abductions in front of Muslims. They will go sell the information.²⁵¹

Similar fear and misinformation is evident in some Tamils' views of the 1990 expulsion:

It is wrong. In some way, it is wrong. They should have been given a time period or something. They had to go empty handed. But when they reached their destination, they were given everything. Due to the displacement, they were given special opportunities. They were given many blessings. They were displaced to a good place. But here, the Tamils are still fighting. No one is caring for us.²⁵²

While Puttalam in 1990 may have been a “good place” compared to the Vanni in 2009, life for the IDPs there has been difficult. Some are now trying to return to the north, but the challenges are substantial. For example, many reportedly are being pressured by officials to cancel their IDP registration in Puttalam and register as returnees in the north, but with no land, facilities or support offered in the north, they are mostly remaining in Puttalam, and in limbo.²⁵³ Unless the resettlement of these long-term IDPs is given the resources and attention needed, they risk slipping through the cracks again.

V. WHAT REAL RECONCILIATION WILL REQUIRE

Reconciling Sri Lanka's ethnic communities is an enormous task. The policies pursued by President Mahinda Rajapaksa since the end of the war have only made it harder. Getting to a point where Sinhalese, Tamils and Muslims have meaningful understandings of each other's experiences and concerns is going to take years. What is critical in the short term is preventing relations from deteriorating further and creating the conditions on which reconciliation eventually can be based. Foremost among those conditions is the opening of political and social space so people can move, speak and live without the fear that now pervades the country. Only then can a narrative of the past that majorities of all three communities can believe in begin to take hold.

The following discussion of what real reconciliation will require is necessarily limited. Each of the components identified – truth, restoring the rule of law and ending impunity, meeting victims' practical needs, as well as distribution of power and other minority rights – is complex and deserves detailed attention beyond the constraints of this report. The analysis below is limited to outlining those components generally and highlighting opportunities to make progress – or to avoid further decline – in the coming months.

A. TRUTH

Documenting history is always controversial. Doing so in a country where the ethnic groups are so polarised and the media so politicised will be particularly challenging. But part of the importance of having sober and accessible accounts of the past in the Sri Lankan context is that they can help decrease that polarisation and politicisation. No narrative will go uncontested, but the more fair and credible it is, the more likely it can be used to promote tolerance over time. The need for truth telling is especially acute in Sri Lanka because of the long history of violence and lack of cohesion. The country may be “post-war”, but it will never be “post-conflict” unless there is a place for a credible narrative.

Ideally the government should take the lead in such efforts. But the Rajapaksa regime has demonstrated repeatedly that it is not willing to provide a truthful and complete accounting of what happened during the war or what is happening now. It is deeply attached to the one-sided narrative of a war against “terrorism” that, now eliminated, leaves no serious political problem to resolve, and it accuses anyone who challenges that account of being an LTTE supporter. The government has also argued that “the past is past; you don't dig into the wounds” and rejects “Western”

²⁵⁰ Crisis Group interview, Colombo, March 2011.

²⁵¹ Crisis Group interview, group of Tamil residents, Mannar, April 2011.

²⁵² Ibid.

²⁵³ “Northern Muslim IDP issues continue despite ongoing resettlement”, *The Sunday Leader*, 5 June 2011.

ideas of accountability and reconciliation as contrary to Sri Lankan culture.²⁵⁴ While this notion has some resonance in Sri Lankan society,²⁵⁵ the regime is using the excuse selectively – for example, by not applying it in the prosecution of Sarath Fonseka – and ignoring the fact that notions of truth and responsible governance carry at least equal weight among Sri Lankans.

A number of steps can help create an environment of truth-telling, including the obvious need to end all harassment and repression of the media. But perhaps most important, the government should acknowledge that the war was not only a fight against a brutal terrorist group, but also in part a product of a history of discrimination against minority communities and majoritarian forms of governance that made most Tamils feel they were second-class citizens. This is anathema to the Rajapaksa regime, but crucial to a peaceful Sri Lanka. However unlikely the government is to take actions that will increase openness, it should be constantly reminded of the importance of doing so.

Other moves – which are no substitute for a full reversal of the government’s policy of denying the ethnic conflict – could also help. Critically, the government should make available to family members information about all individuals detained for suspected involvement in the LTTE. Withholding this information is needlessly prolonging the distress of Tamils whose family members are missing. It also should make public all prior commission of inquiry reports that are not already available, including the 2006-2009 commission’s report and the LLRC’s report as soon as it is finished. While most have been deeply flawed, they captured information that all Sri Lankans should have access to.

Ultimately the Sri Lankan people deserve a real truth commission. Each community needs to be able to tell its stories and have others hear them and learn from them. This is needed especially between communities and across

language and geographic divides, but also within groups. It may be several years before the country is able to have a truly inclusive and representative process, but it is something Sri Lankans should be able to look forward to.

B. RESTORING THE RULE OF LAW AND ENDING IMPUNITY

Truth is an essential component and product of the rule of law. Sri Lanka’s law enforcement and judicial systems are badly damaged after decades of civil war and emergency rule. Restoring their independence and ensuring their adherence to the law is necessary to rebuild Sri Lankans’ confidence in those institutions. Reforming the judiciary and security sector are long-term projects that thus far the Rajapaksa regime has demonstrated no interest in. It should not, however, be allowed to pretend that such reform is not needed. Certain immediate steps should also be taken.

