

# Sri Lanka Between Elections

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## *Executive Summary*

A half year after Maithripala Sirisena's stunning defeat of President Mahinda Rajapaksa raised hopes for democratic renaissance, the complexities of partisan politics, and Rajapaksa himself, have returned to centre stage. Sirisena's initial months with a minority government led by the United National Party (UNP) have opened important political space: robust debate and criticism have replaced the fear under Rajapaksa, and important governance reforms have been made, but much remains undone. By initial steps on reconciliation, the government set a more accommodating tone on the legacy of the civil war and the ethnic conflict that drove it. But divisions within government and Sirisena's failure to take control of his Sri Lanka Freedom Party (SLFP) prevented deeper reform and allowed Rajapaksa and his supporters to mount a comeback. With Sirisena opposing Rajapaksa's return, the 17 August parliamentary elections will test the continued appeal of the ex-president's hardline Sinhala nationalism and give a chance for the fresh start that lasting solutions to the country's social divisions require.

Before running out of steam in June, Sirisena's first six months saw notable achievements. Most important was parliament's April passage of the nineteenth amendment to the constitution. Largely fulfilling the central pledge of the joint opposition campaign, it considerably reduced presidential powers and established independent oversight commissions. Though the original draft was watered down, the amendment is a welcome move away from authoritarianism and could assist in re-establishing the badly-damaged rule of law. As promised in their election manifesto, Sirisena and his UNP partners also launched scores of investigations into alleged major fraud and abuse of power by officials of the former government. While the unprecedented scale of the anti-corruption drive raised public expectations, the lack of indictments thus far has fed rumours of backroom deals and growing doubts that the institutional and political obstacles to effective prosecutions can ever be overcome.

The bright hopes of the government's initial months were increasingly tarnished by unclear, ad hoc policies, frequently contradictory policy statements and missed deadlines for pledged reforms. As parliamentary elections, originally promised for June, were postponed, the coalition that elected Sirisena began to fragment. While the UNP and smaller parties urged him to dissolve parliament and hold elections after passage of the nineteenth amendment, he spent months trying and failing to win over the SLFP, whose nominal leadership he assumed after winning the presidency, following a decade of Rajapaksa at its helm.

The SLFP, which has a large majority in parliament, resented Sirisena's unprecedented experiment with a "national government" dominated by its arch-rival UNP. Many SLFP parliamentarians remain loyal to Rajapaksa; others see the ex-president as the party's best chance to retain its majority in the next parliament, given his popularity among Sinhala voters. After months of resisting Rajapaksa's selection as the prime ministerial candidate of the SLFP-led United People's Freedom Alliance (UPFA), lack of support in the party forced Sirisena to yield in early July.

Sirisena has since made it clear he opposes Rajapaksa's candidacy and will not appoint him prime minister, even if the UPFA wins an unlikely majority. The ex-president's opponents within the SLFP, along with smaller parties, have joined a new

version of the UNP-led coalition that brought Sirisena victory in January, now re-energised by the threat of a Rajapaksa comeback. With the UPFA arguing the UNP threatens national security and supports Tamil separatism, the election will test the strength of Rajapaksa's brand of Sinhala nationalism, as well as the depth of public concern over corruption and abuses of power. Even if he cannot become prime minister, Rajapaksa's leadership of a large Sinhala nationalist bloc in parliament could make it harder for a UNP-led government's to act as promised on reconciliation and accountability.

The Sirisena-UNP government set a new, less Sinhala triumphalist tone on ethnic issues and took some steps for reconciliation: releasing a number of Tamil political prisoners and limited amounts of military-occupied land in Tamil areas, while reducing the presence, though not size, of the military and its involvement in governing the north and east. Despite growing frustration among many Tamils, larger moves have been put off until after elections, as has action on alleged war crimes by both the military and the defeated Tamil Tigers. The government promises a credible domestic inquiry that meets international standards, but doubts about its willingness and ability to tackle institutionalised impunity and prosecute war crimes are widespread and well founded. Successful prosecutions require significant legal and institutional reforms and management of resistance from military leaders and nationalist parties.

The UN Office of the High Commissioner of Human Rights (OHCHR) is due to deliver its long-awaited war crimes report to the UN Human Rights Council (HRC) before it meets in September. At that session, the newly-elected government should commit to the legal reforms needed to effectively prosecute serious human rights violations suffered by all ethnic communities, including war crimes; to pursue prosecutions with adequate witness protection and international involvement; and to consult widely with victims, survivors and community groups on its longer-term program of transitional justice, including a possible truth commission. To be effective, these processes will require consistent international scrutiny and participation, including OHCHR assistance to investigations and continued monitoring and reporting to the HRC.

The parliamentary elections offer voters the chance to renew the mandate for change they gave Sirisena and the UNP in January. A strong showing by the Rajapaksa-led UPFA, however, would complicate the president's plans to form a broad-based "national" government between the UNP, smaller parties and the reformist wing of the SLFP and place obstacles to further progress on much-needed governance reforms and reconciliation. Sri Lanka's chance to finally start on the road to a sustainable resolution of the country's decades-long ethnic strife, including a negotiated political settlement, depends on the outcome.

**Colombo/Brussels, 12 August 2015**

# Sri Lanka Between Elections

## I. Introduction

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The election of Maithripala Sirisena as president on 8 January 2015 was an historic victory for Sri Lanka's beleaguered democracy. Backed by a coalition of parties and civil society activists that spanned the country's broad ethnic and ideological spectrum, he faced an increasingly authoritarian incumbent, Mahinda Rajapaksa, whom many believed would not allow himself to be beaten.<sup>1</sup> Despite significant pre-election violence and abuse of state resources in support of Rajapaksa, fears of a stolen election and possible extra-constitutional measures by the president to remain in power were not fulfilled. The peaceful transition from a repressive regime that had miscalculated its popular support was rightly hailed as a triumph of democracy.

But the victory was only a fragile beginning, particularly with regard to addressing more than a half century of tension and violence over Tamil demands for self-rule in the north and east of the country. This report examines the achievements and the disappointments of Sirisena's first seven months and looks ahead to the 17 August parliamentary elections, at which his modest reform agenda is being challenged by a resurgent Rajapaksa faction within his own party. It also addresses the forthcoming report of the investigation by the UN Office of the High Commissioner for Human Rights (OHCHR) into alleged war crimes in Sri Lanka and sets out recommendations for a credible accountability process involving the Sri Lankan government and the international community.

While Sirisena and his coalition government have opened up political debate, ended authoritarian rule and limited presidential powers, the depths of nationalist sentiments and party politics have put sharp limits on what they have been willing to do to address key matters, including the concerns of Sri Lankan Tamils and Muslims. This paper looks at the constraining factors – entrenched bureaucracy, politicised state institutions, Sinhala and Tamil nationalism, the legacy of the 30-year civil war and, most directly, parliamentary and party politics, particularly in the SLFP.

Sirisena has brought a welcome consensus-building style to government decisions, but the emergence of multiple, competing power centres has led to uncertainty and confusion. Continued Rajapaksa support in the SLFP – despite major corruption allegations and investigations – have allowed him and his powerful family to mount a comeback and contributed to numerous decisions that have disappointed the new president's supporters, who had hoped for a sharper break with the past.

The report draws on interviews conducted in Sri Lanka and by phone from January to July 2015 with government officials, politicians, journalists, lawyers, academics and activists. Most of those interviewed preferred to remain anonymous.

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<sup>1</sup> For analysis of presidential election dynamics, see Crisis Group Asia Briefing N°145, *Sri Lanka's Presidential Election: Risks and Opportunities*, 9 December 2014, and blog, "Hope and fear battle for supremacy in Sri Lanka's presidential election campaign", 5 January 2015; also relevant are Asia Reports N°253, *Sri Lanka's Potemkin Peace: Democracy under Fire*, 13 November 2013 and N°243, *Sri Lanka's Authoritarian Turn: The Need for International Action*, 20 February 2013.

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## II. The 100-day Agenda

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Sirisena's unusually broad coalition of parties and civil society groups was united around a platform of *yahapalanaya* ("good governance"), reestablishing rule of law and ending corruption.<sup>2</sup> These issues dominated its first months, until the demands of party politics took over.

### A. Immediate Relief

Sirisena's most visible achievement has been the break with the Rajapaksa administration's authoritarian and repressive practices. Within days of assuming power, the new government unblocked websites critical of the former regime, relaxed surveillance of political dissenters, ended intimidation of journalists and removed restrictions on the travel of foreigners to the northern provinces. This transformed the political atmosphere, opening space for political debate on sensitive issues, including criticism of the Rajapaksa and current governments, in ways impossible for almost a decade. The words on many lips were "relief" and "able once again to speak freely".<sup>3</sup> But the opening it affords is only an initial step toward addressing deep political challenges.

### B. Tackling Corruption, Restoring Rule of Law

#### 1. Possible fraud and large-scale corruption

Central to Sirisena's victory was his promise to root out what his coalition claimed was the "mega" corruption of the Rajapaksa government.<sup>4</sup> Yet, obstacles to effective legal action – institutional and political – have been significant.

After ad hoc, confused activity following the election that fed accusations of vigilantism, the government established mechanisms for receiving information and investigating corruption. These include a presidential commission of inquiry, a cabinet subcommittee on corruption and a Police Financial Crimes Investigation Division (FCID). The latter is said to be investigating more than a dozen UPFA politicians and ex-officials. The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) has handled yet more cases. More active and credible with a new director general and fewer political constraints, it has received hundreds of complaints.<sup>5</sup>

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<sup>2</sup> Sirisena's winning coalition consisted of the United National Party (UNP), portions of the Sri Lankan Freedom Party (SLFP), the Sinhala nationalist Jathika Hela Urumaya (JHU), the Democratic Party (DP) headed by ex-army commander Sarath Fonseka, the Sri Lanka Muslim Congress (SLMC), the All Ceylon Muslim Congress (ACMC) and the Democratic People's Front (DPF). His election and much of his initial reform agenda was backed by the Tamil National Alliance (TNA) and the leftist Janatha Vimukthi Peramuna (JVP), leaders of which, together with ex-President Chandrika Kumaratunga and the prominent Buddhist monk Ven. Maduluwawe Sobitha Thera, formed the National Executive Council (NEC), an ad hoc grouping that helped guide government reforms during the first four months in office.

<sup>3</sup> Crisis Group interview, academic, Colombo, February 2015.

<sup>4</sup> Sirisena's election manifesto attacked "unprecedented" levels of corruption and "mega ransoms" to Rajapaksa officials. See [www.president.gov.lk/wp-content/uploads/2015/01/Manifesto-EN.pdf](http://www.president.gov.lk/wp-content/uploads/2015/01/Manifesto-EN.pdf).

<sup>5</sup> "Probes into 52 cases, legal action taken on 26", *The Sunday Times*, 19 April 2015; "Probe into corruption allegations continues", *The Sunday Times*, 26 April 2015. "Special anti-corruption unit launched today", *News.lk*, 26 February 2015. On 12 February, Sirisena named a new director general, but the three commissioners, including the chairman, were Rajapaksa appointees. The gov-

Government ministers have said the Rajapaksa family and those close to the old regime stole up to \$18 billion, though no hard evidence has been produced in court.<sup>6</sup> The government is receiving foreign government and international agency help, including the World Bank's, in tracking and recovering stolen assets held abroad.<sup>7</sup>

Investigations initially focused on allegations of bribery and financial fraud in major development projects and state industries. The new government's quick decision to suspend work on and formally review the controversial \$1.3 billion Chinese-funded "Colombo Port City" provoked a sharp reaction from Beijing.<sup>8</sup> The police and bribery commission are investigating dozens of allegedly fraudulent deals involving state agencies controlled by the Rajapaksas or appointees.<sup>9</sup> A special board of inquiry, appointed by the prime minister and tasked to investigate alleged corruption and waste in government-owned Sri Lankan Airlines, found grounds for criminal charges against senior airline officials.<sup>10</sup> An investigation into alleged misuse of millions of dollars of tsunami-relief funds has particularly explosive potential.<sup>11</sup>

With public expectations raised by government rhetoric, the lack of arrests of senior members of the old government has left many disappointed and critical, including some who backed Sirisena's campaign.<sup>12</sup> The 22 April arrest of Basil Rajapaksa for allegedly misappropriating money from his Divineguma (uplifting lives) anti-poverty program appeared to be a significant shift.<sup>13</sup> Just a day later, his brother and

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ernment has accused them of obstructing investigations. "Sri Lanka anti-corruption commissioners refusing to work", *Economy Next*, 30 July 2015. Key electoral coalition partners (JHU and JVP) worked with civil society to funnel thousands of complaints to the police and bribery commission. "Anti-Corruption Front hands over more files to Bribery Commission", government information department, 22 February 2015.

