

## Sri Lanka: A Bitter Peace

### I. OVERVIEW

Since the decisive military victory over the Liberation Tigers of Tamil Eelam (LTTE), Sri Lanka has made little progress in reconstructing its battered democratic institutions or establishing conditions for a stable peace. Eight months later, the post-war policies of President Mahinda Rajapaksa have deepened rather than resolved the grievances that generated and sustained LTTE militancy. While the LTTE's defeat and the end of its control over Tamil political life are historic and welcome changes, the victory over Tamil militancy will remain fragile unless Sinhalese-dominated political parties make strong moves towards a more inclusive and democratic state. The emergence of retired General Sarath Fonseka to challenge Rajapaksa in the 26 January presidential election has opened new space to challenge repressive government policies. But neither has offered credible proposals for political reforms that would address the marginalisation of Tamils and other minorities. Whoever wins, donor governments and international institutions should use their development assistance to support reforms designed to protect the democratic rights of all of Sri Lanka's citizens and ethnic communities.

The government's internment of more than a quarter million Tamils displaced from the Northern Province – some for more than six months – was further humiliation for a population brutalised by months of ferocious fighting. The return by the end of 2009 of most of the displaced to their home districts, and the increased freedom of movement for the nearly 100,000 still in military-run camps, are important steps forward. However, the resettlement process has failed to meet international standards for safe and dignified returns. There has been little or no consultation with the displaced and no independent monitoring; many returns have been to areas not cleared of mines and unexploded ordnance; inadequate financial resources have been provided for those returning home; and the military continues to control people's movements. These and other concerns also apply to the estimated 80,000 Muslims forcibly expelled from the north by the LTTE in 1990, some of whom have begun to return to their homes.

The UN and donor governments should insist more strongly that all resettlement is done according to established guiding principles. Donors should end assistance

to any camps where full freedom of movement is not allowed and condition additional aid on an effective monitoring role for UN agencies and NGO partners. India, Japan, Western donors, the World Bank and the Asian Development Bank should tie additional development assistance to an inclusive and consultative planning process for the reconstruction of the north. Access by the International Committee of the Red Cross (ICRC) to the more than 12,000 Tamils held in irregular detention centres on suspicion of ties to the LTTE is also essential.

The government's approach to the development and reconstruction of the north and east is contributing to minority fears and alienation. Government plans remain unclear, with local communities and political leaders not consulted and even donors not informed of overall reconstruction plans. Strong military influence over policies, tight military control over the population and restrictions on local and international NGOs increase the risk of land conflicts, with the strong possibility of demographic changes that would dilute the Tamil character of the north. No real space has been given to Tamil and Muslim political or community leaders in the north and very little in the east.

The Rajapaksa government has initiated no political reforms to address Tamil and other minorities' concerns. The government-sponsored All Party Representative Committee (APRC) designed to craft constitutional reforms has in effect ended with no sign of an alternative process. Tamil and Muslim parties remain weak and divided, although recent encouraging initiatives to develop a common platform and build trust among Tamil-speaking parties deserve support. Inside and outside Sri Lanka, many Tamils remain angry at the lack of accounting or justice for the thousands of civilians killed in the final months of the war. Most of the million-strong diaspora is still committed to a separate state and many would be willing to support renewed violence.

The brutal nature of the conflict, especially in its closing months, has undermined Sri Lanka's democratic institutions and governance. All ethnic communities are suffering from the collapse of the rule of law. Disappearances and political killings associated with the government's counter-insurgency campaign have been greatly reduced since the end of the war. Impunity for abuses by state officials continues, however, and fear and self-censorship among civil society activists and political dissidents remain widespread.

Rajapaksa's government continues to maintain and use the Prevention of Terrorism Act and Emergency Regulations to weaken its political opposition.

The campaign of retired General Sarath Fonseka has put the Rajapaksas on the defensive and united a long-dormant opposition. Alleging corruption and other abuses of power by the Rajapaksa family, Fonseka and the parties supporting him promise major reforms, including the end of emergency rule and the abolition of the Executive Presidency itself. However, Fonseka's candidacy suffers from contradictions and poses grave risks. Promises made to Tamil parties to restore civilian control over land policies and the resettlement process in the north threaten to put Fonseka at odds with his allies in the military and run directly counter to Fonseka's consistently Sinhala nationalist policies over the course of his career. The numerous allegations that General Fonseka was involved in attacks on journalists and other human rights violations undermine his calls for reforms and an end to impunity. It remains an open question whether the ideologically diverse set of parties that have endorsed Fonseka will be able to work together or influence his policies should he win.

International actors need to press for accountability for abuses by both sides during the war as well as challenge the government's post-war policies. Numerous states with insurgencies have begun to look at Sri Lanka as a model. India and Western governments may yet come to regret giving Sri Lanka the green light – and even assisting it – to fight a “war on terror” prior to the government agreeing to political reforms or showing any commitment to the rule of law, constitutional norms or respect for human rights. The precedent can and should be challenged. Donors should condition further development assistance on governance reforms designed to curb impunity and make government accountable to citizens of all communities. This could eventually help open the space for Tamil and Muslim political leaders to organise effectively now that the LTTE is no longer there to control their agenda.

## II. DISPLACEMENT AND RESETTLEMENT

The detention from May-December 2009 of more than 280,000 civilians who had survived the vicious final months of fighting between the Sri Lankan military and the LTTE generated widespread international concern and condemnation.<sup>1</sup> The internment of so many people –

all of whom had suffered greatly from the war and seen many of their family and friends killed – violated Sri Lankan and international humanitarian law. By October 2009, five months after the fighting ended, fewer than 20,000 of the displaced had been released from the military-run camps or allowed to return home. The camps were overcrowded and conditions failed to meet international standards, with poor sanitation, insufficient water for drinking and bathing, and inadequate food and medical care.<sup>2</sup> Those detained were not able to leave the camps, the media was only let in for occasional guided tours, and no independent monitoring of the camps was allowed.<sup>3</sup> The message being sent to Tamils in Sri Lanka and in the million-strong diaspora was a humiliating one which has undermined the chances for political reconciliation.

The government refused to publish any clear plan or timetable for resettlement, arguing that inmates had to remain inside the camps until all had been screened for possible involvement with the LTTE, and until their home districts had been demined.<sup>4</sup> Concerns for the safety of those in camps were raised by the lack of clarity about the nature of the screening process, the absence of a public list of those in the camps, and by the numerous reports of people being taken from the camps to unknown locations and many others buying their way out of the camps.<sup>5</sup>

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man Rights, 1 October 2009; “Sri Lanka: End Illegal Detention of Displaced Population”, Human Rights Watch, 22 September 2009; and “Sri Lankan Government Must Permanently Release All Civilians”, Amnesty International, 1 December 2009.

<sup>2</sup>A number of violent incidents in the camps in September, along with worries about flooding when seasonal rains arrived in October, had raised serious concerns about the manageability of the camps. See “Displaced Sri Lankans trapped between the military and the impending monsoon”, Amnesty International, 8 October 2009; and “Sri Lanka: Tensions Mount as Camp Conditions Deteriorate”, Human Rights Watch, October 2009.

<sup>3</sup>The ICRC has been denied access to the major camps in Vavuniya since July 2009. The lack of independent and credible sources of information helped generate numerous worrying reports about what was happening inside, which were extremely difficult to confirm or disprove, and some of which later proved untrue. See “Tamil death toll ‘is 1,400 a week’ at Manik Farm camp in Sri Lanka”, *The Times*, 10 July 2009.

<sup>4</sup>See for instance “Statement by Hon. Mahinda Samarasinghe MP, Minister of Disaster Management and Human Rights of Sri Lanka at the 60th Session of the Executive Committee of the UNHCR”, 28 September 2009, at [www.dmhr.gov.lk](http://www.dmhr.gov.lk).

<sup>5</sup>“Freedom at high price”, *Sunday Times*, 6 September 2009; P. Siviamakrishnan, “IDPs ‘smuggled out’ of camps”, BBC Sinhala Service, 3 August 2009; “Sri Lanka’s displaced face uncertain future as government begins to unlock the camps”,

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<sup>1</sup> See International Crisis Group, “The Situation in Sri Lanka”, Testimony to the European Parliament Subcommittee on Hu-

At the end of December 2009, some 147,000 Tamils in closed government camps had been released or bussed back to their home districts or to host families.<sup>6</sup> The camps, mostly located in the Vavuniya district, have now been partially opened, with inmates able to come and go for limited periods of time. The mass returns and the partial opening of the camps were clearly a response to rising international pressure as well as to the government's own concerns about the manageability of the camps and the electoral considerations of the president, who now faces a strong challenge in the 26 January polls.

Nonetheless, there are reasons to remain concerned about the "resettlement" process and the conditions faced by those displaced in the final months of the war. Donor governments and UN agencies working on the ground should not be satisfied with the current process and should speak up in defence of the rights of those displaced. While the vast majority of those who have been returned wanted to go home, they were forced to do so in a way that cannot be said to be dignified, safe or sustainable. The political and social context in the Northern Province where people have returned or will return remains disturbing and has been largely ignored by donors, the UN and international media. In welcoming the recent progress, it is crucial that those who fund and help manage the process of caring for the displaced not lower their expectations so far that they ignore fundamental humanitarian principles. Nor should they forget the bigger political picture: the use and control of land in the north has been at the heart of Sri Lanka's 30 years of civil war.

### **A. CURRENT SITUATION IN CAMPS**

Based on the most recent figures made available by the UN, some 111,000 still remain in the major camps in Vavuniya and other parts of the north.<sup>7</sup> With less than half as many people as before, the camps are significantly less crowded and in better, though not full, compliance with international "Sphere" standards.<sup>8</sup> Problems with

drainage and sewage have eased as a result. The government had promised that all camps will be closed by the end of January 2010, though this now seems unlikely.