Repeal the emergency laws and the PTA. There is no valid excuse for the government to maintain the state of emergency and the extraordinary powers of arrest and detention given to the security forces under the PTA. The government says it has rolled back many of the emergency regulations, but the most controversial powers of arrest and detention remain in place.²⁵⁶ In reauthorising the emergency in parliament every month, the government argues that it is still necessary to deal with existing detainees and the threat of the LTTE regrouping. There is, however, no reason those risks cannot be managed under non-emergency provisions, and indeed doing so would likely build trust with the Tamil community. The continuation of the emergency is particularly suspect when it is being used to prosecute political opponents and postpone elections. Domestic calls to end the emergency and repeal the PTA should be heeded.²⁵⁷

Reduce militarisation and re-establish civil administration. The undermining of local capacity in the north and east (first by the LTTE and now by the government) is greatly reducing chances for reconciliation. Unless control over everyday activities – from holding meetings, to buying vegetables, to attending university – is handed back to the people and civilian officials, communities will continue

²⁵⁴“N. Ram interviews Sri Lanka’s President Mahinda Rajapaksa”, *The Hindu*, 23 November 2010. Sri Lanka’s high commissioner in the UK, for example, claimed that “retributive justice” is “not a concept we Asians are comfortable with”. “UN panel ‘uncalled for’ – High Commissioner Kariyawasam”, News Line, priu.gov.lk, 10 August 2010. Responding to a query from the UN panel about its notion of “restorative justice”, the government explained: “The entire endeavour requires that what happened in the past must be relegated to history, by all communities inclusive of the majority community”. UN Panel Report, op. cit., p. 78.

²⁵⁵ It does not resonate with many people in the north, at least to the extent that talking about what happened in the final stages of the war is somehow un-Sri Lankan. As a local development worker said, “we are like everyone else. You will have a sick society [if people are not allowed to talk about what happened]”. Crisis Group interview, Vavuniya, March 2011.

²⁵⁶ The PTA authorises preventive detention on vague and overbroad grounds for up to eighteen months and indefinitely pending trial. The emergency regulations also allow preventive detention for up to a year for detentions prior to May 2010, and three months for those after May 2010. They further permit detention of “surrendees” without charge or trial for purposes of “rehabilitation” for up to two years, without judicial review or access to legal representation. For more on these detention provisions, see “Beyond lawful constraints”, ICJ, op. cit.

²⁵⁷ “Scrap emergency and PTA” - Friday Forum”, BBCSinhala, 26 May 2011.

to be fearful and divided. Development in particular needs to happen with local input and without military involvement. Donors should insist on this. The government should also be pushed to hold the remaining municipal council elections and the Northern Provincial Council elections – soon and without violence, intimidation or misuse of state resources.

End impunity. Sri Lanka has suffered from a lack of accountability for decades. Changing that culture is not going to happen overnight, but it needs to start somewhere. The report of the UN panel of experts on alleged abuses in the final stages of the war has not only provoked an angry response from the regime, but also highlighted important discussions within civil society about the best way forward in terms of accountability and the role, if any, an international inquiry should play. Two primary concerns expressed by Sri Lankan lawyers and activists are, first, that the singular focus on abuses committed at the end of the war deflects attention from the broader human rights and impunity crisis that has so badly affected all ethnic communities and eroded the rule of law;²⁵⁸ and, secondly, that the “international” part of the panel’s recommendations can only play into the regime’s ability to stir nationalist paranoia and further consolidate power.²⁵⁹

Both concerns point to a real potential for short-term negative consequences from an international inquiry. They also reinforce many diplomats’ reluctance to support an international inquiry, not because they believe that domestic efforts will produce any accountability but because they are not convinced that an expensive international alternative will produce positive results. While these concerns and reluctance are understandable, they also let the government and its international supporters off too easily. There are always risks that international accountability efforts will undermine domestic justice capacities or play into the hands of nationalists. But those risks can be managed by structuring international efforts to encourage positive domestic responses, while still ensuring that the international components are contributing to accountability – and to creating a credible narrative that recognises the misery the LTTE and the government imposed on the country’s ethnic communities, often perpetrating crimes in their names. Some nationalist backlash is inevitable, but its resonance will decrease over time, as the country gets further away from the civil war.

One way forward with an international inquiry that minimises these risks would include the following:

Expand the focus. The government needs to hear a public and consistent message from its international supporters that accountability is needed, not only for the alleged crimes at the end of the war, but also for other past and present abuses. Sri Lanka’s partners should call for all past commission of inquiry reports to be made public and for there to be credible investigations into continuing crimes, such as attacks on journalists and routine police torture. It will be much more difficult for the government to stoke nationalist sentiment when the international community is also drawing attention to the need for accountability for the abuse of Sinhalese at the hands of the government and the LTTE. It is critical that this message be public and repeated, given the government’s firm grip on domestic media outlets.

Defend judicial independence. That message should focus not only on the substantive crimes, but also on the corruption of the judicial process, which has only increased since the end of the war. The case of Sarath Fonseka has been the most prominent confirmation of the regime’s willingness to use the emergency laws and the judicial process for its own ends. Human rights defenders and the international community need to make it clear that his treatment is unacceptable – not because he is a “war hero” or a preferred alternative to the Rajapaksas (he is neither) – but because it violates due process and sends a chilling message to all Sri Lankans that no one is safe.