<sup>6</sup> On 7 May, Foreign Minister Samaraweera alleged \$18 billion had been stolen. "MR family deposited 18 bn USD in foreign banks: Mangala", *Daily Mirror* (online), 7 May 2015. Former President Rajapaksa denied the allegations strenuously and threatened to sue Samaraweera. "Sri Lanka's former President demands Rs. 1 billion from the Foreign Minister", *Colombopage*, 13 May 2015. <sup>7</sup> "World Bank team to probe fraudulent deals in SL", *The Sunday Observer*, 8 March 2015; "Stolen assets probe begins in US", *The Sunday Observer*, 17 May 2015.

<sup>8</sup> "China asks Sri Lanka to protect interests of investors over suspended port project", Xinhua, 8 March 2015. The technical review committee reported that the project did not meet established procedures. "Sirisena torn between his promise of 19A and SLFP's 20A", *The Sunday Times*, 19 April 2015. 28 of 35 investment projects under cabinet review are reportedly Chinese-funded. "Sri Lanka intensifies scrutiny of Chinese projects", Reuters, 3 April 2015. Officials say, however, they intend to restart the project. "Colombo Port City to begin work soon", *Daily News*, 12 June 2015. <sup>9</sup> "Probes into 52 cases, legal action taken on 26", *The Sunday Times*, 19 April 2015; "Probe into corruption allegations continues", *The Sunday Times*, 26 April 2015.

<sup>10</sup> "SriLankan Airlines: The big lie in the sky", *The Sunday Times*, 5 April 2015. The report has not yet been presented to parliament, but a leaked copy is available at "The Weliamuna report on Sri Lankan Airlines", *Lanka Herald*, 9 April 2015. <http://lankaherald.com/2015/04/09/the-weliamuna-report-on-srilankan-airlines>.

<sup>11</sup> On 9 May, ex-Reconstruction and Development Agency (RADA) officials were arrested, charged with misusing the money, which for years has been alleged to have been paid to the Tamil Tigers (LTTE) by proxies of Mahinda Rajapaksa to ensure that Tamils in the north and east would not be able to vote in the November 2005 presidential election. "Tsunami houses: Wickramasuriya re-remanded", *Daily Mirror*, 13 May 2015.

<sup>12</sup> "Citizens unsatisfied with govt.'s progress on combating corruption within the 100 days", *Island* 12 April 2015. The JVP, which kept its distance from Sirisena's administration even as it took part in the National Executive Council, has accused the government of protecting key figures in the old regime. "Political influence blocking corruption probes: JVP", *Daily Mirror*, 30 May 2015.

<sup>13</sup> "FCID arrests Basil Rajapaksa", *Ada Derana*, 22 April 2015. He was arrested a day after returning from the U.S., where he had been staying since a few days after this brother's defeat.

former defence secretary, Gotabaya, was questioned by bribery commission investigators, provoking a protest by his political allies in violation of a court order.<sup>14</sup> Gotabaya also faces police investigations, including by the FCID,<sup>15</sup> on cases of alleged fraud, including the 2006 purchase of MiG airplanes, the purchase and management of Lanka Hospitals, which he chaired (2009-2014) and alleged irregularities involving a government-owned arms and security firm.<sup>16</sup> Numerous other cases have been opened against other ex-officials, including arrests, though no indictments.<sup>17</sup>

The Rajapaksas and UPFA leaders have repeatedly denied the allegations and say the government investigations are a politically motivated “witch-hunt” directed by the UNP.<sup>18</sup> They accuse Prime Minister Ranil Wickremesinghe of controlling them and challenge the legality of the FCID, which is overseen by the cabinet subcommittee on corruption, headed by the prime minister. Wickremesinghe and other officials reject this, saying the FCID operates independently under the inspector general of police.<sup>19</sup> Lawyers for Gotabaya Rajapaksa filed a suit in the Supreme Court that has blocked his arrest until the case is heard in October.<sup>20</sup>

The government faces the dilemma of needing to act fast to satisfy voter expectations and capitalise on the old regime’s political weakness, while also respecting the legal process and their own professed good-governance principles. They must rely on institutions that have been highly politicised and lack staff adequately trained in financial crimes. A lawyer explained: “Senior [state] lawyers are overwhelmed. They’ve always been overwhelmed, [but] now they have triple the caseload. What’s more, they also don’t want to file a case just on [the basis of] a CID [criminal investigation department] report. They need to be confident they can win the case”. With so many different investigations and agencies handling the cases, “no one in the government really knows who is making the call – even within the AG’s [attorney general’s] department. There’s a real challenge prioritising cases”.<sup>21</sup> There are also widespread concerns that many officials, in the police, the attorney general’s department, other

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<sup>14</sup> Dharisha Bastians, “Gunning for Gota!”, *Daily FT*, 24 April 2015.

<sup>15</sup> “Sri Lanka’s former Defence Secretary summoned to FCID”, *Colombopage*, 8 May 2015.

<sup>16</sup> Particular attention has also been given to the floating armouries operated by the private Avant Garde Maritime Services and Rakna Arakshaka Lanka Limited, a government company established by Gotabaya. “Attorney general’s recommendations on Gota arrest: full text”, *Colombo Telegraph*, 27 April 2015.

<sup>17</sup> See, for instance, “Sajin de Vass Gunawardena arrested”, *Colombo Telegraph*, 11 May 2015. There has apparently been no action on allegations by senior officials, including President Sirisena, that outgoing President Rajapaksa and brothers Gotabaya and Basil tried to organise a coup on 9 January to prevent Sirisena taking power. The reason is unclear, with no recent information available on a CID investigation initiated after Foreign Minister Samaraweera made a formal complaint. “Probe continues over alleged coup attempt”, *Colombo Gazette*, 20 May 2015.

<sup>18</sup> “Investigation into ownership of Steel Corporation and Dubai Marion Hotel”, press statement by Mahinda Rajapaksa, 14 May 2015.

<sup>19</sup> “SLFP to challenge gazette notification that set up FCID”, *Island*, 7 May 2015; “Ranil Assures Independence of All Investigations”, *Colombo Telegraph*, 12 May 2015. President Sirisena has criticised that complaints to the FCID can be submitted through the cabinet anti-corruption subcommittee headed by the prime minister. “New parliament to meet in Sept – President”, *Daily Mirror*, 21 May 2015.

<sup>20</sup> Gotabaya’s lawsuit argued that the FCID investigation was politically motivated and the FCID illegally constituted. On 13 May, the court ordered a stay on his arrest. Arguments in the case are scheduled for 6 October. Others under investigation, including Basil Rajapaksa, have also filed suits against the legality of the FCID.

<sup>21</sup> Crisis Group phone interview, April 2015.



government agencies and the judiciary, may remain loyal to the Rajapaksas or hedge their bets until the transition is firmly institutionalised.

The UNP is suspected, even by supporters, of having delayed or interfered with some investigations.<sup>22</sup> Confidence in its often-stated commitment to root out corruption has been badly damaged by criticism of its handling of alleged insider trading and a possibly multi-million dollar loss to the government on a February treasury bond issue.<sup>23</sup> The prime minister appointed a review panel, but many doubted its independence, as all three members were well-known UNP-affiliated lawyers, with no technical financial expertise.<sup>24</sup> The panel's report was nevertheless highly critical of the process used to issue the bonds and called for "full-scale investigation by a proper Government Authority".<sup>25</sup> UPFA parliamentarians criticised this as a cover-up and called for the governor's removal and criminal investigations. Parliament was dissolved before a parliamentary sub-committee could finalise its report.<sup>26</sup>

The lack of indictments and trials of key figures from the old regime has bred significant public scepticism. Nonetheless, that those in power months earlier have been questioned by police and the cases discussed in public is a major change, not just from the Rajapaksas' time, but also from many earlier governments. Whether the promise of change will be fulfilled depends in part on the balance in the next parliament. Even if indictments are brought, history and institutionalised impunity weigh against convictions. Lasting change requires reform of key institutions and the political culture as a whole.

## 2. Other good governance and rule of law initiatives: mixed success

Results of Sirisena's efforts to establish "good governance" and rule of law have been mixed:

- The removal of Chief Justice Mohan Peiris – installed in January 2013 following the politically motivated impeachment of his predecessor, Shirani Bandaranayake, and his replacement by K. Sripavan, the next most senior justice on the Supreme

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<sup>22</sup> Frequently mentioned are the investigations into arms sales by Avant Garde. Crisis Group interviews, lawyers, politicians, activists, Colombo, July 2015; "Exclusive: Ranil Prevents Gota Arrest", *Colombo Telegraph*, 9 March 2015; see also "Sri Lankan Airlines: Ranil yet to table 'Weliamuna/Jayarathne' report in parliament", *Colombo Telegraph*, 17 June 2015.

<sup>23</sup> Large profits were allegedly made by a trading company owned by the son-in-law of the Central Bank governor Arjuna Mahendran, himself a close friend of the prime minister. Mahendran has strongly denied any wrongdoing. "I am ready to go before FCID", *Daily News*, 29 May 2015; R.M.B. Senanayake, "The 30 year bond issue by the CB governor – the issues involved", *Colombo Telegraph*, 18 March 2015; Sam Samarasinghe and Dushyantha Mendis, "The bond issue controversy: an analysis", *Groundviews*, 26 March 2015. The previous Central Bank governor, a Rajapaksa appointee, claimed the loss from the alleged fraud neared half a billion dollars. "Former CB Governor says Treasury bond scam incurs Rs.59 bln loss for SL", *Sunday Times* (online), 14 July 2015. For the prime minister's defence of the treasury bond inquiry, see "Treasury bonds investigation: PM Ranil Wickremesinghe's full speech today", *Colombo Telegraph*, 17 March 2015.

<sup>24</sup> "Treasury Bonds Investigation; Ranil's Committee Lacks Credibility: Chandra Tells President", *Colombo Telegraph*, 13 March 2015.

<sup>25</sup> "Sirisena wavers amid raging waters of SLFP split", *The Sunday Times*, 24 May 2015. For the text of the inquiry report, see "Report of the Committee to look into Central Bank bond issue", *Daily News*, 20 May 2015.

<sup>26</sup> The text of the leaked draft report is available at "Bond scam: Full text of interim report of COPE inquiry", *Colombo Telegraph*, 30 June 2015.

Court – has helped restore some independence to the judiciary.<sup>27</sup> Nonetheless, the transformation is far from complete; superior courts remain packed with Rajapaksa appointees, many criticised for favouring the old government.<sup>28</sup>

- Procedural moves by the UPFA opposition to delay formation – following its re-establishment in April by the nineteenth amendment – prevented the Constitutional Council from appointing members of independent police, bribery, public service and human rights commissions. Many fear commission oversight will be weaker, given the decision, at UPFA insistence, to reserve seven of the ten council seats for members of parliament.<sup>29</sup>
- Despite early hopes, the government did not table either the national audit bill or the much anticipated “right to information” (RTI) bill in parliament.<sup>30</sup> While many media and human rights activists welcomed the nineteenth amendment’s inclusion of a right to information in the constitution, it is significantly more constrained than what was the draft RTI legislation.<sup>31</sup>
- There has been no major effort to investigate the many unsolved political murders during the Rajapaksa’s years in power, though there has been some movement in a few cases.<sup>32</sup> More positively, the new government has prevented violence by militant Buddhists, with the police and courts pursuing cases against leaders of Bodu Bala Sena (Buddhist Power Force, BBS), which was implicated in attacks against Muslims and evangelical Christians in 2013-2014.<sup>33</sup>

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<sup>27</sup> Many who welcomed Peiris’s removal criticised its manner – through Sirisena nullifying the appointment by citing a procedural flaw in the Bandaranayake impeachment, rather than a second impeachment. Crisis Group interviews, Colombo, February 2015. On 28 January 2015, Bandaranayake was reinstated as chief justice; she resigned the next day and was replaced by Sripavan. Dharisha Bastians, “A tale of two CJs”, *Daily FT*, 29 January 2015.

<sup>28</sup> Crisis Group interviews, lawyers, politicians, Colombo, July 2015.

<sup>29</sup> The constitutional council was created in 2001 by the seventeenth amendment, but scrapped by Rajapaksa’s eighteenth amendment in 2010. When it functioned, seven of its ten members were prominent in civil society; three parliamentarians were ex-officio members.

<sup>30</sup> The national audit bill would expand the powers of the auditor general and the independent Audit Service Commission, newly established by the nineteenth amendment; the Right to Information Bill, long sought by activists, would establish citizens’ right to access information held by public authorities. The bills, promised as part of Sirisena’s 100-day agenda, were approved by cabinet but not presented to parliament.

<sup>31</sup> Kishali Pinto Jayawardene, “Giving with one hand and taking with the other?”, *The Sunday Times*, 19 April 2015. Sirisena’s surprise decision to reactive the much-criticised Press Council provoked sharp criticism from journalists and rights activists. “Press Council’s revival threatens media freedom in Sri Lanka”, Reporters Without Borders, 13 July 2015.