The government's decision to "open" the camps to a considerable degree as of 1 December 2009 was a positive and welcome move. Inmates are now allowed to leave the camps and travel virtually anywhere within Sri Lanka for designated periods of time. Still, problems remain. It appears there is a limit on how long inmates can be away from the camps: they must receive a pass that requires them to return by a particular date (generally ranging from five days to two weeks). Inmates of one camp are not allowed to enter other camps in order to visit relatives or friends. There are also reports that in some camps people are being told to leave family members behind as guarantees they will return and that some families considered close to the LTTE are not allowed to leave at all.<sup>9</sup> The camps remain closed to the media, the ICRC and protection/human rights advocates.<sup>10</sup> Even members of the Sri Lankan parliament have only been allowed in recently and for one-off visits. Under these conditions, the camps cannot be considered open.

### **B. PROBLEMS WITH RECENT RETURNS**

That the majority of those once housed in closed camps have now been sent to their home districts or to host families is significant and welcome. It is clear that many are happy to be out of the camps. Nonetheless, most continue to be displaced and face serious challenges. The process by which people have been released from the camps has, in the words of one senior aid worker, been "chaotic and ill-prepared" and raises serious concerns about the well-being of the displaced and the ability of agencies charged with protecting their rights to carry out their work effectively.<sup>11</sup> In the words of one aid agency official, "Large numbers are likely to remain in limbo and protracted displacement".<sup>12</sup>

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Amnesty International, 11 September 2009. Most of these releases came after mid-October.

<sup>6</sup>"Sri Lanka Update, 15 December-24 December 2009", United Nations High Commissioner for Refugees (UNHCR).

<sup>7</sup>"Overview", UNHCR, 21-24 December. On 7 January 2010, the government announced that nearly 170,000 of the 270,000 displaced had been "released and resettled in the North". "Number of IDPs reduce considerably", [www.news.lk](http://www.news.lk), 8 January 2010. UN figures show a caseload of 286,900 displaced since April 2008, not including more than 11,000 detained as LTTE suspects.

<sup>8</sup>Crisis Group email interviews, humanitarian aid workers and confidential UN documents, December 2009. A collaborative initiative by international humanitarian organisations, the Sphere

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Project established minimum standards for the provision of food aid, nutrition, health, water and sanitation and emergency shelter provision in situations following disaster. The full text of the latest edition of the "Sphere Humanitarian Charter and Minimum Standards in Disaster Response" can be found at [www.sphereproject.org/content/view/27/84/lang.english](http://www.sphereproject.org/content/view/27/84/lang.english).

<sup>9</sup>Confidential UN document, December 2009.

<sup>10</sup>Foreign Minister Rohitha Bogollagama asserted in a 1 December television interview that "there were no restrictions" on journalists and they would be able to visit the camps the next day. "Sri Lanka war refugees leaving military camps", BBC News, 1 December 2009.

<sup>11</sup>Crisis Group interview, Colombo, November 2009.

<sup>12</sup>Crisis Group interview, Colombo, November 2009. For an excellent overview of the problems with the "returns" proc-

- ❑ A large portion of the more than 140,000 recently sent out of the camps have not actually *returned* to their homes nor been *resettled*, but have been sent to and remain in “transit centres” in their home districts.<sup>13</sup> In many cases these centres, located in churches, schools and other government buildings, are hours away from people’s homes, without adequate transport to and from their homes or livelihood opportunities.<sup>14</sup>
- ❑ The homes that many if not most people would return to are badly damaged or destroyed; almost all houses have been looted of any items of value.<sup>15</sup>
- ❑ Many of the areas people are returning to have not been fully demined. This puts the newly returned in danger and makes travel, work and farming much more difficult.<sup>16</sup>
- ❑ Because many locations have been demined only up to “battlefield use” standards, not to “humanitarian” standards, UN agencies’ own security regulations prevent their staff from visiting many of the areas people have returned to, despite having the formal approval of the government to do so.
- ❑ There has been no effective or independent monitoring of the returns process. Buses chartered by the

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ess as of the middle of November, many of which remain true two months later, see “Movement of Vanni IDPs: Release, return and transferred displacement”, IDP protection working group, November 2009, at [www.sangam.org/2009/11/Movement\\_IDPs.pdf](http://www.sangam.org/2009/11/Movement_IDPs.pdf).

<sup>13</sup> “The bulk of them are still in temporary facilities. It’s a transit camp until the de-mining is completed. There is quite a number in Kilinochchi and Mullaitivu”, said Minister of Disaster Management and Human Rights Mahinda Samarasinghe. “Sri Lanka: bulk of refugees still in transit camps”, Reuters, 4 December 2009.

<sup>14</sup> “In a normal situation, we’d have been into the area, pre-positioned building materials and other supplies, especially food, and begun to prepare for livelihood activities. But that’s not what is happening. We’re also worried about people not having effective freedom of movement. Not even having the transport facilities. Some would have to walk hours to get to a town with supplies”. Crisis Group interview, Western diplomat, Colombo, November 2009.

<sup>15</sup> As in the immediate post-war period in the Eastern Province, eyewitnesses report seeing military vehicles carrying valuables and household items away from locations throughout the north. Confidential UN documents, December 2009; Crisis Group interview, aid workers, Colombo, November 2009.

<sup>16</sup> “IDPs are being sent to areas that still contain mines and are unsafe. Even the UN won’t go there. Yet, they [IDPs] are being sent to these areas. Unfortunately, it seems that we as INGOs are supporting this process”. Crisis Group interview, humanitarian worker, Colombo, December 2009; “Sri Lanka: landmine clearance a long-haul effort”, IRIN, 18 December 2009.

International Organisation of Migration (IOM) deliver the returnees to the transit centres, but neither the IOM nor UNHCR have the staff or access on the ground necessary to monitor where people have gone from there. No registers have been kept which would allow UN or other protection agencies to verify that those who leave the camps end up safely at “home”. With the exception of Jaffna, no international humanitarian NGOs are currently allowed to visit the areas to which people have been returned; local NGOs in the Mannar district ready to assist have been prevented from working with those being resettled.<sup>17</sup> Both local and international NGOs must get prior approval and agree to tight controls by the “Northern Task Force” headed by the president’s brother Basil Rajapaksa.<sup>18</sup>

This is a particular concern as UN agencies rely on local and international humanitarian organisations to do much of their protection work. The ICRC is not allowed to work with those being returned to Mannar, Kilinochchi or Mullaitivu districts, though it does have access to those returned to Jaffna.<sup>19</sup> A number of larger Colombo-based Sri Lankan NGOs with close links to the government have been given approval to work, but are not known to do monitoring or protection work.<sup>20</sup>

- ❑ Many of those being resettled have not received the promised supplies and financial resources, raising questions about the sustainability of the returns under current conditions.<sup>21</sup> Tens of thousands sent from the camps to live with host families have reportedly been removed from the list of the displaced and will not

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<sup>17</sup> Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, November 2009; Crisis Group email correspondence, diplomats and aid workers, December 2009.

<sup>18</sup> The nineteen-member Presidential Task Force for Resettlement, Development and Security in the Northern Province also includes heads of the armed forces and secretaries from a range of ministries. All but two are Sinhalese.

<sup>19</sup> The ICRC has not been allowed to work in the camps in Vavuniya or Mannar or with those detained as LTTE suspects since late July 2009 and does not have access to those being “resettled”. In Jaffna, it has full access to IDPs in camps and returnees and it has maintained its access to all regular security detainees in official places of detention throughout the country. Crisis Group interviews, diplomats, Colombo, November 2009.

<sup>20</sup> Crisis Group interviews, aid workers, Colombo, November and December 2009.

<sup>21</sup> Officially, each family is being offered a \$45 cash grant, six months of dry rations, a set of kitchen utensils, cement and roofing to build a basic shelter, and a promise of a further \$400 grant for building a more permanent shelter. In practice, the delivery of this assistance has varied widely depending on location. Crisis Group interviews, humanitarian aid workers, Colombo, November-December 2009.

receive any further government support.<sup>22</sup> Tensions between those who have returned and their host families and relatives are already evident, due to overcrowding and lack of financial and other resources.<sup>23</sup>

- The resettled are and will be tightly monitored by the military, limiting their freedom of movement. All those being returned have been photographed by the military and given special ID cards only required of those who have been in the camps.<sup>24</sup> This marks them as Tamils from the Vanni and thus as potentially having LTTE connections. Reports suggest this will mean that many of those who have been returned “home” will be scared to leave the area, even if they are formally allowed to do so, for fear of being harassed or detained elsewhere (as has happened with those living in ex-LTTE areas in the Eastern Province).<sup>25</sup>
- Scores of people, mostly men, have been detained as they left the camps or once they had returned to their home districts. Their whereabouts are not known.<sup>26</sup> The government process of “screening” the displaced population for suspected LTTE members, which for months was its excuse for not letting people out of the camps, seems to be continuing even after release. In the words of one prominent NGO director, “the population of the north will be subject to endless screening”.<sup>27</sup>
- Many families have once again been separated during the process of return. This is in part because of additional screening and subsequent detention of some

as they were leaving the camps. In addition, some members of families sent to live with host families are choosing to remain in the camps in order to protect their claim to land in Kilinochchi and Mullaitivu districts, where very little resettlement has taken place.<sup>28</sup>

### C. GENDER INEQUITIES

Women have suffered in distinctive ways both in the camps and since resettlement. In late September 2009, scores of pregnant women were abruptly released from the camps and told to make their own way home without assistance.<sup>29</sup> There have been numerous credible reports of prostitution networks in the camps which function with the knowledge and involvement of Sri Lankan security forces. Many women, with no other means of financial support, have found themselves forced into selling sex for money and supplies.<sup>30</sup> The large number of female-headed households among those families being resettled raises additional protection concerns given that many are returning to isolated areas patrolled by large numbers of Sri Lankan police and military.<sup>31</sup>

There have also been regular reports from a variety of credible sources that significant numbers of women held in the camps have been raped or sexually assaulted. According to some, women have been removed from the camps with police and military assistance and then assaulted. According to others, former LTTE female fighters have been raped while held in detention centres. The women involved are reportedly too afraid to report the crimes. With levels of fear so high and with no independent monitors allowed access to the camps, it has not been possible to confirm or disprove these accusations.<sup>32</sup>

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<sup>22</sup>This seems to apply primarily to some 30,000 people who have returned to live with relatives or host families in Jaffna but who have land in Kilinochchi or Mullaitivu districts. Prior to being allowed to host a displaced person, families have had to sign a waiver agreeing to provide shelter, food and other provisions and absolving the government of responsibility for additional support. Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, November-December 2009.