Evaluate domestic efforts. Capacity to evaluate domestic efforts, along with a clear timeframe and criteria, will be critical. In the very short term, the UN Secretary-General should be encouraged to follow through on his commitment to set up a monitoring and repository mechanism, as recommended in the UN panel report, to evaluate government accountability efforts. The Secretary-General should require a report on those efforts at the end of 2011. If the government fails to demonstrate convincingly by that time that it is willing and able to hold accountable those responsible for alleged crimes, an international inquiry should be established. To convince the government of the seriousness of the demand for accountability and to concentrate minds on how an international inquiry will operate, the Secretary-General and UN member states need to be working to establish one – pursuant to any lawful authority including that of the Secretary-General or UNHRC²⁶⁰

²⁵⁸ Kishali Pinto-Jayawardena, who writes a weekly column, “Focus on rights”, published in *The Sunday Times*, has raised this issue consistently. See, for example, “The message on internal accountability is clear”, 15 May 2011; “Examining the international war crimes cry”, 13 June 2010.

²⁵⁹ This argument is presented, with more nuance, by the commentator “Publius” in “War crimes accountability In Sri Lanka: is there a liberal democratic alternative to international action?”, *groundviews*, 29 April 2011.

²⁶⁰ The next two sessions of the UNHRC are in September 2011 and March 2012. The Secretary-General should formally transmit the UN panel report to the president of the UNHRC and the High Commissioner for Human Rights in advance of the former; he should also transmit it to the General Assembly. He

– so it can be put in place soon after the end of 2011. Minimum criteria for evaluating the government's efforts in coming months should include the following:

- ❑ the president must commit publicly to a) hold accountable those responsible for violations of international humanitarian and human rights law by either the security forces or the LTTE; and b) support the establishment of a truly independent domestic body to investigate and prosecute alleged violations of international humanitarian and human rights law, including all of the allegations deemed credible by the UN panel;
- ❑ the defence ministry must publicly endorse the president's commitment and cooperate in practice with any investigation or prosecution, consistent with principles of due process;
- ❑ the government must establish under new legislation a special investigative body, independent of the attorney general's department, that is composed of non-political appointees nominated by both government and opposition political parties and is fully empowered and resourced to investigate and, where sufficient evidence exists, to prosecute all alleged violations of international humanitarian and human rights law; and
- ❑ prior to the establishment of the new investigative body, the government must show substantial progress in investigating the alleged extrajudicial executions in the Channel 4 documentary by a) taking action to try to determine the identities of the alleged perpetrators who appear in the video footage; b) by interviewing those units responsible for killing LTTE news reader Isaipiriya and LTTE commander "Colonel" Ramesh; and c) making public the government's findings about the events leading to, and the legality of, those two killings and any plans to prosecute those responsible.

Multi-staged and sequenced international inquiry.

An international inquiry into the credible allegations identified in the UN panel report needs to be structured in a way that it is truly complementary to any genuine domestic process that may emerge after the end of 2011. One approach could be to sequence the investigation so as to focus on certain incidents or categories of crimes initially and proceed to others as available sources are exhausted. To the extent parallel domestic accountability

processes with respect to those incidents or crimes emerge and are proven to meet international standards, the international inquiry could adjust its priorities. For example, the inquiry could start with alleged extrajudicial executions and attacks on hospitals and humanitarian missions by government forces and child recruitment and suicide attacks by the LTTE. The time-frame selected should be expanded from the last months of the war so as to cover a more representative range of incidents, including those crimes the LTTE committed against Sinhalese and Muslims when it was operating at its full power – for example, from the 2002 ceasefire to the end of the conflict.

This approach to an international inquiry, while likely more time consuming, would complicate the government's ability to reject it outright as a violation of sovereignty or to argue that it is merely an effort to tarnish the reputation of all Sri Lankan soldiers, many of whom fought bravely and lawfully. It would also counter concerns that an international inquiry means "immediate criminal accountability", which some consider contrary to the country's Sinhala Buddhist and Tamil Hindu sensibilities.²⁶¹ This cultural assessment is certainly open to debate.²⁶² In any case, as a practical matter, there is rarely anything "immediate" about international criminal accountability, particularly when it involves a wide variety of crimes and actors. Indeed, perhaps the most desirable approach to accountability for crimes committed in the last stage of the war is one in which an international mechanism works over several years to document what occurred and recommend further steps, which may gradually push the government closer to meeting its international obligations and providing truth and justice for its citizens.

Even if this approach proves not to sway the government, the alternative – doing without any international inquiry in the next one to five years – is bleak. The Rajapaksa family has made no secret of its desire to dominate the country for the next generation. The most effective way for it to do so, as seen in models in Central Asia, the Middle East and South America, is *not* to give the Tamil minority significant power in the north and east and *not* to hold its own security forces (and allied paramilitaries) accountable for human rights abuses used to quash dissent. Certainly, a purely domestic process that somehow could help restore the rule of law and open political space would be preferable and, at least by reference to Middle Eastern and South American models, might also, ultimately, prove more prudent for the Rajapaksas. But, as the experience of the LLRC has demonstrated, there is no chance of this government allowing that unless it is under intense inter-

should include with the report an update on his commitment to monitor the government's accountability efforts and to review the UN's own actions in the final stages of the war. The UNHRC should consider the panel report and commit to consider the case of Sri Lanka in March 2012, regardless of whether the government claims it (or the LLRC) needs more time.

²⁶¹ "War crimes accountability in Sri Lanka: is there a liberal democratic alternative to international action?", op. cit.

²⁶² Crisis Group interviews, March-April 2011.

national pressure. And the primary tool the international community has at this time to exert that degree of pressure is a process that counters the regime's narratives – of the past and present – with facts.

C. MEETING VICTIMS' PRACTICAL NEEDS

Addressing the practical needs of victims of Sri Lanka's conflicts from all three ethnic communities is essential. Their suffering and experiences largely define how each community sees itself and others. Responding to their losses in a manner that is transparent and equitable can help alleviate grievances and promote greater understanding and acceptance. While the needs of each community vary, three common issues deserve particular attention: information about and space to mourn the dead and missing, durable solutions for displaced persons and reparations.