<sup>32</sup> Police report progress in the investigation of the 2010 abduction of journalist Prageeth Ekneligoda and the suspicious 2012 death of rugby player Wasim Thajudeen. Dharisha Bastians, “The new political order”, *Daily FT*, 6 August 2015; “Two top Army officers to be grilled”, *Daily News*, 8 August 2015. On 3 March, SLFP parliamentarian Duminda Silva and twelve others were indicted for the October 2011 murder of rival SLFP politician Bharatha Lakshman Premachandra. “Duminda Silva indicted on Bharatha Lakshman killing”, *Ada Derana*, 3 March 2015. Four suspects, allegedly part of a navy death squad responsible for numerous abductions and murders, were arrested in late March for the November 2006 murder of TNA parliamentarian N. Raviraj. “Raviraj murder case: suspects’ blood samples sent for DNA tests”, *Daily Mirror*, 22 April 2015.

<sup>33</sup> Police have charged BBS leader Gnanasara Thera with trespassing and defamation for incidents in 2014, but there has been no investigation of June 2014 violence in Aluthgama and nearby towns that killed three Muslims, injured many and destroyed hundreds of houses and shops. Rights activists

### 3. The economy: initial relief, looming challenges

The new government moved quickly to offer economic relief to the many burdened by high living costs. The populist budget in February lowered prices on government-regulated products and gave raises and other relief to many government employees. The government's longer-term economic strategy focuses on expanding export and attracting foreign investment.<sup>34</sup> It has promised to shift from "mega-development" projects favoured by the Rajapaksas and has suspended many, arguing they were riddled with waste and fraud and delivered no real benefits. Hopes of converting large amounts of relatively short-term high-interest commercial loans into longer-term, lower-interest debt have not materialised.<sup>35</sup> There is growing worry about the decline in foreign reserves and substantial short-term debt coming due.<sup>36</sup> Rupee depreciation has put upward pressure on prices.

The political deadlock and uncertainty that followed the nineteenth amendment brought more economic worries; the stock market fell, and investor confidence and foreign direct investment remained weaker than expected. The suspension of many development projects also appears to have negatively affected economic growth.<sup>37</sup> If economic pressures continue after parliamentary elections, they may feed a broader narrative of disenchantment that could limit the government's ability to pursue more politically controversial reforms.

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also criticise pending government decisions to remove mosques from areas BBS and other militant Buddhists consider sacred. "BBS has gotten things in a few months from this government that they couldn't get under the Rajapaksas". Crisis Group interview, Muslim activist, Colombo, July 2015.

<sup>34</sup> "Ranil's recipe for resurgence", *Daily FT*, 5 August 2015.

<sup>35</sup> The IMF offered no new loans, but the Reserve Bank of India agreed to a \$1.1 billion currency swap to help manage foreign currency volatility. "IMF rules out fresh bailout for Sri Lanka", *Agence France-Presse*, 5 March 2015; "India, Sri Lanka sign currency swap agreement", *PTI*, 18 July 2015.

<sup>36</sup> Crisis Group interviews, economists and business people, Colombo, July 2015.

<sup>37</sup> "Sri Lanka latest to cut rates as growth slows most in two years", *Bloomberg*, 15 April 2015.

### III. Constitutional Amendments and the Battle for the SLFP

The 28 April passage of the nineteenth amendment was a major political victory for Sirisena and a significant step toward rebuilding democracy and the rule of law in Sri Lanka. It allowed Sirisena to fulfil in large part his promise to abolish the executive powers of the president and to overturn Rajapaksa's authoritarian constitutional changes of 2010.<sup>38</sup> However, it involved months of uncertainty and complicated negotiations, and emerged in a weaker form than most of its proponents had wanted, and its difficult passage through parliament revealed important Sri Lankan partisanship and party-first political dynamics that have only worsened since its approval. Unless Sirisena and his allies can learn to manage them more effectively, they will continue to complicate further reforms, particularly with regard to ethnic reconciliation and the legacy of the war.

#### A. *A Hard-fought but Limited Victory*

As with many of their initiatives, the ability of Sirisena and the UNP-led government of Prime Minister Wickremesinghe to pass the nineteenth amendment was weakened by the disparate nature of the coalition and the unfavourable parliamentary balance. Sirisena's election left the old parliament intact, with the substantial majority Mahinda Rajapaksa had put together under his United People's Freedom Alliance (UPFA), the bulk of whose members are with the Sri Lanka Freedom Party (SLFP). The pro-Sirisena coalition lacked a majority in the 225-seat parliament, much less the two-thirds to amend the constitution.<sup>39</sup>

Without broad SLFP support, it was impossible to fulfil the three key promises of Sirisena's 100-day agenda: 1) the nineteenth amendment; 2) changing the electoral system from a proportional system to a mixture of first-past-the-post and proportional representation; and 3) dissolution of parliament on 23 April leading to a new parliament by June. Difficult choices had to be made.

Within weeks of Sirisena's election, the SLFP publicly pledged support to his reform agenda, and he formally took its leadership on 16 January (and the UPFA's on 14 March). Nonetheless, SLFP leaders resisted actively supporting the nineteenth amendment and tried to delay its adoption. By transferring executive powers from the president to the prime minister, it would significantly reduce Sirisena's value to the party. With the UNP standing to gain from the long-sought reduction in presidential powers, the popular amendment was seen as increasing the chances a newly-empowered UNP prime minister would head the next government.

In addition to SFLP resistance, Sirisena struggled to gain consensus within his coalition on the amendment. The UNP and most other parties and activists who backed Sirisena wanted full abolition of the executive presidency and return of a Westminster-style parliamentary model. The small Sinhala nationalist party, Jathika Hela Urumaya (JHU), whose leaders are thought to have significance influence with Sirisena, and some of his SLFP supporters wanted him to keep key powers they believed

<sup>38</sup> In September 2010, Rajapaksa pushed through the eighteenth amendment, which removed presidential term limits and gave the president direct power to appoint judges and a range of oversight commissions. See Crisis Group podcast, "Sri Lanka: Deciphering the Constitutional Coup", 4 October 2010.

<sup>39</sup> The UNP had only 47 seats. See Crisis Group Briefing, *Sri Lanka's Presidential Election*, op. cit.

necessary to defend the unity of the state against renewed separatism.<sup>40</sup> The JHU strongly opposed the initial draft of the amendment, made public in February, which would have radically reduced the president's powers, and made the prime minister head of government with power to appoint the cabinet.<sup>41</sup>

After the Supreme Court approved a compromise version in April and additional weeks of tortuous negotiations and missed deadlines, Sirisena appeared to have enough SLFP support. Despite this, the outcome was in doubt until the final moments on 28 April, and passage required Sirisena and the UNP to accept painful changes required by the SLFP.<sup>42</sup> Passage also required a major push from outside, with a march to parliament led by civil society activists, including the influential monk Ven. Maduluwawe Sobitha Thera, who initiated the movement for an anti-Rajapaksa common candidate on a platform to abolish the executive presidency. The amendment's popularity made it hard for SLFP parliamentarians to vote against it.

Passage was a major victory for Sirisena and a significant step for re-democratisation. The amendment reimposes a two-term presidential limit, removes the president's ability to dissolve parliament early and reduces his legal immunity. It makes him answerable to parliament and increases the power of the prime minister and cabinet, though the president retains significant powers, including as defence minister and commander-in-chief. The amendment also reestablishes a constitutional council responsible for appointing independent oversight commissions for police, elections, public service, human rights and other areas.<sup>43</sup>

Passage was also a defeat for Mahinda and his parliament supporters. After months of increasing public concern about Sirisena's "weak leadership", his success on the amendment was seen by many as a victory for his patient, consultative, consensus-building approach to leadership.<sup>44</sup> He was widely hailed as the first president to live up to his promise to reduce the powers of his own office.

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<sup>40</sup> Sirisena's campaign had been ambiguous: the memorandum of understanding he signed with the UNP and more than 40 other groups promised "abolition of the current executive presidency and the reestablishment of a parliamentary form of government", but a separate agreement with the JHU promised only to remove "excessive powers ... without jeopardising national security and territorial integrity". "JHU announces conditional support to Maithripala", *Island*, 3 December 2014.

<sup>41</sup> Many in civil society and the SLFP and JHU criticised the prime minister and his aides for getting the amendment approved in a secretive, non-consultative way. See Keerthi Tennakoon, "The relationship between political elements – Myths and realities", *caffesrilanka.org*, 20 July 2015.

<sup>42</sup> The most significant SLFP demand was to reduce civil society members on the Constitutional Council from seven to three.

<sup>43</sup> The division of powers between the president and prime minister will require them to cooperate to be effective, though the exact balance will depend on political factors impossible to predict. For a helpful synopsis of the amendment, see Gehan Gunatilleke and Nishan de Mel, "19th Amendment: The Wins, the Losses and the In-betweens", *Verite Research*, June 2015.

<sup>44</sup> In contrast, other observers felt the complex, secretive back and forth over the amendment and the political compromises needed for a two-thirds majority damaged the good governance credentials of Sirisena and his allies. The government was criticised for lack of transparency and consultation on its reforms and the often contradictory statements of its various factions. Kishali Pinto Jayawardene, "Constitutional games and a nation's expectations", *The Sunday Times*, 12 April 2015.

## B. *Battle for the SLFP*

Despite having formal leadership of the SLFP and UPFA, Sirisena's struggle to gain effective control deepened after passage of the nineteenth amendment.

### 1. Continued support for Mahinda

Sirisena's chief obstacle was stronger-than-expected support for Mahinda Rajapaksa within the party. Within weeks of the election, supporters began campaigning for Mahindato to be the UPFA candidate for prime minister in the parliamentary elections. This was led by the UPFA's smaller constituent parties, the Mahajana Eksath Peramuna (MEP), the National Freedom Front (NFF) and the Democratic Left Front (DLF), along with a breakaway faction of the JHU (Pivithuru Hela Urumaya), led by Udaya Gammanpila, and some three dozen SLFP parliamentarians.<sup>45</sup> This support for Rajapaksa was partly ideological – many share his strong Sinhala nationalist positions – but it was also self-interested: without his continued influence, few of his parliament loyalists were likely to win UPFA nominations for the general election and many would be at risk of criminal investigation.

More important, many in the SLFP and UPFA believe the ex-president's continued popularity with voters gives them the best chance in the elections against the UNP. Even senior SLFP members uncomfortable with Mahinda, who had denied them real power during his presidency, wanted to prevent the pro-Rajapaksa faction from leaving and splitting the SLFP so sought a Sirisena-Rajapaksa compromise.<sup>46</sup>

Loyal to the SLFP, which he had served for nearly half a century, Sirisena did not want to be blamed for a UNP victory that kept the SLFP from power for years. At the same time, he felt a deep electoral debt to the UNP. Struggling for a middle ground, he increasingly fell between the two bitterly opposed parties, as Rajapaksa gained.

Overestimating his support in the SLFP, Sirisena failed to take firm control, appearing to believe the party would fall in line, grateful that he rescued it from indignities under Mahinda.<sup>47</sup> Sirisena "could have changed the SLFP general secretary and put his loyalists on Central Committee. Instead he tried to build consensus and failed because those with Mahinda who were worried about being investigated have fought back", a lawyer said.<sup>48</sup> In an effort to bring the party behind the nineteenth amendment, Sirisena appointed 26 additional SLFP ministers, almost all of whom had served Rajapaksa and supported his re-election. The move damaged Sirisena's good-governance credentials and failed to secure decisive SLFP cooperation.<sup>49</sup>

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<sup>45</sup> Large outdoor rallies were held in Nugegoda (18 February), Kandy (6 March), Ratnapura (26 March), Kurunegala (8 May) and Matara (12 June). The first rally featured a letter from Rajapaksa promising to return to politics and fight the "conspiracy" that defeated him. Speakers, including leaders of the militant Buddhist BBS, attacked the "separatist" and anti-Sinhala, anti-military policies of the Sirisena-UNP government.

<sup>46</sup> Dharisha Bastians, "The emerging crisis of cohabitation", *Daily FT*, 18 June 2015.

<sup>47</sup> On one interpretation, initial SLFP support for Sirisena was based on the assumption he would dismiss the minority UNP government and install a SLFP government. Dharisha Bastians, "The Darley Road Rebellion", *Daily FT*, 17 July 2015.

<sup>48</sup> Crisis Group interview, Colombo, July 2015.

<sup>49</sup> "Cabinet balloons to 40 as 26 more SLFPers luck out", *Island*, 23 March 2015. Additional SLFP members were brought into government or made presidential advisers in May-June. By parliament's 26 June dissolution, the government had more SLFP than UNP members. Sirisena took limited action to win control from the Rajapaksa faction, in April removing six of its members from the

## 2. Electoral reforms debacle

Following his hard-won victory on the nineteenth amendment and with pro-Rajapaksa forces on the defensive, Sirisena might have dissolved parliament and called elections. This would have pleased his UNP allies, but with control over the SLFP still uncertain, it would have risked splitting the party. Instead, he continued his search for a cross-party consensus on passage of the twentieth amendment, to create a hybrid first-past-the-post and proportional vote system as he had committed to do in exchange for SLFP support on the nineteenth amendment.