<sup>23</sup>Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, November 2009.

<sup>24</sup>In some areas, families are required to register with four separate entities – local government authorities, the army, the regular police, and the Criminal Investigation Division (CID) of the police – and post photographs of themselves outside their residence. Confidential UN documents, December 2009; Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, November-December 2009.

<sup>25</sup>Crisis Group interviews, human rights advocates, Colombo, November 2009.

<sup>26</sup>Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, 2009. See also “Children among 11,000 Tamil ‘fighters’ held in rehabilitation”, *The Times*, 5 December 2009.

<sup>27</sup>Crisis Group interview, Colombo, November 2009.

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<sup>28</sup>Crisis Group interviews, aid workers and protection advocates, Colombo, November 2009. ICRC is not currently allowed to carry out its traditional work of reuniting separated families in most areas of the north.

<sup>29</sup>Crisis Group interviews, humanitarian workers, Colombo, November 2009. See Chris Kamalendran, “Dark clouds over IDP camps”, *The Sunday Times*, 4 October 2009.

<sup>30</sup>Crisis Group interviews, humanitarian workers and human rights advocates, Colombo, November 2009; confidential UN document, December 2009.

<sup>31</sup>“One worry we have”, said an NGO director working in the north, “is that only the civilians and the army are there. It’s mostly women and children. Very few able-bodied men have returned with them”. Crisis Group interview, Colombo, November 2009. These concerns were expressed by numerous aid workers Crisis Group interviewed in November and December 2009.

<sup>32</sup>Crisis Group interviews, lawyers and aid workers, Colombo, November 2009. Journalists allowed to visit the camps in late 2009 reported that inmates denied there had been any cases of sexual assault by security forces guarding the camps. See

## D. LONG-TERM MUSLIM IDPS

International advocacy should also not neglect the situation of the roughly 80,000 Muslims forcibly evicted from the Northern Province by the LTTE in 1990.<sup>33</sup> Their right to return to their lands in the north must not be forgotten amid concerns about the more recently displaced. Donors should request the Sri Lankan government to clarify their plans for the return and resettlement of Muslims displaced from the north in 1990.<sup>34</sup> Their right of return should be clearly established, while also recognising that some may not want to leave their current homes and should not be forced.<sup>35</sup> Those who do wish to return should be offered the resources necessary to do so, as well as assistance in rebuilding and developing their villages with community participation.<sup>36</sup>

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P.K. Balachandran, "Refugees deny sexual abuse", *New Indian Express*, 24 December 2009. In a 30 September 2009 speech to the United Nations, Secretary of State Hilary Clinton included Sri Lanka as a country in which rape had been used as a "weapon of war". Her comments were immediately challenged by the Sri Lankan government and on 5 October the State Department released a statement clarifying that "in the most recent phase of the conflict, from 2006 to 2009 ... we have not received reports that rape and sexual abuse were used as tools of war, as they clearly have in other conflict areas around the world". That said, there is a well-documented history of sexual abuse by security forces in earlier phases of the 30-year war with Tamil militants. See D.B.S. Jeyaraj, "Sexual violence in the past by police and security forces against Tamil women", *trancurrents.com*, 5 October 2009.

<sup>33</sup> For a useful overview of their situation, see Mirak Raheem, "The other half of the IDP problem: the old IDPs", *Daily Mirror*, 3 November 2009.

<sup>34</sup> This is a point made in "Six months on: end of the war brings no respite and little hope for Sri Lanka's minorities", *Minority Rights Group International*, November 2009. On 26 December 2009, the president announced for the first time that all displaced Muslims from the north would be returned to their properties with their houses and all necessary infrastructure rebuilt by May 2010. B. Muralidhar Reddy, "Evicted Muslims will be resettled in north: Rajapaksa", *The Hindu*, 27 December 2009.

<sup>35</sup> The same principle should apply to Tamils – for instance those Tamils from Jaffna who were displaced to the Vanni in the 1990s and prefer to resettle there, rather than be forced to return to their previous homes in Jaffna, where they may not have lived for fifteen years.

<sup>36</sup> Unlike recent Tamil IDPs, Muslims forcibly displaced in 1990 have lived in relatively safe areas (many near the western town of Puttalam) for almost two decades. Many have restarted their lives and most have secured basic housing and other facilities, even within IDP camps. If they wish to return to the north, it is to gain a more sustainable livelihood and to secure their claims to land. Most of the currently displaced Tamils, on the other hand, have been on the run for many years, living in multiple camps, often in the midst of active

Any returns by northern Muslims are likely to raise complicated property rights and political issues. A transparent and integrated process of return, in which Muslims and Tamils originating from the same areas return at the same time, is vital to reducing future conflicts. Muslims should be allowed to inspect their properties as soon as possible, prior to any new housing being built. Other mechanisms are also needed to resolve the inevitable land disputes.<sup>37</sup> Local and national politicians must be prevented from manipulating the return of Muslims to sow the seeds of new conflicts between Tamils and Muslims. Many Muslims attempting to return to Mannar district are already complaining that they are not being treated fairly by Tamil government officers who control access to government assistance and public facilities and who are seen as giving priority to Tamils more recently displaced.<sup>38</sup>

## E. UNDERSTANDING AND RESPONDING TO THE SHIFT IN GOVERNMENT POLICY

The government's decisions to release or "resettle" the majority of those in the camps can be attributed to growing international concern in September and October 2009 and to domestic political factors. Repeated visits from senior UN, U.S., British and EU officials, as well as regular public statements calling attention to problems in the camps and to the lack of freedom of movement played a crucial role in ultimately forcing the government's U-turn.<sup>39</sup> "The government reacts to pres-

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warfare. Most Tamils are eager to begin the process of establishing a more settled existence and are willing to endure the extremely difficult situations they are now returning to. The conditions that a small number of Muslims have recently returned to in Mannar district, however, where there are few toilets or wells and schools and hospitals are far away without available transport, are worse than where they had been living. Unless conditions improve few additional Muslims are likely to return voluntarily. Crisis Group email interviews, humanitarian workers and human rights activists, Colombo, December 2009.

<sup>37</sup> See Crisis Group Asia Report N°159, *Sri Lanka's Eastern Province: Land, Development, Conflict*, 15 October 2008 and "Land and Property Rights of Internally Displaced Persons", *Centre for Policy Alternatives*, February 2003.

<sup>38</sup> Others complain that the Muslim character of the villages from which they were expelled in 1990 was erased by the LTTE and they receive no government support to reclaim their lands. At the same time, widespread allegations of financial corruption by those associated with the Muslim minister in charge of resettling Muslims in the north, and the minister's close association with a government seen by many Tamils as biased against them, are adding to Muslim-Tamil tensions in the north. Crisis Group email interview, Muslim human rights activist, Colombo, December 2009.

<sup>39</sup> UN Under-Secretary-General for Political Affairs Lynn Pascoe reportedly sent a strong message in support of free-

sure. The returns prove this. These have not been an act of generosity but a response to pressure of different forms, including the government's fear of growing unrest in camps".<sup>40</sup> Domestic political considerations were also important. With presidential elections due on 26 January 2010, the government is more interested than before in convincing its own citizens – and especially Tamil voters – that its treatment of those displaced by the war is reasonable and humane. With the joint opposition candidate, Sarath Fonseka, attempting to make an issue out of the ill-treatment of displaced Tamils, the government wanted to neutralise the issue.<sup>41</sup>

The government's recent shift, while welcome, should be seen as the adoption of a new tactic for controlling the population, and the land, in the Northern Province. Given their close association with and the sympathy of many for the LTTE, Tamils from the Vanni and Jaffna are neither liked nor trusted by the government. It will likely seek to control them for some time.<sup>42</sup> With the

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dom of movement and respecting international standards when he visited Sri Lanka in September 2009. After a visit to Sri Lanka, also in September, Walter Kaelin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, stressed the "urgent need to restore the freedom of movement for the displaced". Regular visits by senior U.S. State Department officials, in particular the August visit of Assistant Secretary of State Eric Schwartz, were also important in keeping the pressure on the Sri Lankan government. British Minister for Development Mike Foster in October delivered a particularly strong public message calling for freedom of movement. The beginning of large-scale releases on 22 October came just a week after the high-profile visit to Sri Lanka by a delegation of parliamentarians from the Indian state of Tamil Nadu, a visit arranged by the Indian government in New Delhi. The announcement that the camps would be "opened" came on 19 November, at the conclusion of a visit by UN Under-Secretary-General for Humanitarian Affairs, John Holmes, his fourth visit to Sri Lanka in 2009.

<sup>40</sup> Crisis Group interview, political analyst, Colombo, November 2009.

<sup>41</sup> General Sarath Fonseka, "Request to retire from the regular force of the Sri Lanka Army", Letter to Mahinda Rajapaksa, 12 November 2009. The text of Fonseka's letter can be found at [http://transcurrents.com/tc/2009/11/sarath\\_fonseka\\_letter\\_of\\_resig.html](http://transcurrents.com/tc/2009/11/sarath_fonseka_letter_of_resig.html).