The dead and missing. The government should provide families of the deceased or missing with whatever information it has about the circumstances of death or disappearance of their loved ones, regardless of ethnicity or status as a combatant or civilian. It should start by releasing information gathered in the 1991-1998 disappearances commissions, the 2006 one-person disappearances commission and the 2006-2009 commission of inquiry. Much of the information gathered about individual cases for these commissions was shared only with the president or attorney general, not with the families. The government should also assist in the location and recovery of remains and provide accurate death certificates or declarations of absence for families that request them. Families should be allowed to state the cause of death or circumstances of disappearance as they understand it, and the issuance of documentation should not prejudice their right to seek further information or legal relief.²⁶³ All families should be permitted to grieve openly, collectively and according to their own cultural and religious customs. Monuments to commemorate the dead should be allowed.

Durable solutions for displaced persons. Families that have been displaced over the decades of conflict should be permitted to move freely and settle where they wish. A local system for resolving land disputes is essential. It

should be open, transparent and sensitive to the complex forms of ownership that have arisen from more than twenty years of multiple displacements. It should be run by the local governmental authority with community participation and without the involvement of the military. To the extent possible, vehicles and other property seized or abandoned during the conflict should be returned to rightful owners. Many communities in the north and east will require housing and livelihood support for several years. This assistance should be administered by local authorities and development partners, who should be allowed to increase levels of assistance and determine priorities.

Reparations. All efforts to compensate victims of the civil war and political violence in the past have been ad hoc. This has led to the politicisation of compensation, with inequitable distributions between and within ethnic groups. There should be a single scheme, equal payments and a transparent process for all victims, no matter who killed whom.

D. DISTRIBUTION OF POWER AND MINORITY RIGHTS

Devolution of power to the traditionally Tamil-speaking north and east is essential to a sustainable peace. It has become no less urgent with the defeat of the LTTE; indeed, the end of the war and the return of some normalcy in those areas make real power sharing all the more important, as critical decisions are being taken about residents' economic and political futures. But any devolution package – whether it builds on the still-unimplemented Thirteenth Amendment or is devised otherwise – will be meaningless unless the government also curbs its growing authoritarianism and centralisation of power and demilitarises the north and east.

A first step toward all these goals would be for the government to hold free and fair elections for the Northern Provincial Council, as the constitution requires. It should be encouraged to do so, and conditions should be monitored closely. The government should also commit publicly to the goal of reaching a political settlement on devolution in the ongoing talks with the TNA. Agreement in those talks should be followed by a process that includes independent representatives of Muslims in the north and east to finalise a settlement acceptable to all communities. The TNA for its part needs to reach out to the Tamil community in the north and east, especially in the Vanni, to better understand their views and needs. The government needs to allow this to happen without intimidation or military interference.

Finally, devolution alone will not protect minority rights. Language discrimination remains a primary concern of Tamil speakers and presents significant economic and political barriers. While in recent years the availability of Tamil-language government forms and translations has increased, it is often the person-to-person interactions at police stations,

²⁶³ In December 2010, the government passed a law providing for "registration of deaths of persons reported missing as a result of terrorist or subversive activity or civil commotion". Registration of Deaths (Temporary Provisions) Act, no. 19 of 2010. While authorities in the north and east have started issuing large numbers of death certificates, there are reports that the new law is not being followed in some areas. Crisis Group email communication, July 2011. Any international assistance to the government in processing death certificates should require that the rights of family members be protected.

local government offices, utility boards and health services in which proficiency in Tamil is lacking.²⁶⁴ Existing law and policy on language rights are relatively good on paper; what is needed are the resources and political will to implement them.

E. DONORS AND SUPPORTERS

Sri Lanka's international partners can have a significant impact on the country's post-war course. Both the regime and the Sri Lankan public remain concerned about their image abroad and bilateral relations, even if the regime attempts to leverage China's financial support and aversion to conditionality against more cautious donors. India, as well as the U.S., Japan, UK, EU and others, including the UN, World Bank, Asian Development Bank (ADB) and implementing partners such as IOM, have important roles to play in assisting Sri Lanka to move toward reconciliation.

Donors and development partners should work together and prioritise the following:

Stopping the slide. The authoritarianism and consolidation of power under the Rajapaksas make for a dangerous course. This, along with the politicisation of the judiciary and repression of the media, should be highlighted consistently in bilateral and multilateral forums. Donors and supporters should directly challenge the government's narrative of the final stages of the war and urge it to publicly acknowledge the ethnic nature of the conflict and the need for meaningful power sharing, demilitarisation of the north and east and repeal of the emergency laws.

Local input on development. Donors should not fund projects unless local stakeholders are part of the planning process. Aid needs to go much more directly to those affected by the conflict, based on neutral criteria that do not discriminate on the basis of ethnicity or prior association with the LTTE. The military should not be involved in selecting beneficiaries or projects. Long-term funding commitments and projects are needed to help build local capacity. There should also be equity in aid delivery, with the government making a financial contribution that will directly benefit the communities affected by the conflict.

Transparency and monitoring. Donors should demand the highest levels of transparency regarding how

their assistance is spent. Access to project details and implementation sites is essential. Particular vigilance is required for any funding of "reintegration" programs for alleged ex-combatants. Donors should insist that the government make available to family members the location of any person in detention, including in "rehabilitation" camps, on suspicion of LTTE involvement and that it provide a mechanism for detainees to challenge their detention.