While agreeing on the need for a mixed electoral system, the UNP and its traditionally bitter enemy, the left-wing JVP, pressed for dissolution of parliament, arguing the government had no mandate beyond the 100-day, 23 April deadline. They hoped to capitalise on anti-Rajapaksa feelings and the remaining momentum of Sirisena's victory. UNP leaders also worried about a late-summer vote, after release of the UN OHCHR report likely to mobilise Rajapaksa's Sinhala-nationalist base. The SLFP and the nationalist JHU pressed for the new electoral rules, with the SLFP in particular hoping the UNP would grow weaker the longer elections were postponed. While electoral reform was part of Sirisena's 100-day agenda, SLFP insistence on its adoption before elections was principally a delaying tactic. Sirisena's decision to spend months searching for agreement was increasingly costly, deepening political infighting in his own coalition and strengthening pro-Rajapaksa forces.

In choosing to continue the search for agreement on electoral reforms, Sirisena responded in part to pressure from his civil society base, where many key reform advocates demanded that the twentieth amendment be passed before dissolution, so as to replace the current system of large multi-member districts and preferential voting, which has led to violent intra-party competition.<sup>50</sup>

However, a cross-party compromise on the twentieth amendment never materialised.<sup>51</sup> From the start, smaller parties and those representing ethnic minorities – particularly the Sri Lanka Muslim Congress (SLMC) – expressed concerns that a new system would reduce their seats. They rejected the version approved by cabinet in June and demanded guarantees of greater proportionality, principally by a double ballot.<sup>52</sup>

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central committee. With Mahinda having strong backing from local officials, he allowed local elected government bodies to expire in May and appointed administrators to replace them.

<sup>50</sup> Crisis Group telephone interviews, researchers, elections activists, June 2015. The system is proportional; voters rank three preferences within a party in multi-member districts. A smaller number are chosen from national lists depending on parties' national vote. The system is criticised for breaking the link between voter and representative, with no legislator directly responsible to a given voter group. Large districts raise campaign costs and are thought to increase the influence of and post-election benefits given to those with money, including businesses and local mafias. The preferential vote system has also led to fierce intra-party competition responsible for much election violence.

<sup>51</sup> While there was a consensus to abandon preferential voting (PR) for a mix of first-past-the-post (FPTP) and proportional representation, parties struggled for agreement on key issues: the number of parliamentary seats; the ratio between seats chosen by FPTP and PR; the use of multi-member districts and double-ballots; the extent and timing of delimitation; and whether the next elections would be held under the current system or postponed until a new system is in place.

<sup>52</sup> "Minority parties adamant: No to 20A in present form", *Daily News*, 16 June 2015. A double-ballot would allow voters to support a smaller party while choosing local representatives from a main party more likely to win. The SLMC has been particularly worried, as many of its voters are widely dispersed. With Tamil voters in the north and east more concentrated, the Tamil National Alliance (TNA) worried more about the effect of delimitation on Tamil-majority seats, given the roughly one

The JHU, whose advisers helped draft the legislation, increasingly criticised SLMC and UNP resistance. Long opposed to the ability of the SLMC and other minority parties to use their limited seats to play “kingmaker” in government coalitions, it pushed for limited proportionality.<sup>53</sup> Criticising what it called the UNP’s lack of interest in reform, JHU leaders even called for the SLFP to take over the government and get the amendment passed prior to general elections.<sup>54</sup> This process of negotiating electoral reforms – in which all parties appeared driven not by “good governance” but by partisan interest – damaged all reputations, including Sirisena’s.

### 3. Sirisena vs. Rajapaksa

A crucial element in the deadlock was the active resistance of many in the SLFP. On 21 May, four SLFP ministers left the government, two months after being appointed as part of Sirisena’s effort to win party support for the nineteenth amendment. Complaining of UNP arrogance and refusal to their ministers real responsibility or resources, they criticised the criminal investigations targeting SLFP politicians as politically motivated and called for the government’s defeat.<sup>55</sup> While Sirisena replaced the deserters with new SLFP ministers, the SLFP and UFPA used their large parliamentary majority to cripple the government. They blocked establishment of the Constitutional Council and the nine independent commissions it appoints, and more than 100 UPFA legislators signed a no-confidence motion against the prime minister.<sup>56</sup> Passing the rest of Sirisena’s 100-day agenda became impossible.

Numerous observers said Sirisena had become increasingly isolated from and distrustful of the UNP and begun to share at least some of the SLFP’s criticisms of the UNP and prime minister. Displeasure at UNP non-cooperation on electoral reform and doubt about its commitment to corruption investigations are thought to have played a part in his decision to postpone June elections.<sup>57</sup> Some even believe he encouraged the SLFP rebellion to keep the UNP and prime minister in check.<sup>58</sup>

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million Tamils who left Sri Lanka during the war. For a valuable analysis of double-ballot voting, see Asoka Obeyesekere, “The 20A is flawed; here is the solution”, *Daily FT*, 17 June 2015.

<sup>53</sup> JHU leaders made much of the fact that reforms would hurt their chances, too, and that this proved good faith. A good governance activist said this just meant “the JHU was willing to lose one eye if the minorities lost both. ... The JHU was very clear in negotiations that they wanted to weaken minorities’ voting power.” Crisis Group interview, July 2015.

<sup>54</sup> “Ven. Rathana Thera wants a new govt. before polls to pass 20A”, *Daily Mirror*, 17 June 2015. A lawyer involved in the process said, “the UNP never sat with any sincerity for electoral reform. After the nineteenth amendment, they only wanted dissolution. ... The smaller parties [also] didn’t sincerely work to reform the electoral system”. Crisis Group interview, July 2015.

<sup>55</sup> UNP arrogance and lack of consultation and cooperation is widely criticised in civil society and among political observers, not only in the SLFP. Crisis Group interviews, Colombo, July 2015.

<sup>56</sup> Prior to dissolution, the motion was scheduled for debate in the third week of July. “UNP-SLMC scuttling 20A: Nimal”, *Daily Mirror*, 18 June 2015.

<sup>57</sup> According to a well-connected lawyer, “the president feels the PM and government didn’t go after [corruption] as seriously as it could have, especially big cases. ... The president ... would think the UNP isn’t sincere about cleaning things up. ... This would have reinforced the president’s thinking that he shouldn’t let [the prime minister] get a big majority”. Crisis Group interview, July 2015.

<sup>58</sup> “Trying to play a Machiavellian game aimed at keeping the UNP in line and appeasing his own party to wean them away from Mahinda Rajapaksa proved to be a dangerous gamble for President Sirisena”. Bastians, “The Darley Road Rebellion”, op. cit.



Meanwhile, the campaign to make Mahinda prime minister gathered momentum, as the pro-Rajapaksa wing of the UPFA organised large rallies in May and June.<sup>59</sup> Mahinda continued visits to Buddhist temples across the country and regular visits to jailed ex-ministers and appeared daily on television and in newspapers.

Sirisena's 26 June decision to dissolve parliament and call elections for 17 August precipitated his deepest political crisis: the 3 July announcement that the UPFA had decided to nominate Rajapaksa as a candidate.<sup>60</sup> With Sirisena appearing to condone the decision, many who had campaigned for defeat of the Rajapaksas in January reacted with disbelief, anger and cries of betrayal.<sup>61</sup> In fact, he was simply outvoted and, under UPFA rules, could not block the nomination.<sup>62</sup> He was forced to accept UPFA nominations for Mahinda and all but four of his key allies.<sup>63</sup> Sirisena's allies in the SLFP, including former President Kumaratunga, appeared in disarray.<sup>64</sup>

Ending a long silence on 14 July, Sirisena reiterated his opposition to Rajapaksa's candidacy, predicted his defeat and made clear he had no intention of appointing him prime minister, even if the UPFA won a parliamentary majority.<sup>65</sup> Pledging to remain apart from the campaign and to ensure a fair election, he called on voters to give him a parliament willing to support his "8 January mandate for reform".<sup>66</sup>

The threat of Mahinda's return also helped reunite and re-energise his opponents. By 13 July, when nominations had to be finalised, the UNP had reversed the fragmentation of the broad coalition that defeated Rajapaksa in January. The newly formed United National Front for Good Governance (UNFGG) brings together a wide range of parties from across the political and ethnic spectrum, including the JHU, some of Sirisena's SLFP supporters and Muslim and Upcountry Tamil parties.<sup>67</sup> With the UPFA campaign focusing on the alleged threat of renewed militant separatism, the election looks to be a test of Rajapaksa's hardline brand of Sinhala nationalism.<sup>68</sup>

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<sup>59</sup> This included one in the southern town of Matara attended by 75 UPFA parliamentarians, most from the SLFP, and a separate 19 May "Victory Day" celebration, featuring Mahinda, Gotabaya and former government ministers. "National security, economy at stake: MR", *Daily Mirror*, 13 June, 2015. See also P.K. Balachandran, "SLFP Heads for Split after 55 MPs Attended Pro-Rajapaksa Rally", *New Indian Express*, 9 May 2015.

<sup>60</sup> "UPFA decides to give nomination to Mahinda Rajapaksa", *Ada Derana*, 3 July 2015.

<sup>61</sup> Crisis Group interviews, academics, activists, Colombo, July 2015. "Talk straight Mr. President: Purawesi Balaya", *Daily FT*, 7 July 2015; "Major political realignments as nominations end", *The Sunday Times*, 12 July 2015.

<sup>62</sup> Asoka Obeyesekere, "Who really controls the UPFA nominations?", *Manthri.lk*, 10 July 2015.

<sup>63</sup> The UPFA parliamentarians denied nominations – Duminda Silva, Sachin Vaas Gunawardena, Mervyn Silva and Sarana Gunewardena – are under police investigation or have pending court cases against them. Sirisena failed to stop nominations of other candidates accused of crimes. "No nominations for Duminda, Mervyn, Sajin: UPFA", *Daily Mirror*, 14 July 2015.

<sup>64</sup> "People's Rainbow Revolution under a dark cloud", *The Sunday Times*, 5 July 2015; "Major political realignments as nominations end", *The Sunday Times*, 12 July 2015.

<sup>65</sup> Following the nineteenth amendment, the president is constitutionally required to name as prime minister the person "who, in the President's opinion, is most likely to command the confidence of Parliament". Sirisena said other SLFP legislators were more qualified to become prime minister. Dharisha Bastians, "Maithri mauls Mahinda!", *Daily FT*, 15 July 2015. If the UPFA win a clear victory, many believe it would be hard for Sirisena not to appoint Rajapaksa.

<sup>66</sup> Responding to critics, Sirisena argued it was only because he had been SLFP leader that he was able to get the nineteenth amendment approved; and that he resigned in frustration at Rajapaksa's nomination, Rajapaksa would have taken full control of the SLFP and UPFA and denied nominations to remaining Sirisena allies. *Ibid.*

<sup>67</sup> The Tamil National Alliance (TNA) and JVP are contesting the elections separately.

<sup>68</sup> "MR: No room for separatism", *Daily Mirror*, 4 August 2015.

The president's rejection of Rajapaksa as prime minister, his call for Rajapaksa's defeat and the strong anti-corruption campaign of civil society groups<sup>69</sup> make the UNP-led coalition the favourite to form the next government.<sup>70</sup> But even if Rajapaksa cannot become prime minister, his leadership of a strongly Sinhala nationalist parliamentary bloc could pose a significant challenge to further reforms, especially on reconciliation and devolution.

Still, the formation of the UNFGG and Sirisena's belated broadside against Rajapaksa increase prospects for the post-election "national government" Sirisena has always said he would like.<sup>71</sup> If a new coalition is to achieve more of the ambitious 8 January reform agenda than its predecessor did from January to June, however, lessons will need to be learned and several challenges managed, including:

- ❑ The UNP and Ranil Wickremesinghe must consult and cooperate more fully with, and respect the interests of, their coalition partners, particularly any SLFP legislators who might agree to join a national government;<sup>72</sup> and
- ❑ the certain presence of the Sinhala nationalist JHU in any UNFGG government would complicate further moves on reconciliation, especially UNP hopes to negotiate constitutional reforms with Tamil parties.

Managing such coalition tensions would require all Sirisena's formidable listening and consensus building skills. But it could also require of him more decisive leadership on ethnic issues than he has shown to date.

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<sup>69</sup> Various initiatives, including the March 12 Movement, have campaigned for parties not to nominate those facing criminal charges or suspected of corruption and advocated other commitments to "clean" elections. Together with groups like Purawesi Balaya (Citizens' Power) that campaigned for Sirisena in January, the call for voters not to support "corrupt" politicians could affect numerous UPFA and some UNP candidates. "Sri Lanka election watchdog to handover 'March 12 Declaration' for clean candidates today", *Colombopage*, 6 July 2015.

<sup>70</sup> An opinion poll released on 4 August showed a clear plurality – 39.8 to 27.5 per cent – viewing Ranil Wickremesinghe as better suited to be prime minister than Rajapaksa; he had the overwhelming backing of Tamil and Muslim voters, while Rajapaksa had a slight lead – 36 to 31.9 per cent – among Sinhala voters. "General Election 2015 – Pre-election poll", Centre for Policy Alternatives, August 2015. Failure to become prime minister could cripple Rajapaksa politically. A Tamil academic suggested his presence in parliament as a regular member would offer a chance to chip away at his aura. "Let him be in parliament and talk – better this than denying him a nomination and making him a hero". Crisis Group interview, Jaffna, July 2015.