<sup>42</sup> The roughly 100,000 remaining in the camps include many of those last to come out of the fighting, whom the government considers closest to the LTTE. The UN and other aid agencies predict that between 60,000-80,000 will not be able to return to their homes in the eastern portion of the Northern Province, given the mines and unexploded ordnance and the government's desire to keep aid workers and media away from the areas where the last weeks of fighting with the LTTE took place. If the camps are shut down by the end of January 2010 as promised, it is not yet clear where these people will go. Crisis Group interviews, aid officials and human rights advocates, Colombo, November 2009.

bulk of the displaced now scattered in transit centres and isolated villages across the north, and with UN and INGO and media access highly restricted, the ability to monitor the situation of those being resettled is in some ways reduced from when most were in a few camps.<sup>43</sup> The displaced are likely to receive less international political and media attention as a result.

By deciding to resettle so many people so quickly, the Sri Lankan government succeeded in deflecting international criticism. According to one humanitarian aid official, "the focus of donors' advocacy was on the percentage returned, not on freedom of movement or protection of individual rights. Yes, we fell collectively into the government's trap here. But international pressure did work to some extent".<sup>44</sup> "The government is so clever", said one Western diplomat. "They take an extremely hard line at first and then they loosen up a little bit and everyone is then willing to support them in moves that are highly problematic, as we've seen with the recent returns process".<sup>45</sup> The muted criticism by UN and officials with donor governments of the chaotic and insufficiently monitored returns process suggests the government has largely succeeded in disarming its international critics.<sup>46</sup>

Due to restrictions on the ability of the ICRC and other protection agencies to serve those being resettled, there is little effective public advocacy for the rights of the displaced.<sup>47</sup> In their understandable effort to encourage

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<sup>43</sup> "Yes, the government can control people this way, perhaps more effectively than when they are all in one big camp. The north will likely become some mixture of the tea estates, with a captive and exploitable workforce, and lots of military control, checkpoints. It will be another form of repression". Crisis Group interview, humanitarian aid official, Colombo, November 2009.

<sup>44</sup> Crisis Group interview, humanitarian aid official, Colombo, November 2009.

<sup>45</sup> Crisis Group interview, Western diplomat, Colombo, November 2009.

<sup>46</sup> The government has succeeded in this strategy partly because many donors and UN officials gave more importance to "speedy resettlement" than the rights of the displaced to move freely and live where and as they wish. Nor had UN and donor officials been willing to condition their aid on a clear plan being in place before major returns began and on the absolute necessity of local and international NGOs being allowed to work with the UN as partners.

<sup>47</sup> Among new government criteria for allowing INGOs to work in northern Sri Lanka is the requirement that they "keep advocacy distinct from" relief, recovery and development operations. "Collaboration between Government and NGOs in North SL", Presidential Task Force for Resettlement, Development and Security in the Northern Province, November 2009. Donors should resist this requirement strongly. The UN should insist that its aid is contingent on the ability of its part-



further improvements in government policy and not have their already limited access reduced, UN and donor statements have glossed over the problems in the process of emptying the camps. The discrepancy between what UN and humanitarian agencies are saying in public and what those working with the displaced – both Sri Lankan and international – will say in private is striking. There needs to be much stronger public advocacy by donor governments and the UN on the current risks to the resettled population and the need for better protection.

## F. DETENTION, REHABILITATION AND REINTEGRATION OF SUSPECTED LTTE COMBATANTS

The military has been maintaining extra-legal detention centres for an estimated 11,000-13,000 people suspected of LTTE ties.<sup>48</sup> These detained have had no access to lawyers, their families, ICRC or any other protection agency, and it is unclear what is happening inside the centres.<sup>49</sup> In addition, “the grounds on which the ex-combatants have been identified and the legal basis on which they are detained are totally unclear and arbitrary.”<sup>50</sup>

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ner organisations to conduct the protection work that is recognised as a basic entitlement of internally displaced populations.

<sup>48</sup> Sri Lanka’s Permanent Representative to the UN Palitha Kohona has indicated that security forces had identified 12,700 suspected LTTE cadres among the IDPs, “The ‘Elders’ Statement on IDPs in Sri Lanka – Sadly outdated and Inaccurate – Dr. Kohona”, *Asian Tribune*, 5 December 2009. Those suspected of being more senior LTTE cadre have reportedly been sent to police detention centres in Colombo and the notorious Boosa prison in the Southern Province. There are widespread but unverified reports that others have been summarily executed at various points in the “screening” process. Crisis Group interviews, human rights advocates, Colombo, November 2009.

<sup>49</sup> The ICRC did have access to some of those detained when they were first separated from the mass of displaced persons leaving the battlefield in April and May 2009 and to detention facilities in Vavuniya until late July 2009. Some local Sri Lankan priests and nuns have been able to visit the camps to deliver food and basic relief items to the detainees. The World Food Programme (WFP), whose principal funder is the U.S. government, has provided food to these centres, arguing that they were simply a specific category of the displaced. The U.S. requested that none of its funds or food be provided for this purpose and the program was stopped. Crisis Group interviews, diplomats, Colombo, Washington DC, November 2009.

<sup>50</sup> Crisis Group email interview, diplomat, Colombo, December 2009. Although the detainees are referred to by the government as “surrendered”, very few surrendered. Most turned themselves over to the military at the initial reception points for those fleeing areas of combat, in response to a call for all those with any affiliation to the LTTE to identify themselves. Others were picked out of the internment camps after being

Given the well-established practice of torture, enforced disappearance and extra-judicial killing of LTTE suspects under the current and previous Sri Lankan governments, there are grounds for grave concerns about the fate of the detained.<sup>51</sup> The government has announced that of those alleged ex-combatants currently detained, only 200 will be put on the trial; most will be detained for a further period of “rehabilitation” and then released.<sup>52</sup>

A detailed Action Plan for the National Framework for the Reintegration and Rehabilitation of Ex-Combatants was adopted on 5 October and is awaiting the president’s formal approval.<sup>53</sup> It contains some procedural safeguards for the rights of those detained and tasks the attorney general with developing a framework to establish the legal basis for the detention of ex-combatants, to lay out the criteria that determine their status, to address the issue of amnesties, and to provide for judicial guarantees and procedural safeguards.<sup>54</sup> In practice, those now in detention and likely to be subject to rehabilitation are managed by a parallel process supervised by the ministry of defence, ministry of justice, commissioner general of rehabilitation, and the attorney general’s department.<sup>55</sup> The bulk of detainees continue to exist in

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denounced by military and police informants or other camp inmates.

<sup>51</sup> See Crisis Group Asia Report N°135, *Sri Lanka’s Human Rights Crisis*, 14 June 2007. At greatest risk are likely those who never got to these camps.

<sup>52</sup> Karon Snowden, “Sri Lanka to free most Tamil Tigers”, ABC radio, 9 December 2009, [www.abc.net.au/news/stories/2009/12/09/2766990.htm](http://www.abc.net.au/news/stories/2009/12/09/2766990.htm).

<sup>53</sup> The Action Plan was developed by the human rights ministry, with the cooperation of the United Nations Development Programme (UNDP), the International Labour Organization (ILO) and ICRC and aims to implement the “National framework proposal for reintegration of ex-combatants into civilian life in Sri Lanka” published in July 2009. It lays out the basic procedure for rehabilitation centres and community reintegration. The five-year plan with a \$75-million budget aims to work with 15,000 ex-combatants and 60,000 families. Crisis Group interviews, diplomats, Colombo, November 2009. See also Manjula Fernando, “Reintegration of ex-combatants before month’s end”, *Daily News*, 22 September 2009.

<sup>54</sup> The Action Plan does not apply and offers no safeguards for the most critical, and dangerous, stage when people are “screened” and some identified as eligible for the rehabilitation process while others are at grave risk of “disappearing”.

<sup>55</sup> In the words of one close observer, “there is still a great concern that there is no convergence between the different ministries involved in the DDR [disarmament, demobilisation and reintegration] process, for example the Ministry of Justice, the Human Rights Ministry, the Ministry of Defence, and the Presidential Task Force”. Crisis Group email interview, diplomat, Colombo, December 2009. Lawyers from the attorney general’s office are reportedly looking into each of the 11,000-



legal limbo, with no clear recourse to challenge their detention.<sup>56</sup>

Donors have been eager to support the rehabilitation and reintegration of ex-combatants.<sup>57</sup> To date, however, they have withheld financial assistance to build and manage new “rehabilitation” centres until there is a clear legal framework in place that guarantees detainees their rights to due process and until the ICRC or another credible international agency is permitted to access those detained and monitor the process. Donors and the UN, in their understandable desire to support an apparently worthy initiative, should not compromise on these two basic criteria and thereby legitimise the denial of basic rights and protection.<sup>58</sup>

Former LTTE child soldiers are being held in rehabilitation camps with better conditions as well as regular access by UNICEF and other groups.<sup>59</sup> Nonetheless, after his December 2009 visit to Sri Lanka, the United Nations Special Envoy of the Special Representative of the Secretary-General for Children and Armed Conflict, Gen. Patrick Cammaert, reported that “hundreds of children are still missing or separated from their parents [and] must be reunited as soon as possible”.<sup>60</sup> He also urged that children recruited by the LTTE be returned to their families as soon as possible, especially those who served with the LTTE for very brief periods. Nor

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13,000 cases to determine who can be released, who should be tried and who should be sent for rehabilitation.

<sup>56</sup> Crisis Group interviews, diplomats and human rights advocates, Colombo, July and November 2009.

<sup>57</sup> The IOM has reportedly lobbied donors for funds to build and manage the camps even prior to the establishment of a legal framework and in the absence of any monitoring role for ICRC. It has worked closely with the government in preparing plans to do so. Crisis Group interviews, diplomats and aid workers, Colombo, November 2009. USAID has recently been allocated \$10 million from the Defense Department for “community re-integration” programs in the Northern Province. USAID already provides support to an IOM-run reintegration program in the east, despite the absence of ICRC involvement or a clear legal framework for those being “reintegrated”. Unlike in the east, however, the proposed rehabilitation for suspected ex-LTTE combatants in the north would involve continued detention on an unclear legal basis.