Accountability and rule of law. Sri Lanka is unlikely to avoid renewed conflict unless the rule of law is restored and authorities are held responsible for abuses. This is almost entirely an issue of political will, requiring the government to end the politicisation of law enforcement institutions and conduct credible investigations of alleged abuses. Donors and supporters can encourage movement in this direction by insisting on accountability and funding projects to increase local capacity, including support for domestic civil society monitoring and documentation initiatives and for other work by Sri Lankan human rights defenders. But they should also support an international inquiry into alleged abuses by both the government and the LTTE, as outlined above. This would increase pressure for credible domestic efforts and contribute to a truthful accounting of Sri Lanka's past.

Military-military ties and Sri Lankan contributions to UN peacekeeping operations should be reviewed; until there is a credible investigation of the allegations against the military in the UN panel of experts report, all military assistance should be suspended, and the UN should refrain from accepting the participation of Sri Lankan troops. The UN should also follow through on its commitment to review its own conduct during the final stages of the war and revisit its failed policy in Sri Lanka of holding back on public criticism to maintain humanitarian access.

Strengthened Principles. Sri Lanka's partners – including India, Japan, the World Bank and the ADB – should incorporate these and other priorities into a set of principles for more conflict sensitive work, particularly, but not exclusively, in the north and east. These must go beyond the vague and often unimplemented "Guiding Principles for Humanitarian and Development Assistance" agreed in 2007.²⁶⁵ Development agencies and bi-lateral donors should learn from the mistakes of the last five years of uncoordinated and largely unconditioned assistance and require that their money be spent in ways that support the re-emergence of legiti-

²⁶⁴ For a good discussion of the language issue, including current laws and policies, see "No war, no peace: the denial of minority rights and justice in Sri Lanka", Minority Rights Group International, 2011, pp. 26-28. While some forms are available in Tamil, many are not, from documents related to fishing registration to letters given to detainees upon release.

²⁶⁵ For more on principles of conflict-sensitive development assistance, see Crisis Group Report, *Development Assistance and Conflict in Sri Lanka*, op. cit., especially pp. 7-11. For a brief discussion of the "Guiding Principles", see *ibid*, p. 11.

mate institutions and a strong civil society, as the World Bank's most recent World Development Report has argued.²⁶⁶

The principles should be formally agreed upon and ratified with the Sri Lankan government at a donors conference before the end of 2011. While Sri Lanka is no longer an aid-dependent country, international aid has played the central role in what limited resettlement and rebuilding of the north has taken place. A joint position from Western donors, development banks, India and Japan would be almost impossible for the government to ignore.

VI. CONCLUSION

Reconciliation after long periods of conflict never happens quickly. But in Sri Lanka there is a serious risk it may not happen at all. The government's intransigence and triumphalism a full two years after declaring victory over the LTTE has meant the country is yet to see any semblance of compromise or inclusiveness. Instead, President Rajapaksa and his powerful family members have maintained their war-time "with us or against us" mentality and continued to consolidate power and wealth, shaping much of the country as they wish. The refusal of much of the Tamil diaspora to recognise the brutality of the LTTE and its share of responsibility for Tamil suffering only bolsters their position. The government tells a very different story to the international community and to its own people about its agenda, claiming that it is pursuing reconciliation and taking care of all those who suffered in the war. But the reality on the ground, especially in the devastated north, is profoundly different, and resentment among many Tamils is growing.

To avoid an eventual return to violence, the government must change course drastically. The 30-year emergency needs to come to an end, and government repression of the media and political opponents must stop. Restoring the rule of law and accountability is essential, as is a political settlement to provide real devolution of power. Attention must also be paid to the many victims of these three decades of war and political violence from all three main ethnic groups – Sinhalese, Tamils and Muslims. Indeed, rebuilding relations among those communities and getting to a point where each has some real understanding of what the others have gone through should be a central goal. All of this will take years, but the sooner it starts the more likely renewed conflict will be avoided.

Colombo/Brussels, 18 July 2011

²⁶⁶ "World development report 2011: conflict, security, and development", World Bank, released 11 April 2011.

APPENDIX A

MAP OF SRI LANKA



APPENDIX B

EXECUTIVE SUMMARY, REPORT OF UN PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA

On 22 June 2010, the Secretary-General announced the appointment of a Panel of Experts to advise him on the implementation of the joint commitment included in the statement issued by the President of Sri Lanka and the Secretary-General at the conclusion of the Secretary-General's visit to Sri Lanka on 23 March 2009. In the Joint Statement, the Secretary-General "underlined the importance of an accountability process", and the Government of Sri Lanka agreed that it "will take measures to address those grievances". The Panel's mandate is to advise the Secretary-general regarding the modalities, applicable international standards and comparative experience relevant to an accountability process, having regard to the nature and scope of alleged violations of international humanitarian and human rights law during the final stages of the armed conflict in Sri Lanka. The Secretary-General appointed as members of the Panel Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); and Yasmin Sooka (South Africa). The Panel formally commenced its work on 16 September 2010 and was assisted throughout by a secretariat.

Framework for the Panel's work

In order to understand the accountability obligations arising from the last stages of the war, the Panel undertook an assessment of the "nature and scope of alleged violations" as required by its Terms of Reference. The Panel's mandate however does not extend to fact finding or investigation. The Panel analysed information from a variety of sources in order to characterize the extent of the allegations, assess which of the allegations are credible, based on the information at hand, and appraise them legally. The Panel determined an allegation to be credible if there was a reasonable basis to believe that the underlying act or event occurred. This standard gives rise to a legal responsibility for the State or other actors to respond. Allegations are considered as credible in this report only when based on primary sources that the Panel deemed relevant and trustworthy. In its legal assessment, the Panel proceeded from the longsettled premise of international law that during an armed conflict such as that in Sri Lanka, both international humanitarian law and international human rights law are applicable. The Panel applied the rules of international humanitarian and human rights law to the credible allegations involving both of the primary actors in the war, that is, the Liberation Tigers of Tamil Eelam (LTTE) and the Government of Sri Lanka. Neither the publicly expressed aims of each side (combating terrorism, in the case of the Government, and fighting for a separate homeland, in the case of the LTTE), nor the asymmetrical nature of the tactics employed affects the applicability of international humanitarian and human rights law.