<sup>71</sup> Sirisena's "national government" plan appears to envisage an alliance much like the UNFGG, with perhaps more SLFP members joining after the election, including possibly the TNA. Supporters argue such a government is needed for more reform, including a negotiated settlement to the ethnic conflict. JHU influence with Sirisena and its important role in the January and August campaigns would complicate this, however. For a critique of the national government idea, see Jayadeva Uyangoda, "Jaathika Anduwa Some Reflective Thoughts", *Daily Mirror*, 20 April 2015.

<sup>72</sup> Crisis Group interviews, politicians, lawyers, journalists, Colombo, July 2015; Bastians, "The Darley Road Rebellion", op. cit.

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## IV. Initial Steps on Reconciliation

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The focus of Sirisena's presidential campaign was its promise to restore democracy and the rule of law and tackle corruption; his 100-day agenda and manifesto said little about specific ethnic issues and the war legacy. The Sirisena-UNP government made only limited moves to address politically sensitive ethnic and conflict-related issues, due to both the many other urgent issues and fears about how reforms would play among Sinhala voters in the parliamentary elections.

Sirisena and UNP leaders promised that devolution, reconciliation and post-war accountability would be given greater priority after the January election, but as 100 days turned into seven months, confidence has waned that progress on such contentious issues is likely. Should a UNP-led coalition return to power, it would still need to be pressed by international partners to deliver on its promises. No significant progress could be expected with a UPFA government, particularly if Mahinda Rajapaksa were made prime minister.

### A. *Progress so Far*

Sirisena's government did not prioritise reconciliation or Tamil grievances, but official rhetoric has shifted noticeably and positive steps have been taken, though these are yet to demonstrate – particularly to Tamils in the north and east – that a real page has been turned.

#### 1. A new tone and language

Sirisena's 4 February Independence Day speech, attended by Tamil National Alliance (TNA) leaders for the first time since 1972, replaced Rajapaksa's triumphalism with a more sombre tone, pledging to "bring together the minds of the people of the North and South". The event featured a "peace declaration" in Sinhala, Tamil and English that paid respect to "all the citizens of this country, of all ethnicities and religions, who lost their lives due to the tragic conflict that affected this land for over three decades, and for all the victims of violence since Independence".<sup>73</sup> On 18 March, in the face of strong Sinhala nationalist opposition, the president reinstated the policy (rejected by Rajapaksa) to allow the national anthem to be sung in Tamil.<sup>74</sup> He and the prime minister have publicly accepted the need for a negotiated political solution to the ethnic conflict; in April, Sirisena established an Office of National Unity and Reconciliation, to be led by former President Kumaratunga.<sup>75</sup>

#### 2. New governance for the north and east: land, military, detainees

In its first weeks, the government removed restrictions on foreign travel to the north and appointed respected civilian governors for the northern and eastern provinces,

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<sup>73</sup> "Stronger bonds of national unity and eradication of poverty – President at Independence Day celebrations", government information department, 4 February 2015. "Sri Lanka marks Independence Day with a special Declaration of Peace", *ibid*, 5 February 2015.

<sup>74</sup> In his statement marking 100 days in office, Sirisena rejected criticisms of his releasing military-occupied land in the north and east as the work of "extreme racists". "President Sirisena's Special Statement", *Daily Mirror*, 23 April 2015.

<sup>75</sup> "CBK to chair high level office on national unity", *Daily News*, 27 March 2015. Little has been said about the office, but it will reportedly focus on reparations and rehabilitation in the north and east. Crisis Group interviews, diplomats, politicians, July 2015.

replacing retired military officers who, on orders of Rajapaksa, had actively interfered in provincial council work. Further modest confidence-building measures followed, with more promised, but the absence of a larger or coherent program for resettlement and demilitarisation has led to growing frustration in the north and east.

**Land releases:** In March-April releases, the government returned some 1,000 acres of military-occupied land to owners displaced for decades from homes in the Valikammam area of northern Jaffna district. It was undeveloped, with neither original houses nor new military camps or other government buildings; returning the remaining thousands of acres on which the military built camps or hotels will be harder.<sup>76</sup> This shows the significance of the 7 May announcement that a naval camp in an eastern town, Sampur, will be moved so 1,200 families displaced in 2006 can return.<sup>77</sup> To avoid further alienating Tamils, the government must go beyond gestures and establish a consultative process for release of military-occupied land. The aim should be to maximise community ability to return to traditional agricultural and fishing livelihoods, with compensation for those unable due to genuine security needs. According to a government official, more land releases and a more comprehensive plan will only be possible “after [parliamentary] elections”.<sup>78</sup>

**Policing and surveillance by the military:** In early March, President Sirisena chose not to renew the police powers President Rajapaksa had granted the military on a monthly basis.<sup>79</sup> As a result, any military checkpoint is now technically illegal, though some remain in the north.<sup>80</sup> “The overt military presence and interference in meetings and civilian activities has reduced”, a Jaffna-based activist said, and large protests have been allowed, with some activists reporting significantly less harassment by the military.<sup>81</sup> But “the repressive security apparatus remains in place”; the police and military retain their extensive informer network – relying heavily on ex-LTTE (Tamil Tiger) combatants – and regular questioning that political activists in the north and east find intimidating.<sup>82</sup>

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<sup>76</sup> Without houses, limited public construction funds and with little or no infrastructure, few owners can occupy their land. Crisis Group phone interviews, lawyers, activists, April, June 2015.

<sup>77</sup> The families’ return also required Sirisena to revoke a 2010 Rajapaksa designation of a neighbouring area as a special economic zone. On 10 July, the Supreme Court rejected a legal challenge by the company granted a lease to develop the land and allowed the return. “SC upholds DSG’s assertion: Nobody can challenge presidential gazettes”, *Sunday Times*, 12 July 2015.

<sup>78</sup> Crisis Group phone interview, May 2015. For an overview of ongoing internal displacement, see “Ending protracted displacement in Sri Lanka”, Internal Displacement Monitoring Centre, 1 July 2015. The UN, working with the resettlement ministry and donors, is preparing a resettlement action plan that will receive UN peacebuilding funds. “Address by UN Resident Coordinator: Donor Conference on the Comprehensive Policy Framework and Formulation of the Resettlement Action Plan”, un.lk, 4 June 2015.

<sup>79</sup> “No police powers for armed forces”, *The Sunday Times*, 15 April 2015. Sirisena was criticised for renewing these powers in February, issued under the Public Security Ordinance. The decision appeared to catch senior officials by surprise. Crisis Group interview, Colombo, February 2015.

<sup>80</sup> Crisis Group interviews, lawyers, Colombo, July 2015. The army illegally still registers vehicles that pass through Omanthai. Crisis Group interview, lawyers, Colombo, June 2015.

<sup>81</sup> Crisis Group interview, human rights activist, Jaffna, July 2015.

<sup>82</sup> Crisis Group interviews, lawyers and activists, Colombo and Jaffna, July 2015. There have also been arrests of journalists and activists. “Eight arrested while dubbing anti-army film”, *Island*, 30 March 2015. Tamil commemorations of those killed in the war were monitored tightly by police and military but allowed. Elil Rajendram, “Tamils brave harassment, threats to mourn their dead”, *Colombo Mirror*, 21 May 2015.

**Detainees:** On 10 March, the government released on bail Tamil disappearances activist Balendran Jayakumari, held for a year without charges under the Prevention of Terrorism Act (PTA).<sup>83</sup> Eight other detainees were released at the same time, and an unknown number of other PTA detainees whom the TNA and human rights groups label political prisoners have also been released. Despite promises, however, the government has yet to publicly clarify the number and status of those detained under the PTA – many have been held for years without charges – or to establish a process either to release those against whom there is insufficient evidence or to expedite trials for those who remain.<sup>84</sup> Tamils returning from abroad continue to be arrested under the PTA on suspicion of old LTTE involvement.<sup>85</sup> According to some reports, after police detention, many are sent to the military-run rehabilitation program.<sup>86</sup> Tamil politicians and activists allege that secret detention centres established by the old government continue, though officials deny this.<sup>87</sup>

### 3. Promises on accountability and truth

Sirisena's initial foreign policy challenge was the March 2015 session of the UN Human Rights Council (HRC), which was due to consider a report from the Office of the High Commissioner for Human Rights (OHCHR), including the results of its investigation into alleged war crimes and crimes against humanity from 2002-2011. The government's strong lobbying and promises to establish a "domestic mechanism" for accountability won a postponement until September and a six-month deferral of the release of the OHCHR report (known as OISL). The commitment to a domestic accountability process with possible UN "technical assistance" has earned the government significant good will, including praise from the U.S., UK and EU.<sup>88</sup> Sirisena and senior government officials call this one of their major policy successes.<sup>89</sup>

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<sup>83</sup> Jayakumari's release followed a year's domestic and international campaign. She was arrested in March 2014, accused of harbouring a Tamil – known as Gobi – accused by the government of having returned from abroad to revive the LTTE. Dozens of Tamils in the northern province were detained in the hunt for Gobi and his alleged accomplices. On 11 April, the government reported that he and two others had been shot dead while resisting arrest by the military. "Army confirms Gopi and Thevian killed in Nedunkerny clash", *Ada Derana*, 11 April 2015.

<sup>84</sup> "President promises to set up a domestic war crimes inquiry within a month", *News.lk*, 13 March 2015; "Sri Lanka's leader grapples with release of political prisoners", *The New York Times*, 22 February 2015.

<sup>85</sup> "16 Batticaloa Tamils arrested within last 100 days at Colombo airport", *Tamilnet*, 3 May 2015; Crisis Group interviews, Colombo, lawyers, July 2015.

<sup>86</sup> Crisis Group phone interview, government official, May 2015.

<sup>87</sup> Crisis Group interviews, Colombo and Jaffna, July 2015. "Secret camp operated in Trincomalee naval base, Sri Lanka Tamil party alleges", *Colombopage*, 21 February 2015; "Mangala denies existence of secret detention centres", *Island*, 9 May 2015. Police investigators have, however, reported to court evidence that Trincomalee and Colombo naval bases were used to hold Tamils kidnapped by a navy abduction gang. "Karannagoda aware of 'Navy abductions'", *Daily News*, 24 June 2015.

<sup>88</sup> Foreign Minister Samaraweera's 13 February letter to the high commissioner requesting a deferral of the OHCHR report promised the government would "set up the necessary domestic mechanisms required to investigate into incidents and where sufficient evidence is available, conduct criminal prosecutions". It added that "the government looks forward to working with you and your office to develop this mechanism and obtain technical assistance". Sirisena's manifesto stated that "ensuring justice with regard to such matter [war crimes] will be the business of national independent judicial mechanisms". "Letter to High Commissioner Zeid", 13 February 2015.

<sup>89</sup> "President Maithripala Sirisena's Special Statement", *Daily Mirror*, 23 April 2015.

The promises of “cooperation” with the UN, however, remain limited and ambiguous. The government has invited visits from the High Commissioner and the Working Group on Enforced and Involuntary Disappearances (WGEID); Pablo de Greiff, the Special Rapporteur for Truth, Justice, Reparations and Guarantees of Non-Recurrence, visited in April.<sup>90</sup> At the same time, the government refused engagement with the OISL investigation team.<sup>91</sup> The UN “technical assistance” the government is willing to accept appears to be limited to advice about the nature of the process the government says will be unveiled in September.<sup>92</sup> There is no public indication consideration is being given to allowing active UN or other international expert involvement in the domestic investigations or prosecutions.

The government cites the continued work of the commission of inquiry on missing persons, established by its predecessor in August 2013, as evidence of its commitment to truth and justice. It reportedly plans to establish a permanent missing persons office and is negotiating with the International Committee of the Red Cross (ICRC) to help establish a missing persons database.<sup>93</sup> The prime minister and foreign minister have also announced intention to establish a process for truth and reconciliation, to run on a separate track from accountability and prosecutions.<sup>94</sup>

The decision to defer the release of the OISL report gave the new government important breathing space. Many hoped it would use this to consult widely and develop clear plans for a range of accountability and transitional justice initiatives it could present to the HRC in September. Instead, its plans remain shrouded in secrecy and contradictory statements, and advocates of transitional justice are increasingly worried.<sup>95</sup>

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<sup>90</sup> In April, de Greiff spent five days in Sri Lanka, afterwards issuing a strong statement noting “the country cannot afford to simply reproduce an approach that is characterised by the proliferation of largely unrelated and inconsequential ‘ad hoc’ initiatives. Serious consideration needs to be given to establishing transitional justice mechanisms that contribute to building lasting institutions and capacities, and which allow for effective implementation”. “Observations by the Special Rapporteur ... on the conclusion of his recent visit to Sri Lanka”, 11 April 2015. A mid-August visit by WGEID, scheduled before elections were announced, has been postponed. “Disappearances: UN visit on hold due to parliamentary polls”, *Island*, 2 August 2015.