<sup>58</sup> Donors and the UN should also insist that the confidentiality of those being rehabilitated is maintained.

<sup>59</sup> Hundreds of children are being held in two government-run “rehabilitation” centres, one of which is attached to a Tamil school south of Colombo and offers full educational facilities. Crisis Group interviews, human rights advocates, Colombo, December 2009.

<sup>60</sup> “Sri Lanka: No effort should be spared for the children affected by conflict”, press statement by the United Nations Special Envoy of the Special Representative of the Secretary-General for Children and Armed Conflict, Colombo, 11 December 2009.

has the government made any moves to address the maiming and killing of hundreds, possibly thousands of children during the last months of the war, an issue which also falls under the mandate of the UN Security Council 1612 process.<sup>61</sup> Until the Sri Lankan government takes action on these and other issues,<sup>62</sup> the Security Council Working Group on Children in Armed Conflict should resist pressure to remove Sri Lanka from its agenda.

### III. DEVELOPMENT IN THE NORTH AND EAST

The development and reconstruction of the north and east pose many risks and potential obstacles to a fair political settlement of the ethnic conflict. They need to be managed extremely carefully. The humanitarian, infrastructure and economic needs in the north and east are massive, and, as the government argues, the development of the predominantly Tamil north and multi-ethnic east is essential to lasting peace.

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<sup>61</sup> The Sri Lankan government is not known to have taken any steps to determine the number of children killed and injured, to offer them or their families compensation, or to hold anyone accountable for killings and injuries which took place as a result of military operations that did not comply with the Geneva Conventions.

<sup>62</sup> The special envoy also raised concerns about “isolated cases of new recruitments” in the east by Tamil groups linked to the government. According to UNICEF statistics, as of end October 2009 at least ten underage recruits remained with the Tamil Makkal Vidulthalai Puligal (TMVP) or the faction headed by government minister V. Muralitharan, alias Karuna. “Underage Recruitment Database”, UNICEF, Colombo, 31 October 2009. There remain scores of others still with both the Karuna faction and the TMVP who were recruited as children but have since come of age. See Crisis Group Report, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, op. cit., pp. 18-19. Nor has the government held anyone accountable for underage recruitment carried out with its full knowledge. In a reply to an EU human rights investigation, the government listed the names and locations of a remaining fourteen underage recruits held by the TMVP and the Karuna faction, and the names of the commanders in charges of the camps where they are held. No attempt has been made to arrest or prosecute these commanders. “Observations of the government of Sri Lanka in respect of the ‘report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka’”, document no. C (2009) 7999, 19 October 2009. At least four of the fourteen recruits have since been released. Crisis Group interviews, child rights advocates, London, January 2010.

Physical reconstruction and economic development alone will not bring peace.<sup>63</sup> The crucial questions, which were at the heart of Sri Lanka's conflict, are development by whom, on whose terms, and for whose benefit? Which politicians and which ethnic communities will make the development decisions, control the land and economic resources of the north and east, and benefit economically from further development?

The Rajapaksa government has consistently presented the problem in the north and east as one of underdevelopment, while denying the political and ethnic nature of the conflict.<sup>64</sup> Many donors see the reconstruction of infrastructure and rapid development of the north as an urgent humanitarian imperative, which must be undertaken prior to any democratisation or demilitarisation of the north. This unwittingly supports the government's depoliticising approach.

Under current political conditions, development assistance is likely to increase the risk of an unjust takeover by Sinhala interests of resources – land, fishing and economic opportunities – in the north and east and with it the risk of renewed violence. Unless there are major changes in government and donor policies, the development and “reconstruction” of the north, as in the east, will almost certainly be characterised by:

- ❑ **Heavy militarisation.** Military leaders currently have effective veto power over all important decisions about the treatment and resettlement of the displaced. Recently retired Sinhala generals are the governors of both Northern and Eastern Provinces. Just as in the east, pro-government Tamil political parties and armed groups will be monitoring and controlling the local population and assisting in counter-insurgency operations by the military and police.<sup>65</sup> The government is reportedly planning large new “cantonments” for the

military and their families in Kilinochchi and Mullaitivu districts.<sup>66</sup>

- ❑ **Conflict over land.** With the expected establishment of military cantonments, high security zones and special economic zones, many thousands may never be resettled.<sup>67</sup> Those who lived in the north for years either were given their land by the LTTE or bought it without government approval. With the vast majority of the land in the north formally owned by the government,<sup>68</sup> Tamils and Muslims fear that it will be redistributed to the politically connected, with Sinhalese settled with military support or through state-supported business opportunities, resulting in a slow but definitive shift in the demographics. There are growing reports of large numbers of Sinhalese moving (back) to the east.<sup>69</sup> In the absence of meaningful,

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<sup>63</sup> For a more detailed account of development and reconstruction in the east, see Crisis Group Report, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, op. cit.

<sup>64</sup> “The president believes in the neo-conservative idea that Sri Lanka doesn't suffer from an ethnic issue but from underdevelopment. Mahinda doesn't believe there's anyone he can't buy. He'll throw money at Tamils in the north and east. At least this is better than throwing bombs”. Crisis Group interview, former senior government official, Colombo, November 2009.

<sup>65</sup> “There are people in certain areas in the east, in former LTTE areas, who are effectively under military lockdown”. Crisis Group interview, senior Western diplomat, November 2009. In the north, the principal government-supported Tamil armed groups belong to the Eelam People's Democratic Party (EPDP) and the People's Liberation Organisation of Tamil Eelam (PLOTE), both also registered political parties.

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<sup>66</sup> See Ranil Wijayapala, “New Defence structure in the offing”, *Daily News*, 12 June 2009; “Colombo has plans to colonize North with Buddhist Sinhalese – Suresh Premachandran”, *Tamilnet*, 7 October 2009. Retired army commander Sarath Fonseka, along with defence secretary Gotabhaya Rajapaksa, are widely believed to have planned the establishment of “security settlements” in the north that would explicitly link military, development and ethno-demographic policies. Crisis Group interviews, diplomats and political analysts, Colombo, July and November 2009.

<sup>67</sup> Under emergency regulations issued by the government, high security zones (HSZs) throughout the country have been established around military bases and other strategic locations giving security forces the right to use and control access to land and buildings. The largest HSZs are in the Northern and Eastern Provinces. In Jaffna district, between 70,000 and 130,000 people have been forced off their land by HSZs. For a discussion of HSZs, see Crisis Group Report, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, op. cit., pp. 23-24; and “High Security Zones and the Rights to Return and Restitution in Sri Lanka: A Case Study of Trincomalee District”, Centre on Housing Rights and Evictions, April 2009.

<sup>68</sup> For an analysis of the legal and political complexities involved in the distribution and use of government land, see Crisis Group Report, *Sri Lanka's Eastern Province: Land, Development, Conflict*, op. cit., pp. 17-18.

<sup>69</sup> In a 23 October 2009 speech to parliament, Tamil National Alliance (TNA) leader R. Sampanthan reported on “widespread unlawful occupation of State land by members of the majority community” in the Trincomalee district and other parts of the Eastern Province. In certain cases, “members of the minority communities [were being evicted] from lands and houses lawfully occupied by them and to which they are legally entitled”. R. Sampanthan, “Unlawful Occupation of State Lands”, 23 October 2009, at [www.sangam.org/2009/11/Sampanthan\\_Speech.pdf](http://www.sangam.org/2009/11/Sampanthan_Speech.pdf). Tens of thousands of Sinhalese were forced to leave portions of the multi-ethnic east in the 1970s, 1980s and 1990s and some have begun to return. With virtually no possibility of independent monitoring of population move-

well-intentioned consultation with and between Tamil and Muslim political and community leaders, there is also a high risk of renewed land disputes as Muslims attempt to return to land in Jaffna, Mannar and other parts of the north they were expelled from by the LTTE in 1990.<sup>70</sup> There are also tens of thousands of Sinhalese forced out of the north, primarily Jaffna, who may wish, or be encouraged by the government, to return. This is their right, but the government and donors should first establish a transparent process.

- **Tight control over the activities of NGOs and development agencies** and restrictions on their ability to monitor resettlement, “early recovery” and development activities. Controls will likely be even tighter than in the Eastern Province. Other than a handful of organisations with government ties, few NGOs will likely be allowed to work in the north at all, or they will be extorted, monitored, harassed and limited in their movements, as they have been in the east.<sup>71</sup>
- **No decision-making role or political influence for independent Tamil and Muslim political leaders.** There is almost no space at all for democratic politics in the north and marginal space in the east. There are no effective representative institutions in the north and only very weak ones in the east: local governments have no powers over development issues; the Eastern Provincial Council has been deprived of its constitutional powers and its northern counterpart is not yet established. The government has made no attempt at serious consultation with affected communities.

The government sees the “reconstruction” of the north as a matter of creating a *new* north, one that it controls very tightly and that serves its political and security purposes. Local Tamils – and returning Muslims – will perhaps eventually experience improved material conditions, but they will have little political or economic power. There is no sign yet of any serious attempt at “affirmative action” arrangements for local Tamil and Muslim businesses.

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ments in the east, it is impossible to know how many Sinhalese are returning and of these how many are new settlers.

<sup>70</sup> See Section II.D above.

<sup>71</sup> According to one aid worker and human rights activist who works throughout the north and east, “In the north, the government is systematically cutting off the tentacles of the NGO information network by attacking local organisations with connections to INGOs or to EU or U.S. support. Local NGOs soon won’t have funds and in the end, there will be no civil society. Once the government knows what you are up to, the divisional secretary or the presidential task force will refuse permission to work in a district, then the donors won’t fund you and the organisation will die”. Crisis Group interview, Colombo, November 2009.