Sri Lanka is a party to several human rights treaties which require it to investigate alleged violations of international humanitarian and human rights law and prosecute those responsible; customary international law applicable to the armed conflict also includes such obligations. In addition to underscoring

these legal obligations, in providing its advice to the Secretary-General, the Panel has drawn heavily on the international standards expressed in various United Nations documents and views of treaty bodies. These sources express the core understanding that achieving accountability for crimes under international law involves the right to the truth, the right to justice and the right to reparations, including through institutional guarantees of non-recurrence. The Panel has also drawn on the diverse practical approaches, consistent with these standards, which have been developed in numerous other countries that have faced similar challenges for ensuring accountability. The Panel has used this framework as the basis both for assessing the domestic policy, measures and institutions, which are relevant to the approach to accountability taken by the Government of Sri Lanka to date, and for developing its recommendations to the Secretary-General. Finally, in formulating its advice, the Panel has given priority to the rights and needs of the victims who suffered tragic consequences from the actions of both parties in the protracted armed conflict in Sri Lanka; women, children and the elderly usually bear the brunt of suffering and loss in wars, and the Sri Lankan case is no exception.

Allegations found credible by the Panel

The Panel's determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka. The Government says it pursued a "humanitarian rescue operation" with a policy of "zero civilian casualties." In stark contrast, the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity. Indeed, the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.

Specifically the Panel found credible allegations associated with the final stages of the war. Between September 2008 and 19 May 2009, the Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling, causing large numbers of civilian deaths. This campaign constituted persecution of the population of the Vanni. Around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE. The Government sought to intimidate and silence the media and other critics of the war through a variety of threats and actions, including the use of white vans to abduct and to make people disappear.

The Government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilian population to concentrate, even after indicating that it would cease the use of heavy weapons. It shelled the United Nations hub, food dis-

tribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches. It shelled in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others. Most civilian casualties in the final phases of the war were caused by Government shelling.

The Government systematically shelled hospitals on the frontlines. All hospitals in the Vanni were hit by mortars and artillery, some of them were hit repeatedly, despite the fact that their locations were well-known to the Government. The Government also systematically deprived people in the conflict zone of humanitarian aid, in the form of food and medical supplies, particularly surgical supplies, adding to their suffering. To this end, it purposefully underestimated the number of civilians who remained in the conflict zone. Tens of thousands lost their lives from January to May 2009, many of whom died anonymously in the carnage of the final few days.

The Government subjected victims and survivors of the conflict to further deprivation and suffering after they left the conflict zone. Screening for suspected LTTE took place without any transparency or external scrutiny. Some of those who were separated were summarily executed, and some of the women may have been raped. Others disappeared, as recounted by their wives and relatives during the LLRC hearings. All IDPs were detained in closed camps. Massive overcrowding led to terrible conditions, breaching the basic social and economic rights of the detainees, and many lives were lost unnecessarily. Some persons in the camps were interrogated and subjected to torture. Suspected LTTE were removed to other facilities, with no contact with the outside world, under conditions that made them vulnerable to further abuses.

Despite grave danger in the conflict zone, the LTTE refused civilians permission to leave, using them as hostages, at times even using their presence as a strategic human buffer between themselves and the advancing Sri Lanka Army. It implemented a policy of forced recruitment throughout the war, but in the final stages greatly intensified its recruitment of people of all ages, including children as young as fourteen. The LTTE forced civilians to dig trenches and other emplacements for its own defences, thereby contributing to blurring the distinction between combatants and civilians and exposing civilians to additional harm. All of this was done in a quest to pursue a war that was clearly lost; many civilians were sacrificed on the altar of the LTTE cause and its efforts to preserve its senior leadership.

From February 2009 onwards, the LTTE started point-blank shooting of civilians who attempted to escape the conflict zone, significantly adding to the death toll in the final stages of the war. It also fired artillery in proximity to large groups of internally displaced persons (IDPs) and fired from, or stored military equipment near, IDPs or civilian installations such as hospitals. Throughout the final stages of the war, the LTTE continued its policy of suicide attacks outside the conflict zone. Even though its ability to perpetrate such attacks was diminished compared to previous phases of the conflict, it perpetrated a number of attacks against civilians outside the conflict zone.

Thus, in conclusion, the Panel found credible allegations that comprise five core categories of potential serious violations committed by the Government of Sri Lanka: (i) killing of civilians through widespread shelling; (ii) shelling of hospitals and humanitarian objects; (iii) denial of humanitarian assistance; (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre; and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government.

The Panel's determination of credible allegations against the LTTE associated with the final stages of the war reveal six core categories of potential serious violations: (i) using civilians as a human buffer; (ii) killing civilians attempting to flee LTTE control; (iii) using military equipment in the proximity of civilians; (iv) forced recruitment of children; (v) forced labour; and (vi) killing of civilians through suicide attacks.

Accountability

Accountability for serious violations of international humanitarian or human rights law is not a matter of choice or policy; it is a duty under domestic and international law. These credibly alleged violations demand a serious investigation and the prosecution of those responsible. If proven, those most responsible, including Sri Lanka Army commanders and senior Government officials, as well as military and civilian LTTE leaders, would bear criminal liability for international crimes.