<sup>91</sup> In a series of media interviews during his 8-10 March visit to London, Sirisena promised a domestic accountability mechanism would be announced within the next month but said the UN’s only role would be advisory. “Sri Lanka president Sirisena pledges war crimes inquiry”, BBC News, 12 March 2015. On the same trip he reportedly promised a report from a separate inquiry by July. “Domestic inquiry report in July”, *Daily Mirror*, 12 March 2015.

<sup>92</sup> “War crimes probe delayed, says Sri Lanka”, Agence France-Presse, 24 June 2015. This followed numerous contradictory statements by the president and other senior officials about when the domestic inquiry would begin or its outline be made public. “Domestic inquiry report in July”, op. cit.

<sup>93</sup> Crisis Group interviews, government officials, Colombo, July 2015; “Sri Lanka to act on UN war crimes report”, Agence France-Presse, 4 August 2015. Human rights groups and victims’ families have increasingly criticised the missing persons commission. See below.

<sup>94</sup> “Electoral reforms: decision within 10 days”, *Daily Mirror*, 27 March 2015. In late March, the South African deputy foreign minister visited Colombo to discuss possible South African government assistance in establishing a truth process, but no clear plans have been formulated. Crisis Group interviews, diplomats, Colombo, July 2015. South African officials and civil society groups have also met with members of Tamil diaspora organisations as part of a larger confidence-building process. “South African delegation meets Tamil diaspora organisations to discuss issues of settling Sri Lanka’s ethnic conflict”, *Tamil Guardian*, 25 May 2015.

<sup>95</sup> On accountability, there is “no real commitment, other than by Mangala Samaraweera, to push it ahead. Others are saying it’s a hot potato, don’t touch it”. Crisis Group interview, business leader, Colombo, July 2015. Concern is particularly widespread among activists and diplomats at lack of

## B. *Tamil Responses*

Establishing a genuine and sustainable national reconciliation process is not only a matter of what Sinhala-dominated parties do and think. Attitudes among Tamils, especially in the north and east, are crucial. There is relief at the partial relaxation of the military's grip on social and political life in Tamil majority areas, yet there is also frustration at the pace of progress on land, demilitarisation and rehabilitation of the war-affected.<sup>96</sup> A leading lawyer said, "nothing's changed – or what's changed is that we can complain and speak for our rights without so much fear, but the military and police continue to do the same things".<sup>97</sup> Tamils across the political spectrum argue continued military involvement, directly and through proxies, in the northern and eastern economies hurts local economic chances. Resistance from the military is also blamed for the limited and fragmented nature of land released for resettlement. In the words of an activist with the Tamil Civil Society Forum (TCSF), "the government released land just to be able to say they've released something, not as part of a well-thought out plan".<sup>98</sup>

In a letter to the UN Special Rapporteur on Transitional Justice, the TCSF criticised lack of transparency and consultation with victims in the formulation of accountability plans, the government's regular defence of the military's good name, and its lack of commitment to international involvement in its promised domestic inquiry.<sup>99</sup> It also expressed widely-shared criticism of the missing persons commission, whose hearings in the north and east have met with organised protests.<sup>100</sup> There is disappointment that "the government is not developing a counter-narrative to the Rajapaksas'" Sinhala triumphalism and militarism. Instead, an activist said, it reacts defensively to criticism that its policies weaken national security and favour the return of the LTTE, while "the 'MR [Mahinda Rajapaksa] might come back' factor is being used to justify why more progress isn't being made".<sup>101</sup>

TNA leadership's support of Sirisena and its moderate tone during the first seven months of his presidency have earned it increasing criticism from many activists in the north and east and from TNA members of the Northern Provincial Council (NPC), including Chief Minister C.V. Wigneswaran, previously considered a moderate close to TNA leader R. Sampanthan.<sup>102</sup> A Sinhala activist generally supportive of post-war

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clarity and meaningful consultation, as well as the apparent lack of coordination and divergence in approaches between the president, prime minister and foreign minister. Crisis Group interviews, Colombo, July and August 2015.

<sup>96</sup> Crisis Group interviews, professionals, activists, journalists, Colombo, Jaffna, July 2015. A national opinion survey showed a strong majority of Tamils report positive changes under the new government. "Sri Lanka Political Weather Analysis", Social Scientists Association, June 2015.

<sup>97</sup> Crisis Group interview, Colombo, July 2015.

<sup>98</sup> Crisis Group phone interview, June 2015. A retired senior civil servant complained that "the return of the 1,000 acres is going at a frustrating speed. This is because of the military". Crisis Group interview, Jaffna, July 2015.

<sup>99</sup> "Transitional Justice and Domestic Mechanisms: for its realization in Sri Lanka", TCSF, 1 April 2015.

<sup>100</sup> Activists and politicians criticise the lack of effective follow-up investigations by police, pressure on families to accept death certificates for their missing loved ones and post-testimony harassment of witnesses and those who assisted them. Crisis Group interviews, Colombo, Jaffna, July 2015.

<sup>101</sup> Crisis Group phone interview, TCSF activist, June 2015. This is an argument activists fear can be extended indefinitely so long as Sinhala nationalism has a strong popular base.

<sup>102</sup> "TNA and Wigneswaran may be heading for a split", *New Indian Express*, 3 August 2015. The TNA is a diverse coalition of four parties, led by the Illankai Tamil Arasu Kachchi (ITAK). For back-

TNA policies said, “the TNA has been all over the place. They’ve not been seen as critical enough of the slow pace of land release and have been challenged by more and more Tamils as a result”.<sup>103</sup>

Lacking organisational capacity to pursue their more pragmatic approach on the ground, and not controlling the NPC, Sampanthan and his close associate, M.A. Sumanthiran, are widely viewed as part of the Colombo elite, disconnected from average Tamils’ concerns, and criticised for making policy without adequate consultation.<sup>104</sup> Other TNA politicians who take more combative, unapologetically nationalist positions, particularly provincial Councillor Ananthi Sasitharan, are more visible in the north and east and offer more vocal defences of rights and interests.<sup>105</sup> Wigneswaran’s popularity in particular is widely believed to be growing.<sup>106</sup>

The challenge to the TNA leadership is also an inevitable effect of the mismatch between their deliberately cautious approach – encouraged by India and Western governments – and the frustrations felt by activists in the north and east, particularly as these can now more easily be expressed. Popular anger in the north helped ignite violent protests following what many saw as the inadequate police response to the May rape and murder of an eighteen-year old Tamil student in Jaffna.<sup>107</sup> The violence, which damaged court buildings, was quickly controlled and was condemned by all Tamil elected leaders, including Wigneswaran. Despite this, Mahinda Rajapaksa and his supporters used the incidents to argue the government was neglecting security and risking renewed militancy and terrorism.<sup>108</sup>

The growing gulf between TNA politics at the centre and the political periphery can be seen in the unanimous 10 February endorsement by the NPC of a resolution detailing evidence of “historical and ongoing genocide” and calling for UN investigation.<sup>109</sup> The resolution, which Wigneswaran has continued to promote, provoked criticism not just from strong Sinhala nationalists, but also from Prime Minister Wickremesinghe and other Sinhalese politicians whose support would be needed for any negotiated political settlement of the Tamil national question. It also contributed to a public feud between Wickremesinghe and Wigneswaran.<sup>110</sup>

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ground on the TNA and post-war Tamil politics, see Crisis Group Asia Reports N°239, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, 20 November 2012, and *Sri Lanka’s Potemkin Peace*, op. cit.

<sup>103</sup> Crisis Group phone interview, April 2015.

<sup>104</sup> Crisis Group interviews, lawyers, diplomats, Colombo, July 2015. Women activists are increasingly critical of the male domination of the TNA and Tamil political life generally, especially as the concerns of Tamil women, whether as widows, or heads of families without male income-earners, or as vulnerable to sexual violence, are central to post-war reconciliation in the north and east.

<sup>105</sup> Sasitharan is the wife of a prominent LTTE leader who went missing after surrendering to the army in May 2009.

<sup>106</sup> Crisis Group interviews, researchers, activists, diplomats, Colombo and Jaffna, July 2015.

<sup>107</sup> “Sri Lanka president visits Jaffna over gang-rape anger”, Agence France-Presse, 26 May 2015. Many in Jaffna across the political spectrum, however, believe elements linked to the military incited the crowds. Crisis Group interviews, intellectuals, activists, Jaffna, July 2015.

<sup>108</sup> “LTTE began like Jaffna protests’ – Mahinda”, *Tamil Guardian*, 21 May 2015.

<sup>109</sup> “Full Text: NPC’s resolution on genocide of Sri Lankan Tamils”, *Colombo Telegraph*, 11 February 2015.

<sup>110</sup> “Ranil calls Justice Wigneswaran a ‘liar’”, *Colombo Mirror*, 7 March 2015; “Tamils annoyed by Ranil’s bid to disregard Northern Provincial Council”, *New Indian Express*, 6 April 2015.



Tamil critics argue that Wigneswaran and the NPC have politicised Tamils' problems rather than used their limited powers to address them<sup>111</sup> but acknowledge that nationalism remains the dominant political force, and voters are frustrated by the TNA leaders' cautious, accommodating approach. This may not translate into many votes for TNA opponents in the parliamentary election, but unless the government, NPC and TNA leaders can work together to bring relief and hope to northern residents, rising discontent could energise more hardline Sinhala nationalists, who actively seek anything that can be presented as evidence of separatism or a militant threat.<sup>112</sup>

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<sup>111</sup> "The NPC doesn't know the art of getting things done. The only method they know is boycott", said a Tamil professional. "They think they have to sort out the national question first and all other problems come after that". Another added: "[The chief minister] doesn't know the administrative art, or the political art". Crisis Group interview, professionals, Jaffna, July 2015. Wigneswaran's supporters argue this is one of his great strengths: "He's not a politician. He speaks his mind". Crisis Group interview, journalist, Colombo, July 2015.

<sup>112</sup> Crisis Group interviews, journalists, activists, diplomats, Colombo, July 2015.

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## V. Post-election Agenda for Reconciliation and Accountability

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After the August elections, President Sirisena and his new government will face renewed pressure to expedite progress on reconciliation issues, including demilitarisation, devolution and the war's legacy. Many will pose significant political challenges, but Sirisena's popularity and credibility as a non-corrupt Sinhala Buddhist leader position him uniquely to break new ground, particularly if the UNFGG is able to form a broad-based government.

### A. Demilitarisation

Completing the government's initial positive steps on land, detainees and the return of effective civilian governance requires fundamental change in the military's role in the north and east. The president's decision to end its police powers is significant but is not yet fully implemented. The modest moves to date have reportedly met resistance from the military and security establishment, over which the government has yet to establish full control.<sup>113</sup> For meaningful progress toward reconciliation, accountability and power sharing, this will need to change.

The government has said little about its plans for longer-term restructuring of the post-war, post-Rajapaksa military, other than its intention to expand the troops contributed to UN peacekeeping missions.<sup>114</sup> Sri Lanka's international partners should offer expertise on developing a long-term strategy for the gradual reduction in the size and role of the military, both in the north and east and nationally, including a move away from its involvement in civilian and economic activities. There are indications that some in the military would welcome a return to a more limited role.<sup>115</sup>

Others, however, are likely to resist, particularly loyalists of ex-defence secretary Gotabaya Rajapaksa and those who have personally benefited from the expansion into a range of economic activities. Reducing the size and influence of military intelligence, whose numbers reportedly increased seven-fold under the Rajapaksas, is a key challenge.<sup>116</sup> International partners should insist that security sector reform (SSR) is essential for the domestic accountability process to be credible and should offer to assist in its planning and implementation as a post-election priority. They also should make clear that an expanded role in UN peacekeeping can come only after significant

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<sup>113</sup> Crisis Group interview, government official, July 2015. Jayakumari's release was reportedly delayed for three weeks after being ordered. Crisis Group phone interviews, lawyers, April 2015. The 7 May appointment of Major General Jagath Dias as army chief of staff was particularly concerning. During the final months of the civil war, he led the 57th Division, which has been implicated in potential war crimes by numerous eyewitnesses and the UN secretary-general's panel of experts. Crisis Group Asia Report N°191, *War Crimes in Sri Lanka*, 17 May 2010. Dias was fifth in seniority for the job and is reportedly close to ex-army commander Sarath Fonseka, who was made Sri Lanka's first ever field marshal in February. Crisis Group email correspondence, lawyers, activists, May 2015.

<sup>114</sup> "President speaks of more of SL military personnel for international peace-keeping force", *News First*, 27 June 2015.

<sup>115</sup> Sirisena won a large percentage, possibly a majority, of military voters in January's election, with many reportedly expressing irritation at being made to take on non-military work such as maintaining parks and working on farms. Crisis Group interviews, diplomats, UN officials, Colombo, February, July 2015.