In this context, it is hard to see how development can avoid being ethnically biased, with unequal distribution of resources and economic opportunities and the risk of economic colonisation of the north and east by Sinhala and foreign firms with government connections. “What worries me”, says one prominent Tamil intellectual, “is the majoritarian [pro-Sinhala] attitude of development advocates. They are not blatantly chauvinist or militarist, but they advocate controlling economic decisions from Colombo, with virtually no Tamil voices in the discussions. This will create a lot of bitterness among Tamils in coming years. Land will be given and controlled by the central state”.<sup>72</sup> The elected, Tamil, chief minister of the Eastern Province and other Tamil and Muslim leaders in the east have complained about their lack of involvement in or control over the distribution of land for tourist developments along the east coast.<sup>73</sup> With even weaker civil society and political institutions, the situation is likely to be worse in the north.<sup>74</sup>

Donor agencies need to think seriously about how to respect their own professed principle of “do no harm”, and how to work responsibly in such a context. “Conflict sensitive” development will at the very least require consultation with and involvement of all the stakeholders – the displaced being resettled, local government officials, and Tamil and Muslim political leaders, including those in the opposition – and guarantees of equitable distribution of benefits and respect for basic rights of the local residents. To date, these issues have barely registered on the international, much less the domestic, political agenda.<sup>75</sup>

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<sup>72</sup> Crisis Group interview, Colombo, July 2009.

<sup>73</sup> See Chris Kamalendran, “Pillayan withholds support for President”, *The Sunday Times*, 29 November 2009 and “Pillayan’s double cross: the story behind the story”, *The Sunday Times*, 6 December 2009.

<sup>74</sup> “Things are fairly fluid in the east, more calm than before, but still with a very high degree of military control. Things remain very tense between Pillayan and Karuna”. Crisis Group interview, senior Western diplomat, Colombo, November 2009. December 2009 saw violent clashes in the east between supporters of ex-LTTE leader and now government minister, Karuna, and his former deputy and now eastern chief minister, Pillayan. “Thirukkivil clash instigated by Pillayan supporters: Karuna”, *Daily Mirror*, 18 December 2009. For more on their rivalry, see Crisis Group Report, *Sri Lanka’s Eastern Province: Land, Development, Conflict*, op. cit., pp. 14-17.

<sup>75</sup> The existing conflict sensitive policies of the World Bank and Asian Development Bank operate at project rather than the program level. They are thus unable to affect the larger political dynamics that constrain opportunities at the local level. For more on donor conflict sensitive policies in Sri Lanka, see Crisis Group Report, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, op. cit., pp. 7-11.

Despite the government's current militarised, undemocratic and non-consultative approach, the World Bank and Asian Development Bank have ambitious plans for increased assistance to the north and east.<sup>76</sup> These should be put on hold and donors should refuse to fund any further non-emergency or development work in the north until the government has developed a clear plan, based on widespread consultation and accepted by legitimate elected and community leaders from all three communities.<sup>77</sup>

Bilateral donors, including India and Japan, together with UN agencies, the World Bank, the Asian Development Bank and the International Monetary Fund should work together to develop a framework of principles for development assistance which the government would be required to adopt in order to receive additional support.<sup>78</sup> The framework should insist on demilitarisation and the restoration of basic democratic and liberal rights throughout the north and east, inclusive consultation and decision-making in all major development activities, and monitoring procedures to ensure that international aid does not fund unfair and potentially unstable political arrangements. Contributing states should oppose further

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<sup>76</sup> The World Bank recently approved an additional \$182 million for projects in Sri Lanka, \$110 million of which is for the north and east. Approval by the board of directors had been conditional on the government returning a substantial number of people to their places of origin. "World Bank lends 182 million to Sri Lanka refugees", AFP, 18 December 2009. Another \$125 million of World Bank projects in the north and east are planned. The ADB supports projects in the north and east of about \$100 million per year, roughly a third of their annual support to Sri Lanka. Crisis Group email interviews, diplomats and aid officials, Colombo, December 2009.

<sup>77</sup> One proposal would be for international donors to "insist on meeting publicly with Tamil representatives whenever they go to Sri Lanka and insist that anything they fund in the north and east is first approved by legitimate Tamil and Muslim political representatives. Establishing such a forum of Tamil and Muslim political representatives would help empower moderates among the Tamil public who are otherwise being radicalised". Crisis Group interview, Sri Lanka humanitarian aid worker, Washington DC, October 2009.

<sup>78</sup> Donors are reluctant to place conditions on their aid in part because of the large amounts of money being invested by China in development projects across Sri Lanka, and fear they will lose political and economic influence if aid is withheld. According to one estimate, the value of China's projects currently underway or recently completed in Sri Lanka totals \$6.1 billion. "Dragon's share of Lankan development projects given to China", *The Sunday Times*, 6 December 2009. India has provided over \$100 million in assistance for the displaced and their resettlement and has expressed willingness to contribute another \$100 million. "India offers more aid to Lanka for IDPs", *Asian Tribune*, 18 October 2009. In December 2009 it extended a \$425-million line of credit for northern rail projects.. Japan continues to be one of Sri Lanka's most generous donors with hundreds of millions of dollars in aid each year.

disbursements of IMF loans until the government makes concrete progress in establishing the conditions for inclusive, conflict sensitive development.<sup>79</sup>

#### **IV. A POLITICAL SOLUTION? ELECTIONS, GOVERNANCE AND MINORITY RIGHTS**

##### **A. THE POST-WAR POLITICAL LANDSCAPE**

###### **1. Reconciliation and political reforms on hold**

The Rajapaksa government has shown no interest so far in constitutional or other reforms to address the ethnic tensions that gave rise to – and were deepened by – nearly 30 years of civil war. It has launched no major political initiatives to bridge the gaps between Tamils, Sinhalese and Muslims and pave the way for lasting reconciliation.

The president's public comments since the end of the war suggest little recognition that there is a serious problem of ethnic justice or power sharing that needs to be solved.<sup>80</sup> Rajapaksa's 19 May 2009 speech announcing the victory over the LTTE and proclaiming the end of the war stated that "all the people of this country should live in safety without fear and suspicion, all should live with equal rights", while including the following extraordinary passage:

We have removed the word minorities from our vocabulary three years ago. No longer are the Tamils, Muslims, Burghers, Malays and any others minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.<sup>81</sup>

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<sup>79</sup> For a detailed list of conditions that should be established in the north and east prior to the provision of new international loans and development assistance, see Crisis Group Report, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, op. cit., pp. ii – iv.

<sup>80</sup> According to one well-known Sinhala civil society leader, "the Rajapaksa brothers believe that in practice Sri Lanka belongs to the Sinhalese; others are welcome but they have their own place and need to keep to it. They all agree that there is no ethnic issue here. Economic development can fix things. This is Basil's mantra. He's partly right, but economic development would not be enough to really solve the problems". Crisis Group interview, NGO director, Colombo, November 2009.

<sup>81</sup> President Mahinda Rajapaksa, "Address at the ceremonial opening of parliament, Sri Jayawardhanapura-Kotte," 19 May 2009, available at [www.president.gov.lk/speech\\_New.asp?Id=74](http://www.president.gov.lk/speech_New.asp?Id=74).

While some Sinhala commentators praised these lines as evidence of the president's commitment to an ethnically egalitarian Sri Lanka, many others, especially Tamils and Muslims, view the claim that there are "no minorities" as ominous, especially when basic rights are under assault.<sup>82</sup>

To date, "the government has been extraordinarily successful at taking devolution [of power] off the political agenda".<sup>83</sup> The APRC, established by the president in mid-2006 to develop a package of constitutional reforms, finally handed over a summary of its consensus positions to the president in August 2009. The APRC chair and minister of science and technology Tissa Vitharana argues that the draft contains important constitutional changes.<sup>84</sup> That consensus was eventually reached among the various government parties on the APRC is encouraging, but huge hurdles remain: none of the three major opposition parties – the United National Party (UNP), Janatha Vimukthi Peramnuwa (JVP) and TNA – was included in the APRC and the strongly Sinhala nationalist Jathika Hela Urumaya (National Sinhala Heritage, JHU), a constituent member of the government, opposes all forms of devolution and power sharing. The president has made no public comment on the future of the APRC proposals since they were presented to him. Nor did he respond to the UNP's offer of assistance in seeing constitutional reforms through parliament.

The government has done nothing to strengthen the powers of the existing provincial councils and fulfil its longstanding promise to implement the existing Thirteenth Amendment, which would provide some autonomy to the regions. The Eastern Provincial Council remains paralysed. The Tamil and Muslim majority on the council, elected as part of a pro-government coalition, has made no secret of its anger at the regular interference in their work by the Eastern Province governor – appointed and supported by the president.<sup>85</sup>

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<sup>82</sup> As the leader of the Sri Lanka Muslim Congress (SLMC), Rauff Hakeem, argued, if the president had wanted to reassure minorities it would have been much better to say there is no longer any majority community in Sri Lanka. Crisis Group interview, London, September 2009.

<sup>83</sup> Crisis Group interview, retired senior government official, Colombo, November 2009.

<sup>84</sup> Sandun A. Jayasekera, "Political solution only after polls," *Daily Mirror*, 5 October 2009. In the words of one Western ambassador, "Tissa Vitharana is the only man in the world who still believes his process can lead to something. Even the TNA, when they meet the government, doesn't talk about devolution any more, nor do Indian delegations". Crisis Group interview, Colombo, November 2009.