At the same time, accountability goes beyond the investigation and prosecution of serious crimes that have been committed; rather it is a broad process that addresses the political, legal and moral responsibility of individuals and institutions for past violations of human rights and dignity. Consistent with the international standards mentioned above, accountability necessarily includes the achievement of truth, justice and reparations for victims. Accountability also requires an official acknowledgment by the State of its role and responsibility in violating the rights of its citizens, when that has occurred. In keeping with United Nations policy, the Panel does not advocate a "one-size-fits-all" formula or the importation of foreign models for accountability; rather it recognizes the need for accountability processes to be defined based on national assessments, involving broad citizen participation, needs and aspirations. Nonetheless, any national process must still meet international standards. Sri Lanka's approach to accountability should, thus, be assessed against those standards and comparative experiences to discern how effectively it allows victims of the final stages of the war to realize their rights to truth, justice and reparations.

The Government has stated that it is seeking to balance reconciliation and accountability, with an emphasis on restorative justice. The assertion of a choice between restorative and retributive justice presents a false dichotomy. Both are required. Moreover, in the Panel's view, the Government's notion of restorative justice is flawed because it substitutes a vague notion of the political responsibility of past Government policies and their failure to protect citizens from terrorism for genuine, victim-centred accountability focused on truth, justice and reparations. A further emphasis is clearly on the culpability of certain LTTE cadre; the Government's plan, in this regard, contemplates rehabilitation for the majority and lenient sentences for the "hard core" among surviving LTTE cadre. The Govern-

ment's two-pronged notion of accountability, as explained to the Panel, focusing on the responsibility of past Governments and of the LTTE, does not envisage a serious examination of the Government's decisions and conduct in prosecuting the final stages of the war or the aftermath, nor of the violations of law that may have occurred as a result.

The Panel has concluded that the Government's notion of accountability is not in accordance with international standards. Unless the Government genuinely addresses the allegations of violations committed by both sides and places the rights and dignity of the victims of the conflict at the centre of its approach to accountability, its measures will fall dramatically short of international expectations.

The Lessons Learnt and Reconciliation Commission

The Government has established the Lessons Learnt and Reconciliation Commission as the cornerstone of its policy to address the past, from the ceasefire agreement in 2002 to the end of the conflict in May 2009. The LLRC represents a potentially useful opportunity to begin a national dialogue on Sri Lanka's conflict; the need for such a dialogue is illustrated by the large numbers of people, particularly victims, who have come forward on their own initiative and sought to speak with the Commission.

Nonetheless, the LLRC fails to satisfy key international standards of independence and impartiality, as it is compromised by its composition and deep-seated conflicts of interests of some of its members. The mandate of the LLRC, as well as its work and methodology to date, are not tailored to investigating allegations of serious violations of international humanitarian and human rights law, or to examining the root causes of the decades-long ethnic conflict; instead these focus strongly on the wider notion of political responsibility mentioned above, which forms part of the flawed and partial concept of accountability put forth by the Government. The work to date demonstrates that the LLRC has: not conducted genuine truth-seeking about what happened in the final stages of the armed conflict; not sought to investigate systematically and impartially the allegations of serious violations on both sides of the war; not employed an approach that treats victims with full respect for their dignity and their suffering; and not provided the necessary protection for witnesses, even in circumstances of actual personal risk.

In sum, the LLRC is deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process.

Other domestic mechanisms

The justice system should play a leading role in the pursuit of accountability, irrespective of the functioning or outcomes of the LLRC. However, based on a review of the system's past performance and current structure, the Panel has little confidence that it will serve justice in the existing political environment. This is due much more to a lack of political will than to lack of capacity. In particular, the independence of the Attorney-General has been weakened in recent years, as power has been more concentrated in the Presidency. Moreover, the continuing

imposition of Emergency Regulations, combined with the Prevention of Terrorism Act in its current form, present a significant obstacle for the judicial system to be able to address official wrongdoing while upholding human rights guarantees. Equally, the Panel has seen no evidence that the military courts system has operated as an effective accountability mechanism in respect of the credible allegations it has identified or other crimes committed in the final stages of the war.

Other domestic institutions that could play a role in achieving accountability also demonstrate serious weaknesses. Over three decades, commissions of inquiry have been established to examine a number of serious human rights issues. While some have served important fact-finding goals, overwhelmingly these commissions have failed to result in comprehensive accountability for the violations identified. Many commissions have failed to produce a public report, and recommendations have rarely been implemented. The Human Rights Commission of Sri Lanka could also potentially contribute to advancing certain aspects of accountability, but the Panel still has serious reservations and believes that the Commission will need to demonstrate political will and resourcefulness in following up on cases of missing persons and in monitoring the welfare of detained persons.

Other obstacles to accountability

During the course of its work, the Panel observed that there are several other contemporary issues in Sri Lanka, which if left unaddressed, will deter efforts towards genuine accountability and may undermine prospects for durable peace in consequence. Most notably, these include: (i) triumphalism on the part of the Government, expressed through its discourse on having developed the means and will to defeat "terrorism", thus ending Tamil aspirations for political autonomy and recognition, and its denial regarding the human cost of its military strategy; (ii) on-going exclusionary policies, which are particularly deleterious as political, social and economic exclusion based on ethnicity, perceived or real, have been at the heart of the conflict; (iii) the continuation of wartime measures, including not only the Emergency Regulations and the Prevention of Terrorism Act, mentioned above, but also the continued militarization of the former conflict zone and the use of paramilitary proxies, all of which perpetuate a climate of fear, intimidation and violence; (iv) restrictions on the media, which are contrary to democratic governance and limit basic citizens' rights; and (v) the role of the Tamil diaspora, which provided vital moral and material support to the LTTE over decades, and some of whom refuse to acknowledge the LTTE's role in the humanitarian disaster in the Vanni, creating a further obstacle to accountability and sustainable peace.