<sup>116</sup> Crisis Group interviews, politicians, Colombo, February 2015. "Intelligence expanded into six battalions", *Daily Mirror*, 29 October 2011.

action on accountability, including a transparent investigation of charges of sexual violence by peacekeepers during missions in Haiti and elsewhere.<sup>117</sup>

### B. *Strengthening the Northern and Eastern Councils, Deepening Devolution*

Following Sirisena's appointment of a respected retired diplomat as governor of the northern province, the government has a chance to build a more cooperative, empowering relationship with the TNA-led NPC and the neighbouring Eastern Provincial Council (EPC). With the support of international partners – the U.S., EU, India, the UN and IFIs like the World Bank and Asian Development Bank – the government should create a development and reconstruction program built on the active involvement of those councils, local elected authorities and the war-affected communities. This should aim to develop the councils' capacity to maximise use of their constitutional powers and build the trust needed to negotiate greater devolution and a lasting solution to the ethnic conflict. In particular, the government, working with the UN and donors, should:

- ❑ work together with the NPC and EPC on a comprehensive needs assessment for the north and east, going beyond the limited work of the UN-government joint needs assessment on internally displaced persons (IDPs) completed in 2014.<sup>118</sup> To increase its peace-building potential, parallel initiatives could be undertaken with neighbouring conflict-affected and poverty-stricken districts;
- ❑ assist in strengthening the administrative and law-writing capacity of the councils and provincial administrations, which remain too weak to make use of their full powers. This should become part of a larger effort to increase the capacity of all interested provincial councils;<sup>119</sup> and
- ❑ assist in operationalising the newly-established chief minister's fund, which should allow increased funding, including from abroad, for provincial reconstruction and economic development. Such a fund could be a useful outlet for positive economic engagement from the Tamil diaspora, as encouraged in recent statements by the president and foreign minister.<sup>120</sup>

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<sup>117</sup> Little information is available about military inquiries into the abuse in Haiti. "UN confirms sex charges", *Sunday Times*, 30 March 2015. According to a 2010 U.S. State Department report citing Sri Lanka officials, twenty soldiers "were discharged, demoted, formally reprimanded, or otherwise punished", but none appeared to have been jailed or punished under criminal law. Crisis Group Asia Report N°217, *Sri Lanka: Women's Insecurity in the North and East*, 20 December 2011, pp. 16-17. Kathie Klarreich, "UN in Haiti: When Protectors Turn Predators", *100Reporters*, 2015.

<sup>118</sup> Due to pressure from the Rajapaksa government, the northern chief minister's requests that the NPC play a central role in a comprehensive assessment were denied, and its scope was severely limited. A UN staff member called the process a "debacle". NPC exclusion from the process has contributed to a very difficult relationship between the chief minister and UN officials in Colombo. Proposed UN funding for the NPC contains positive elements but has not yet been endorsed by the NPC chief minister. Crisis Group interviews, Colombo, Jaffna, diplomats, UN staff, northern province officials, July 2015.

<sup>119</sup> On the limited powers and capacity of provincial councils, see Crisis Group Report, *Sri Lanka's Potemkin Peace*, op. cit., pp. 12-15.

<sup>120</sup> Sirisena approved the fund on 8 June. "Northern CM's Development Fund Wigneswaran gets green light from President", *Ceylon Today*, 10 June 2015; "Mangala urges Lankan diaspora to return home", *Colombo Gazette*, 11 June 2015.

Offering the NPC and EPC political, financial and administrative support should be seen as a transitional step toward a lasting settlement of the more than half-century power-sharing conflict between Colombo and the north and east. Comments by the president, prime minister and foreign minister indicate general support for a long-term negotiated settlement of the ethnic conflict, to be pursued by a national government formed after the parliamentary election.<sup>121</sup> This would involve negotiations between the government, the TNA and Muslim parties to agree on a more extensive, less ambiguous devolution scheme than what is in the thirteenth amendment.<sup>122</sup>

Negotiations depend on the UNP gaining a convincing electoral victory and being able to forge a working consensus within its very broad coalition. While expressing support for “maximum devolution of power under a unitary state”, UNP leaders have opposed the TNA’s call for federal political solution,<sup>123</sup> and resistance to more devolution would be fierce from Mahinda Rajapaksa and his legislative allies, as well as Sinhala nationalist groups outside parliament.<sup>124</sup> In this difficult context, giving the northern and eastern councils what they need to make maximum use of their constitutional powers could advance a negotiated settlement by increasing trust on all sides of Sri Lanka’s complex ethnic divides.<sup>125</sup>

### C. *Impunity and Accountability*

The most difficult challenge the Sirisena-UNP government has faced is the demand for accountability for violations of international law during the final stages of the civil war.<sup>126</sup> Near-complete impunity for rights violations has been a central contributing factor to Sri Lanka’s multiple insurgencies over the past half century,<sup>127</sup> and lasting peace will require some degree of justice, as well as progress dismantling institutionalised impunity. While the government’s public commitment to a domestic accountability process is welcome, any meaningful process will face major obstacles, not

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<sup>121</sup> “Sri Lanka pledges ‘political solution’ in war-torn north”, Agence France-Presse, 29 March 2015; “I would not be insincere to the feel of the UNP”, *Daily News*, 19 March 2015. Wickremesinghe and other senior ministers have stated an interest in transforming the next parliament into a constituent assembly that would draft a new constitution, to include a broader scheme of devolution. “Parliament to become Constituent Assembly after poll”, *Daily News*, 11 April 2015; “Sri Lanka parliament votes to curb president’s power”, Agence France-Presse, 28 April 2015.

<sup>122</sup> The thirteenth amendment formally grants provinces powers over a range of issues, including health, education, land and policing, but it has never been fully or effectively implemented. For an analysis of its limitations, see Crisis Group Reports, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, op. cit., pp. 18-21, and *Sri Lanka’s Potemkin Peace*, op. cit., pp. 9-18. Crisis Group interviews, Colombo, February 2015. TNA leaders have already reportedly discussed a political solution with Sirisena. “TNA, Maithri discuss political solution, land issue”, *Colombo Gazette*, 24 June 2015. Visiting 13-15 March, Prime Minister Narendra Modi reiterated India’s long support for devolution “going beyond” the thirteenth amendment, while also counselling patience to the TNA. “Modi asks Colombo to embrace Tamils, wants stronger ties”, IANS, 13 March 2015; “Be patient with Sri Lankan govt.: Modi to Tamil leaders”, *Hindu*, 14 March 2015.

<sup>123</sup> “Low key election campaign”, *Island*, 26 July 2015; “UNP rejects a federal solution for Tamil issue”, *Colombo Gazette*, 29 July 2015.

<sup>124</sup> This would be all the more so if attempted constitutional reforms coincide with domestic inquiries into alleged crimes by the military.

<sup>125</sup> Muslims, who are 40 per cent of the eastern province and much less in the north, must be persuaded their interests and rights will be protected in any devolution.

<sup>126</sup> For an analysis of those violations, see Crisis Group Report, *War Crimes in Sri Lanka*, op. cit.

<sup>127</sup> See Crisis Group Asia Report N°135, *Sri Lanka’s Human Rights Crisis*, 14 June 2007.

least strong resistance from sections of the military and police, many of whose senior officers have been accused of involvement in crimes and remain politically influential.<sup>128</sup> There is also strong opposition from politically mobilised Sinhala nationalists. Given the well-founded doubts that a domestic process can deliver justice, careful but sustained international scrutiny and assistance will be essential for even modest progress to be made.

#### 1. Reforms for “accountability”, broadly defined

The challenge facing the government and its international partners is to initiate a meaningful accountability process that can be sustained. Achieving sustainable peace and reconciliation will be a slow and unsteady process at best. The government will need to develop a careful, long-term approach that is more than a box-ticking exercise for international consumption. Lasting progress will require substantive consultation with victim and survivor groups from all communities, and broad buy-in from all ethnic groups, ultimately including nationalists on all sides. The fears and concerns of Sinhalese, as well as their satisfaction in the military victory over the LTTE, will need to be understood and taken into consideration in any attempt to find accountability for crimes committed during the war.

At the same time, release of the OHCHR investigation report – expected just after parliamentary elections – together with September’s HRC session, offers an important opportunity to persuade the government to establish a sustainable and credible process. In addition to a commitment to prosecutions where evidence exists, key legal reforms are needed to put in place the conditions for effective investigations and prosecutions. The plan must be designed to take into account the evidence and recommendations in the OHCHR report.

Equally important, the reforms must target – and be seen to target – the larger problem of impunity for human rights violations suffered by all communities and to contribute to their prevention in future. This is important both in itself and as a way of defusing some Sinhala nationalist resistance to accountability. Without losing a sense of the uniqueness and severity of violations in the first months of 2009, accountability needs to be defined broadly enough to be seen to bring benefits to all communities, not just those who suffered from state abuses during the war,

The government has shared little detail of its plans, but there are indications it may tell the HRC it intends to prosecute a small number of cases not directly linked to the final months of fighting, as well as to establish a truth commission and new institutions to account for the thousands of missing and disappeared.<sup>129</sup> Harder to investigate and prosecute will be crimes allegedly committed in the final months of fighting, particularly any involving the large-scale killing of civilians. Moves by senior officials have been criticised as suggesting some in the government hope to prevent serious questioning of the legality of the military strategy of the last months.<sup>130</sup>

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<sup>128</sup> Former army commander Sarath Fonseka and other senior commanders active in the final months of the war continue to have influence within the current government.

<sup>129</sup> Potential cases most frequently mentioned include the 2006 massacre of seventeen aid workers with Action contre la faim (ACF), the 2006 murders of five Tamil students in Trincomalee, the murder of Lasantha Wickremetunga and possibly other prominent journalists and some of the alleged executions at war’s end for which strong visual evidence exists. Crisis Group interviews, diplomats, politicians, lawyers, Colombo, July 2015.

<sup>130</sup> Echoing many activists and diplomats, a legal researcher argued: “Making the legal case to dismiss any serious questioning of the military shelling of civilian concentrations and humanitarian

Given the strength of nationalist and pro-military feelings among many Sinhalese, it will take time and public airing of credible evidence of alleged crimes by both sides to generate public support for prosecutions. Trials will not happen quickly, but they are possible as the culmination of a process of broad consultation, evidence gathering and national debate, particularly if President Sirisena actively lends his considerable prestige and popularity to the effort.<sup>131</sup>

Should the UNP gain a working majority in parliament, current political dynamics should not prevent the government from beginning the process by presenting a plan to the HRC in which it agrees to a) launch a thorough and genuine investigation into war crimes allegations, including those found credible by the OISL report; and b) put in place the legal infrastructure to make possible effective prosecutions of any major human rights violation. To address the decades-long impunity crisis and achieve accountability for the most serious crimes by all parties during the war, the government should agree to the following legal and institutional reforms:

- ensuring all investigative, prosecutorial and truth-seeking mechanisms established include effective witness protection units, with adequate powers, resources and independence.<sup>132</sup> Providing a safe and supportive environment for witnesses and victims to come forward also requires complete withdrawal of the military from all policing duties and an end to aggressive and intimidating actions by anti-terrorism police. Fears are particularly high among Tamils and other potential witnesses that it is not safe to speak freely, though witnesses throughout the country are regularly intimidated into silence;<sup>133</sup> and
- establishing an independent prosecutor's office, with adequate resources and staffed by investigators and attorneys, including those from outside Sri Lanka, with experience in international criminal law. As recommended by previous commissions of inquiry, including the 2011 Lessons Learnt and Reconciliation Commission (LLRC), the prosecutor's office should be separate from the attorney general's department, whose past human rights prosecutions have frequently been accused of conflicts of interest.<sup>134</sup>

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targets is the task assigned to the international advisory panel to the missing persons commission". Crisis Group interview, Colombo, July 2015.

<sup>131</sup> That Sirisena and other top officials have not yet started making this case to the Sinhala public has been criticised by many Tamil activists. See, for instance, "At home and abroad: accountability, reconciliation and Sinhala Buddhism", *Tamil Guardian* 13 May 2015.

<sup>132</sup> The witness protection system established by law on 20 February is inadequate, particularly given the lack of any protection unit independent of the police department. "The chance of this law being effective is very slim", said a lawyer and activist. Crisis Group telephone interview, March 2015. "Sri Lanka enacts legislation to protect victims of crimes and witnesses", *Colombopage*, 20 February 2015. The government has yet to establish the protection authority, the police division or the protection fund and safe houses authorised by the law. The bill that passed was largely unchanged from the heavily-criticised draft promised by President Rajapaksa since 2007 and finally tabled in parliament in August 2014.

<sup>133</sup> These fears are encouraged by reports of continued arrests of Tamils returning from overseas and allegations of sexual violence and torture targeting Tamils suspected of involvement with the LTTE, including under the Sirisena government. For a detailed report of such allegations, see, "A still unfinished war: Sri Lanka's survivors of torture and sexual violence, 2009-2015", International Truth and Justice Project Sri Lanka, July 2015.