<sup>85</sup> "Eastern Governor may be impeached by Provincial Council," *transcurrents.com*, 6 January 2009. Plans to file suit against the

Some diplomats and political analysts believe Rajapaksa could still propose constitutional changes should he be re-elected and have a favourable majority in parliament. When addressing Indian and other international audiences in the first few months after the war, he made vague promises of constitutional reform that would go beyond the Thirteenth Amendment, without any sense of urgency. In a July 2009 interview, the president expressed his preference for a new second chamber of parliament that would give provinces representation at the centre and promised that provincial powers would be constitutionally protected against changes by majorities at the centre.<sup>86</sup>

Yet he also made clear the limits of any possible constitutional changes: "No way for federalism in this country. For reconciliation to happen, there must be a mix [of ethnicities]".<sup>87</sup> The state will remain unitary, and provinces will not be defined by or given powers based on their ethnic make-up: "In this country, you can't give separate areas on an ethnic basis, you can't have this. With the provinces, certainly there must be powers, where local matters can be handled by them".<sup>88</sup> While arguing that constitutional changes require a new mandate from the people, Rajapaksa has nevertheless said little to Sri Lankan audiences about the need for devolution or major constitutional changes and done even less to generate public support for them.<sup>89</sup>

Instead of developing political institutions that give meaningful roles to minority leaders and empower the communities they represent, the government has been moving in the opposite direction. Many analysts believe

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governor were blocked after pressure from the president. Crisis Group email interviews, lawyer, Colombo, January 2010.

<sup>86</sup> "Yes, I want to get representatives from the Provinces involved in national policy-making. And if there is anything against a Provincial Council, they can protect their powers constitutionally. I have an arrangement in mind – this is what we call 'home-grown solutions' – but the idea needs to be discussed and the details settled. I don't want to impose any arrangement". "I want to re-settle these people as soon as possible: Rajapaksa", *The Hindu*, 6 July 2009.

<sup>87</sup> *Ibid.*

<sup>88</sup> Jyoti Thottam, "The man who tamed the Tamil Tigers", *Time*, 13 July 2009.

<sup>89</sup> "I want to re-settle these people as soon as possible: Rajapaksa", *The Hindu*, op. cit. Commenting on the prospect of Rajapaksa pushing for constitutional changes if re-elected, one Sri Lankan political analyst said, "At the end of the day, Mahinda wants to have a legacy, and the way to do that in Sri Lanka is to change the constitution. But the content of the changes are less important to him than the fact of having a legacy. And which changes are made will depend on the particular configuration of political forces and deals that can be made at that particular moment, not on a considered and principled process of constitution making". Crisis Group interview, Colombo, November 2009.

the government aims to reorient Sri Lankan politics along the lines of Malaysia's "bumiputra" model.<sup>90</sup> This would feature a ruling national party controlled by the majority Sinhalese while incorporating ethnic politicians and granting them patronage to distribute to their ethnic constituencies, with some limited regional power but no independent political power at the centre.

Analysts point to the government's electoral reforms law presented to parliament in August 2009, which would ban any political party "if its name signifies any religious, community or ethnic group".<sup>91</sup> A suit filed by opposition parties was heard by the Supreme Court, which ruled in September that this and other clauses of the terms of the law were unconstitutional and prevented it from going into force.<sup>92</sup> Even without the law, the government has worked hard to undermine the autonomy and independent character of Tamil and Muslim parties. Former LTTE commander, V. Muralitharan, better known as Karuna, was pressured to leave the party he had founded, the Tamil Makkal Viduthalai Puligal (TMVP), and join the ruling Sri Lanka Freedom Party (SLFP).<sup>93</sup> Similarly, the pro-government Eelam People's Democratic Party (EPDP) was forced to contest the August 2009 Jaffna and Vavuniya municipal elections as part of the president's United People's Freedom Alliance (UPFA), after first being pressured to disband and integrate into the SLFP.<sup>94</sup>

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<sup>90</sup> "The government's goal is Malaysia," said one senior aid official, "where the majority has stamped its identity on the state, but there is a bi-cameral legislature, with states and pseudo-federalism and strong security controls". Crisis Group interview, Colombo, November 2009. According to one former government official and political analyst, "Mahinda wants to move Sri Lanka towards Mahathir's Malaysia, favouring the 'bumiputra' but with minorities otherwise being made comfortable, with a grand alliance under one party, led by a paternalistic leader". Crisis Group interview, retired senior government official, Colombo, July 2009. For more on the Malaysian model, see Khoo Boo Teik, "Ethnic Structure, Inequality and Governance in the Public Sector: Malaysian Experiences", United Nations Research Institute for Social Development, Democracy, Governance and Human Rights Programme Paper 20, December 2005; and Ian Buruma, "Eastern Promises: Anwar Ibrahim, Islam, and Malaysian democracy", *The New Yorker*, May 2009.

<sup>91</sup> Nanda Wickremasinghe, "Sri Lankan government to impose onerous restrictions on political parties", *transcurrents.com*, 29 August 2009.

<sup>92</sup> Gihan de Chickera and Kelum Bandara, "SC says some clauses unconstitutional", *Daily Mirror*, 9 September 2009.

<sup>93</sup> On 9 March 2009, Karuna joined the SLFP and was named the minister of national integration and reconciliation.

<sup>94</sup> The results of the August 2009 municipal council elections in the overwhelmingly Tamil towns of Jaffna and Vavuniya, suggest the government's strategy of curbing the autonomy even of pro-government Tamil parties may not yield electoral benefits. Despite benefiting from illegal use of state resources,

The TMVP, now led by Eastern Province Chief Minister Sivanesanathurai Chandrakanthan, or Pillayan, is unhappy enough with the limited power granted by the central government to be contemplating not supporting President Rajapaksa's re-election bid.<sup>95</sup>

## 2. Tamil politics after the LTTE's defeat

Following their crushing military defeat, there has been no sign of renewed LTTE militancy. The killing of virtually the entire political and military leadership, combined with the August 2009 arrest of the LTTE's international leader, and would-be successor to Prabhakaran, S. Pathmanathan, or K.P., has crippled the organisation.<sup>96</sup> The Sri Lankan military continues to discover large amounts of stockpiled weapons and explosives throughout the Northern Province, but the Tigers appear to have lost the command and control capabilities necessary for terrorist operations. The reported emergence in late 2009 of a previously unknown Tamil militant group, the People's Liberation Army, appears as likely to be the work of the Sri Lankan government as a genuine guerrilla organisation.<sup>97</sup> With the military maintaining very tight control over the north and the east, it is

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control of the media, physical intimidation of opposition candidates and restrictions on their ability to campaign, pro-government parties did much less well than expected. In Jaffna the UPFA won thirteen seats with just over 50 per cent while the TNA received nearly 40 per cent of the vote and gained eight seats. In Vavuniya, the UPFA won on two seats with just a quarter of the vote, while the TNA won five seats with a third of the vote. Full results available at [www.slections.gov.lk/](http://www.slections.gov.lk/). See Acharya, "Analysis of how Jaffna voted and why the EPDP feels defeated in Sri Lanka's first post-war elections", *Groundviews* ([www.groundviews.org](http://www.groundviews.org)), 10 August 2009.

<sup>95</sup> Easwaran Rutnam, "UNP invites TMVP for 'secret' talks to garner support", *Daily Mirror*, 2 January 2010. TMVP leader Pillayan was quoted as saying that "we want to leave the choice of choosing the best candidate to vote in the hands of Tamil voters". See Chris Kamalendran, "TMVP sways, keeps options open again", 13 December 2009.

<sup>96</sup> D.B.S. Jeyaraj, "'Operation KP': Extraordinary rendition of New Tiger Chief", 7 August 2009, available at, <http://dbsjeyaraj.com>. Despite the LTTE being militarily defeated, the organisation continues to maintain a shadowy presence overseas with bank accounts and front organisations that continue to function. A forthcoming Crisis Group report will analyse the current state of the LTTE and the role of the Tamil diaspora in post-war Sri Lanka.

<sup>97</sup> Crisis Group email interviews, political analysts, Colombo, December 2009. Anthony Loyd, "New Tamil group People's Liberation Army vows to start a fresh war", *The Times*, 7 December 2009. See also "Government aware of PLA presence in the East: Minister", *Daily Mirror*, 7 December 2009 and "Opposition calls for military operation against PLA", *Daily Mirror*, 9 December 2009.

unlikely that any successor to the Tigers will emerge in the near term.

The disappearance of the LTTE as the controlling force in Tamil politics has been one of the few positive developments in Sri Lanka's post-war political landscape. In principle, it should make it easier for minority political parties to develop their own independent, and more moderate, political positions. Said one senior Tamil parliamentarian, "the absence of the LTTE opens up more space for other political players on the Tamil side. The LTTE's presence and views on its own status in the Tamil polity wasn't conducive to pluralist politics. The space now has widened".<sup>98</sup> The November meeting in Zurich, Switzerland, between Tamil, Muslim and Up-country Tamil politicians was a positive development.<sup>99</sup> Unfortunately, the government has shown little interest in allowing a stronger Tamil or collective minority political grouping to emerge.<sup>100</sup> So long as Tamil and Muslim parties remain politically weak and divided, and in the absence of the LTTE's military pressure, the government has felt little domestic political pressure to consider devolution or other forms of power sharing and has no obvious partner to negotiate with.<sup>101</sup>

The continued calls for a separate state from the Tamil diaspora further add to the political challenges faced by

Tamil-speaking parties.<sup>102</sup> "The fact that the TNA and the SLMC and others can talk now is a sign of improvement and an effect of the LTTE's absence. It gives the TNA more manoeuvrability. But still they are between a rock and a hard place: between the diaspora and the government.... Many in the TNA are apprehensive about the diaspora putting up obstacles to negotiating something here. Going back to Vadukoddai Resolution makes the TNA's job impossible. A united Sri Lanka is a given for any reasonable settlement.... But at the same time, the TNA will find it difficult to accept even the Thirteenth Amendment".<sup>103</sup>

Even without negotiating constitutional changes to devolve power to the regions or otherwise guarantee Tamils and Muslims an equitable share in power, the Sri Lankan government could take other steps to regain the trust of minorities. Major pillars of a reconciliation program, elements of which have been proposed by the TNA, could include:

- ❑ withdrawing the state of emergency and all emergency regulations, repealing the Prevention of Terrorism Act (PTA), and releasing those detained under both measures against whom no evidence existence for prosecution;
- ❑ establishing a consultative and civilian-led process for resettling the displaced and handling the control of and disputes over land, including the phased elimination of all high security zones in the north and east; and
- ❑ fully accounting for all those missing and killed throughout the war, with a special focus on the last year of fighting, with the assistance of an independent body, such as the ICRC, to verify the accuracy of the count.