An environment conducive to accountability, which would permit a candid appraisal of the broad patterns of the past, including the root causes of the long-running ethno-nationalist conflict, does not exist at present. It would require concrete steps towards building an open society in which human rights are respected, as well as a fundamental shift away from triumphalism and denial towards a genuine commitment to a political solution that recognizes Sri Lanka's ethnic diversity and the full and inclusive citizenship of all of its people, including Tamils, as the foundation for the country's future.

International role in the protection of civilians

During the final stages of the war, the United Nations political organs and bodies failed to take actions that might have protected civilians. Moreover, although senior international officials advocated in public and in private with the Government that it protect civilians and stop the shelling of hospitals and United Nations or ICRC locations, in the Panel's view, the public use of casualty figures would have strengthened the call for the protection of civilians while those events in the Vanni were unfolding. In addition, following the end of the war, the Human Rights Council may have been acting on incomplete information when it passed its May 2009 resolution on Sri Lanka.

Recommendations

In this context, the Panel recommends the following measures, which it hopes, as a whole, will serve as the framework for an ongoing and constructive engagement between the Secretary-General and the Government of Sri Lanka on accountability. They address the various dimensions of accountability that the Panel considers essential and which will require complementary action by the Government of Sri Lanka, the United Nations and other parties.

Recommendation 1: Investigations

- A. In light of the allegations found credible by the Panel, the Government of Sri Lanka, in compliance with its international obligations and with a view to initiating an effective domestic accountability process, should immediately commence genuine investigations into these and other alleged violations of international humanitarian and human rights law committed by both sides involved in the armed conflict.
- B. The Secretary-General should immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions:
 - (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings;
 - (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations; and
 - (iii) Collect and safeguard for appropriate future use information provided to it, which is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system.

Recommendation 2: Other immediate measures to advance accountability

- A. The Government of Sri Lanka should implement the following short-term measures, with a focus on acknowledging the rights and dignity of all of the victims and survivors in the Vanni:
 - (i) End all violence by the State, its organs and all paramilitary and other groups acting as surrogates of, or tolerated by, the State;

- (ii) Facilitate the recovery and return of human remains to their families and allow for the performance of cultural rites for the dead;
- (iii) Provide death certificates for the dead and missing, expeditiously and respectfully, without charge, when requested by family members, without compromising the right to further investigation and civil claims;
- (iv) Provide or facilitate psychosocial support for all survivors, respecting their cultural values and traditional practices;
- (v) Release all displaced persons and facilitate their return to their former homes or provide for resettlement, according to their wishes; and
- (vi) Continue to provide interim relief to assist the return of all survivors to normal life.

B. The Government of Sri Lanka should investigate and disclose the fate and location of persons reported to have been forcibly disappeared. In this regard, the Government of Sri Lanka should invite the Working Group on Enforced and Involuntary Disappearances to visit Sri Lanka.

C. In light of the political situation in the country, the Government of Sri Lanka should undertake an immediate repeal of the Emergency Regulations and modify all those provisions of the Prevention of Terrorism Act that are inconsistent with Sri Lanka's international obligations, and take the following measures regarding suspected LTTE members and all other persons held under these and other provisions:

- (i) Publish the names of all of those currently detained, whatever the location of their detention, and notify them of the legal basis of their detention;
- (ii) Allow all detainees regular access to family members and to legal counsel;
- (iii) Allow all detainees to contest the substantive justification of their detention in court;
- (iv) Charge those for whom there is sufficient evidence of serious crimes and release all others, allowing them to reintegrate into society without further hindrance.

D. The Government of Sri Lanka should end state violence and other practices that limit freedoms of movement, assembly and expression, or otherwise contribute to a climate of fear.

Recommendation 3: Longer term accountability measures

While the current climate is not conducive to an honest examination of the past, in the longer term, as political spaces are allowed to open, the following measures are needed to move towards full accountability for actions taken during the war:

- A. Taking into account, but distinct from, the work of the LLRC, Sri Lanka should initiate a process, with strong civil society participation, to examine in a critical manner: the root causes of the conflict, including ethno-nationalist extremism on both sides; the conduct of the war and patterns of violations; and the corresponding institutional responsibilities.

- B. The Government of Sri Lanka should issue a public, formal acknowledgment of its role in and responsibility for extensive civilian casualties in the final stages of the war.
- C. The Government of Sri Lanka should institute a reparations programme, in accordance with international standards, for all victims of serious violations committed during the final stages of the war, with special attention to women, children and particularly vulnerable groups.

Recommendation 4: United Nations

Considering the response of the United Nations to the plight of civilians in the Vanni during the final stages of the war in Sri Lanka and the aftermath:

- A. The Human Rights Council should be invited to reconsider its May 2009 Special Session Resolution (A/HRC/S-11/L.1/Rev. 2) regarding Sri Lanka, in light of this report.
- B. The Secretary-General should conduct a comprehensive review of actions by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates.

The Panel's report and its advice to the Secretary-General, as encapsulated in these recommendations, are inspired by the courage and resilience of victims of the war and civil society in Sri Lanka. If followed, the recommendations would comprise a genuine process of accountability that would satisfy the joint commitment and would set Sri Lanka on the course of justice, dignity and peace.