<sup>134</sup> See, for instance, the 2008 letter of resignation by the International Independent Group of Eminent Persons (IIGEP) in protest at the attorney general's conflict of interest and other forms of

Moreover, the current legal architecture is not adequate for investigation and prosecution of many of the most important crimes likely committed by both sides during the war. To change this, the government should pass new laws to:

- ❑ criminalise enforced disappearances, as recommended by numerous previous Sri Lankan commissions of inquiry;<sup>135</sup>
- ❑ establish command responsibility as a form of criminal responsibility, in order to hold senior officers accountable, rather than just the “trigger-pullers”;<sup>136</sup>
- ❑ incorporate war crimes and crimes against humanity into the law code, so as to make possible prosecution of a range of actions allegedly taken by government, paramilitary and LTTE forces that would not otherwise be crimes;<sup>137</sup> and
- ❑ enable establishment of a special court to try alleged war crimes. Such cases are complex and difficult to prosecute and would benefit from the specialised staff and resources, including the greater potential for outside funding, needed for such a tribunal. The law should also include the possibility of involving foreign judges, prosecutors and legal staff. While activating a hybrid court in the near term would be politically controversial, senior ministers have not ruled out the possibility of eventually making use of foreign judges.<sup>138</sup>

Finally, to ensure the credibility and effectiveness of its accountability initiatives, the government should accept help from OHCHR and other international experts in the design and implementation of its domestic accountability processes. UN or other expertise, perhaps including that of foreign police departments, should be invited to a) help expedite and strengthen the relatively weak witness protection system; b) offer forensics and other expertise for investigation of particular cases; and c) strengthen local officials’ capacity to exhume and investigate mass graves (especially those recently found in Matale and Mannar).<sup>139</sup> To maximise its ability to assist, OHCHR should

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obstruction by the government. “The Presidential commission’s public inquiry process so far falls short of international norms and standards: Public Statement”, IIGEP, 6 March 2008. For a discussion of the IIGEP, see Crisis Group Report, *Sri Lanka’s Human Rights Crisis*, op. cit.

<sup>135</sup> Once criminalised, an enforced disappearance would continue to be an offence until the person’s fate is clarified, so there are no concerns about it being a retroactive law.

<sup>136</sup> This has been recommended by previous Sri Lankan commissions of inquiry, following the consistent failure to hold senior officers accountable in those few human rights violations that have been prosecuted.

<sup>137</sup> These include attacks on hospitals and other humanitarian targets and the shelling and bombing of civilian areas. To avoid the question of retroactivity, the actions covered would be limited to those already recognised under customary international law applicable to Sri Lanka.

<sup>138</sup> The foreign minister has spoken publicly about the possibility of Commonwealth judges, and other senior ministers are reported to be considering additional forms of international involvement. One option reportedly under consideration within the government has been the “Gambian model”, in which Commonwealth judges heard cases jointly with national judges. “New Sri Lankan foreign minister: our tilt towards China needs a course correction”, *Swarajya*, 18 January 2015. There have also been calls for Sri Lanka to establish a hybrid court on the model of the UN-supported Sierra Leone special court. “Sri Lanka: Press Ahead on Rights Reforms”, Human Rights Watch, 26 February 2015. For a helpful analysis of the issues involved in establishing a hybrid court in Sri Lanka, see Rhadeena de Alwis and Niran Anketell, “A Hybrid Court: Ideas for Sri Lanka”, South Asian Centre for Legal Studies, May 2015.

<sup>139</sup> A grave holding more than 150 bodies – widely believed to be of suspected JVP supporters murdered in 1989-1990 – was discovered in December 2012 in the central town of Matale. A grave holding more than 80 bodies was uncovered in the north-east town of Mannar in December 2013. Inquiries into both cases have been dogged by controversy and accusations of cover-ups. On Matale, see Crisis

be invited to set up a field office, with a mandate to build domestic capacity for human rights protection, including war-related accountability, and all facets of transitional justice.<sup>140</sup>

Even with the best will, government accountability initiatives will face considerable political and institutional challenges. Sri Lanka's international partners should support the government's efforts, and it is essential that the HRC give the high commissioner a continued mandate to monitor and report back on progress toward complying with promises to the council.

## 2. Missing persons commission

The government's decision to continue with the presidential commission on missing persons without significantly addressing its deep flaws is regrettable. As it stands, the commission has neither the mandate, political will nor resources to investigate its 20,000 cases effectively.<sup>141</sup> Unless the government radically revamps the commission so it can function as a credible investigative body, it should be scrapped. A proper inquiry that respects victims and their families requires adequate resources, new commissioners and staff who have the trust of the affected families and communities, no involvement by military and intelligence officers and guarantees that its inquiries feed directly into meaningful police investigations and prosecutions. Recent moves to strengthen the commission are far from adequate.<sup>142</sup>

The missing persons commission has also announced that it will release in August a report from an international panel appointed by President Rajapaksa in July 2014 to "advise" it on international humanitarian law (IHL).<sup>143</sup> The panel has been criti-

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Group Report, *Sri Lanka's Potemkin Peace*, op. cit., p. 25; "Mannar mass grave body count increases to 80", *Island*, 26 February 2015.

<sup>140</sup> This would be controversial, but not impossible. Other steps the government could take to make more meaningful its limited engagement with UN mechanisms – and as a gesture to victims that it is serious about ending impunity – include: releasing past commission reports in advance of the WGEID visit; and making available information on police investigations into specific disappearance cases. In addition, the government should invite a visit from the special rapporteur on extrajudicial executions, one of the most important and useful of all the special mandate holders for Sri Lanka.

<sup>141</sup> As well as lacking adequate staff, resources and skilled Tamil interpreters, the commission has been criticised for the pro-military bias of its questioning and for allowing military intelligence access to the hearings. Crisis Group interviews, lawyers, activists, Colombo, July 2015. See "The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications", December 2014, and "Raising Concerns with the Work and Progress of the Commission, Letter to Chairman of the Presidential Commission to Investigate into Complaints Regarding Missing Persons", 8 June 2015, both by the Centre for Policy Alternatives.

<sup>142</sup> In May, the commission added two additional Sinhala-speaking commissioners, despite the more pressing need for Tamil-speaking commissioners and staff. Five retired police officers have been hired for follow-up investigations. "Missing Persons Commission appoints Investigative Team", *Island*, 28 July 2015. The commission's interim report, given to the president in April, has not been made public; it reportedly recommends counseling programs for families of the missing and provides details of specific enforced disappearances, including names of security force personnel allegedly involved. Crisis Group interviews, lawyers, activists, Colombo, July 2015; "Japan To Assist CoI", *The Sunday Leader*, 19 April 2015.

<sup>143</sup> "Eelam War missing report soon", *The Sunday Observer*, 10 May 2015. The advisory panel, headed by Sri Lankan-born UK barrister Desmond de Silva and other international lawyers, was appointed as part of an expansion of the commission's mandate into IHL questions, so as to show the government was implementing the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC). There is, however, little publicly available information to suggest the commission or its advisers have done a proper investigation into alleged IHL violations, though the commis-



cised for alleged lack of independence, and many diplomats and activists have expressed concern that its report was designed to be used at the HRC to counter the critical findings expected in the OISL report.<sup>144</sup> The government's decision to continue the work of the panel under these circumstances has further undermined public trust in the commission and runs counter to its commitment to cooperate with the UN and pursue its own credible accountability process.

#### D. *Truth-telling Processes*

Government officials have announced that in addition to procedures for legal accountability, they will establish a process for truth telling and reconciliation. Senior South African officials visited to discuss how they might assist in the development of this process. The government has also expressed its intention to work with the Special Rapporteur on Truth and Justice to design a domestic process.<sup>145</sup>

Before establishing any truth and reconciliation mechanism, however, the government – perhaps working through the newly established Office of National Unity and Reconciliation and a range of civil society groups – should consult widely and transparently with members of all communities. Getting the process right and with wide public support is more important than meeting artificial deadlines. The UN special rapporteur on truth and justice should be given a central role to ensure that victims and their representatives are involved in the design and implementation of the process. International participation should be encouraged at all stages, particularly for protection of witnesses and victims and preservation of their testimony.

Any truth and reconciliation process should be designed to complement, not undercut accountability, not only with respect to crimes at the end of the war, but also to help dismantle institutionalised impunity throughout the political and security system. Whatever overall process is established should be flexible and open to the possibility that public support for prosecutions could increase as more information and experiences are made known. Widespread consultation is particularly important to increase support from Sinhalese and to ensure that grievances of all communities and within communities – eg, among Tamils against the LTTE and other armed groups – are adequately addressed. Finally, public consultation should also aim to design a process that includes the other key aspects of effective transitional justice: public acknowledgment by state and non-state actors, reparations, memorialisation and, most urgent for many survivors in all communities, psycho-social support.

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sion has defended its private interviews of a number of key commanders of units accused of serious violations. Commission letter to the Centre for Policy Alternatives, 16 June 2015.

<sup>144</sup> Several fear the report will be used to pin the blame on a few perpetrators in a small number of cases, while absolving the military strategy of responsibility, and to justify a very limited accountability process. Crisis Group interviews, diplomats, May and June 2015. Alleged excerpts of legal opinions by panel members (not confirmed as authentic) have been published in the Sri Lankan media and appear to find the military operations lawful, further reinforcing these concerns. In a 17 March 2015 speech to parliament, the TNA's M.A. Sumanthiran asserted de Silva had a conflict of interest in serving on the panel, as he was retained previously by the government to advise regarding the final stages of the war. "Get it right now or pay the price", *Colombo Telegraph*, 24 March 2015. De Silva has since strongly rejected any breach of rule as to conflict of interest. "Carefully orchestrated NGO campaign against me – Sir de Silva", *Ceylontoday*, 6 August 2015. The Rajapaksa government also reportedly paid some \$3 million for the services of various experts, their staff and others, including the panel, to assist the commission. "Rs. 400 m spent on foreign advisors for domestic HR inquiry", *The Sunday Times*, 15 February 2015.

<sup>145</sup> For details on government promises on truth and reconciliation, see section IV. A. 3 above.

## VI. Conclusion

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The positive political changes brought about by the election of Maithripala Sirisena have been real, but fragile and far from institutionalised. Public confidence in lasting change began to fade as partisan political infighting escalated during his first months and the obstacles to political reforms became clearer. Parliamentary elections may allow voters to renew January's "good governance" mandate, but there are no guarantees of a decisive outcome and broad-based government. Mahinda Rajapaksa's re-entry to parliament as opposition leader could give him significant power to complicate a UNP-led government's ability to handle the deep problems Sri Lanka faces: on corruption and rule of law, on demilitarisation, reconciliation and a negotiated settlement of the ethnic conflict, on accountability and the economy.

The election and the parliament it produces will be crucial, but equally important is the character of the campaign and strength of nationalist voices. While the UNP-led coalition has defended itself strongly against Rajapaksa's and the UPFA's charges of supporting separatism and terrorism, it is unclear how strong a popular mandate a UNP government would have to pursue the reforms necessary to reconciliation: land, detainees, demilitarisation, empowering the northern and eastern councils, and meaningful constitutional negotiations.

The OHCHR report on alleged war crimes by government and LTTE and HCR debate will raise many difficult issues. All sides need to approach it carefully and resist the urge to score political points and to see fault only in other communities. No special investigation is needed to know that terrible crimes were committed during the multiple insurgencies by all sides, and within and between all communities. Justice, reconciliation and lasting reforms will take years, even decades.

The challenge is to put in place a careful, step-by-step process with the full range of transitional justice mechanisms: this must include credible investigations and judicial processes, with significant international involvement, and a truth commission, but also reparations, psychosocial support, memorialisation and, perhaps most important, open discussion within communities about the human costs of the government's counter-insurgency tactics and LTTE violations against all communities, including Tamils and Muslims. Impunity and damage to the justice system go much deeper than the war's final months. All communities were badly affected and stand to gain from improvements to the justice system and rule of law.

Sri Lanka is only at the possible beginning of a long journey, one delayed by six years of Sinhala nationalist authoritarianism. It needs to rebuild democratic institutions damaged by more than 40 years of insurgency, civil war and ethnically biased centralisation. This requires close, skilful international scrutiny, pressure and patient support – not just of the government but also of civil society organisations and citizen activists of all communities. It took a cross-ethnic coalition of parties and activists to restore life to democracy in January 2015. It will take their continued engagement to see that the promise of good governance bears fruit for all.

**Colombo/Brussels, 12 August 2015**

Appendix A: Map of Sri Lanka



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## Appendix B: Glossary of Terms

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**JHU** – Jathika Hela Urumaya (National Sinhala Heritage party): a Sinhala nationalist party founded in 2004 as the first party to run a slate of Buddhist monks as candidates. Its best known leaders are Champika Ranawaka, currently energy and power minister and the prominent monks Authuraliye Rathana Thera. It offered important early backing to Maithripala Sirisena's presidential campaign after leaving President Rajapaksa's government in November 2014, and formally left the UPFA in July 2015.

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

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

**OHCHR** – UN Office of the High Commissioner for Human Rights.

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

**SLFP** – Sri Lanka Freedom Party: the main left-of-centre party and main constituent of the UPFA, currently chaired by President Maithripala Sirisena and until January 2015 headed by Mahinda Rajapaksa.

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

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

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

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