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<sup>98</sup> Crisis Group interview, Colombo, July 2009.

<sup>99</sup> See "Tamil Parties Meeting in Zurich Recognize Need for Unity and Consensus for Durable Solution", at [http://transcurents.com/tc/2009/11/tamil\\_parties\\_meeting\\_in\\_zurich.html](http://transcurents.com/tc/2009/11/tamil_parties_meeting_in_zurich.html).

<sup>100</sup> "The government is unsure whether to continue divide and rule or let the Tamil polity develop and then make a deal. Most signs suggest they will continue with their previous approach". Crisis Group interview, Western ambassador, Colombo, November 2009.

<sup>101</sup> Before the end of the war, donors and others concerned with a lasting solution took it for granted that there were two sides and two competing nationalisms that had to be accommodated and respected. For all their faults and resistance to a negotiated settlement, the LTTE kept power sharing on the table, even as the Tigers blocked any possibility of agreement through their intransigent attachment to separatism, their murder of moderate Tamils, and their terrorist attacks in the south. With the defeat of the LTTE, the equation and balance of power has shifted fundamentally. Already donors and international institutions are adjusting to the new unipolar political scene and doing little to strengthen the hand of Tamil and Muslim communities in dealing with the government. "People no longer see this government as one of the parties to the conflict", said one senior aid official. "This is perhaps the central problem. The government is now seen by donors merely as a state partner they want to work with and not as one of the protagonists in the conflict". Crisis Group interview, Colombo, November 2009.

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<sup>102</sup> In the wake of LTTE's May 2009 military defeat, pro-Tiger elements in the Tamil diaspora have created several new organisations – chief among them the Global Tamil Forum (GTF) and the Provisional Transnational Government of Tamil Eelam – designed to carry forward the struggle for a separate Tamil state through non-violent means. Many analysts are sceptical about the ability of these organisations to achieve this goal. "For the Tamil diaspora group to try to pursue the politics of the LTTE without the LTTE is politically naive and politically unviable ... The Kurds in Iraq, with U.S. protection, have less autonomy than what the TNA are still demanding today, without LTTE power". Crisis Group interview, retired senior government official, Colombo, July 2009.

<sup>103</sup> Crisis Group interview, senior Western diplomat, Colombo, November 2009. In the words of another senior Western diplomat, "The best you can hope for is to neutralise the effect of the diaspora, because it has been such a negative factor for so long". Crisis Group interview, Colombo, November 2009.



## B. ELECTION FEVER

Since the war ended, President Rajapaksa's primary interest has been to consolidate his power. His widely expected decision to call a presidential election for 26 January 2010 after completing only four of his six years in office was viewed as an effort to translate his post-war popularity into a landslide victory against a weak opposition.<sup>104</sup> By the time Rajapaksa could legally call for elections in late November, however, his luck had begun to turn. Facing growing discontent with abuses of power and increasing allegations of corruption, including against members of the Rajapaksa family, spiralling crime and a lawless police force, the high cost of living and lack of jobs – the cumulative toll on the president's standing has been significant.<sup>105</sup>

Rajapaksa's decision two months after the war to sideline the ambitious army commander General Sarath Fonseka by naming him as chief of defence staff backfired.<sup>106</sup> An opposition previously in disarray has seized the discontented and popular Gen. Fonseka as their standard-bearer and possible route to power. Fonseka's 29 November announcement that he will challenge Rajapaksa for the presidency and Fonseka's backing by a diverse range of political parties, led by the leftist-nationalist JVP and their bitter rivals the conservative-internationalist UNP, has set up an election many are predicting will be very close.

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<sup>104</sup> Some supporters were even hoping to achieve an unprecedented two-thirds majority in parliamentary elections, which must be called by April 2010. The government could then enact constitutional changes without opposition cooperation.

<sup>105</sup> For analyses of Rajapaksa's weakened position, see "The rise and fall of a 'king'", *The Sunday Leader*, 14 November 2009, and Victor Ivan, "The future of President Mahinda Rajapaksa", *The Sunday Leader*, 22 November 2009. "Things have turned out to be much more complicated than the Rajapaksas thought they would be. This is often the case after successful wars. They thought it would all go smoothly post-victory. The economy would pick up immediately, the development money would pour in, they would have easy victories in the presidential and parliamentary elections. But things haven't turned out as they planned. Strikes, Fonseka, lots of grumbling about prices, which are still very high, international criticism of the treatment of IDPs". Crisis Group interview, senior Western diplomat, Colombo, November 2009.

<sup>106</sup> Fonseka was appointed chief of defence staff on 12 July 2009. President Rajapaksa and his brothers were reportedly worried about the military gaining too much power under Fonseka's continued leadership. See Roel Raymond, "Sri Lanka says Fonseka not removed on 'external' influence", *Daily Mirror*, 15 December 2009, and D.B.S. Jeyaraj, "Rajapakse [sic] regime and the Fonseka phenomenon: Genesis of current crisis", *dbsjeyaraj.com*, 14 November 2009.

Both Rajapaksa and Fonseka are known as strong Sinhala nationalists. Fonseka worried minorities and rights advocates when he was quoted in July 2008 as saying:

I strongly believe that this country belongs to the Sinhalese but there are minority communities and we treat them like our people. We being the majority of the country, 75 per cent, we will never give in and we have the right to protect this country.... They can live in this country with us. But they must not try to, under the pretext of being a minority, demand undue things.<sup>107</sup>

With Fonseka and Rajapaksa likely to split the Sinhala nationalist vote, many have argued that Tamil and Muslim votes could be decisive. The desire to appear more reasonable to Tamil voters seems to have been one of the motives behind the government's decision to shift most people out of the camps. Tamil voters dislike both candidates, however, and have strong grounds to doubt that either will have their interests at heart after the election. Very few Tamils are likely to vote for Rajapaksa, and despite the historical tendency of Tamils to favour the UNP, it would seem difficult for most Tamils to back Fonseka given his well-known ideology and role directing a war that killed and maimed so many Tamil civilians. In the words of one former senior government official, "If you were a Tamil, how could you vote for either candidate? Lots of Tamil nationalist voters will likely not vote at all".<sup>108</sup>

This could change in the wake of Fonseka's 4 January 2010 agreement with the TNA on a ten-point program of "relief measures for war-affected persons and areas" and the TNA's subsequent decision to endorse his candidacy.<sup>109</sup> The agreement commits Fonseka to speed the return of the displaced and the rebuilding of war-damaged infrastructure, lift the state of emergency, release most of those in detention under anti-terrorism laws, disarm Tamil paramilitary groups, dismantle high security zones, reduce the role of the military in the administration in the north and east and adopt a series of measures designed to protect against illegal seizure of land and properties in the north and east.<sup>110</sup> The TNA's decision to endorse Fonseka reflects the strong desire among Tamil political and community leaders not to make the same mistake they did in 2005 when, under pressure

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<sup>107</sup> Stewart Bell, "Inside Sri Lanka: a life given over to war", *National Post*, 23 September 2009.

<sup>108</sup> Crisis Group interview, Colombo, November 2009.

<sup>109</sup> "Sampanthan: Majority of TNA MPs back Fonseka", *Tamilnet*, 6 January 2010.

<sup>110</sup> The full text of Fonseka's TNA-inspired program can be found at [http://transcurrents.com/tc/2010/01/programme\\_of\\_immediate\\_relief.html#more](http://transcurrents.com/tc/2010/01/programme_of_immediate_relief.html#more).

from the LTTE, most Tamils in the north and east boycotted the vote and helped Rajapaksa with election.<sup>111</sup>

Even with the TNA endorsing Fonseka, devolution or other forms of power sharing between ethnic communities are unlikely to be seriously debated during the election. While Fonseka has made occasional statements endorsing a political solution to the ethnic issue, he is unlikely to campaign for one actively, given his need to appeal to his Sinhala nationalist base.<sup>112</sup> Devolution or power-sharing proposals are not central to the platform of the UNP-led United National Front alliance and are vehemently opposed by the JVP, whose active support Fonseka is relying on. The government, on the other hand, has already made clear its lack of enthusiasm for devolution. There is little chance that either candidate will seek, much less gain, an electoral mandate for such changes. The chances of the winning candidate gaining the two-thirds majority in parliament necessary to pass any constitutional changes are equally slim.<sup>113</sup>

Most political observers predict Rajapaksa will win, yet the contest will be close and appears to be getting closer. Already there have been numerous violent attacks, mostly on opposition offices and supporters, and many fear January's presidential elections, and the parliamentary vote that must follow by May 2010, could be especially violent.<sup>114</sup> In the words of one aid official, "If it's close, the election will be very dirty and violent. There's no

way this government will allow Fonseka to win. This is simply not permissible from their point of view. They won't leave any stones unturned to prevent Fonseka from getting elected".<sup>115</sup> Recent provincial council elections were marred by violent attacks on candidates, intimidation of opposition campaigners, large-scale misuse of state resources by government candidates, and other irregularities.<sup>116</sup> Similar abuses have been documented over the first few weeks of the presidential campaign and there are reasons to fear for the integrity of the 26 January vote.<sup>117</sup> Many also fear the government could tamper with the votes of the roughly 200,000 voters from the Vanni still in camps for the displaced or recently returned to their home districts but living under effective military control. Few of those of voting age have been able to register, and many, if not most, might not be able to vote.<sup>118</sup> The TNA's endorsement of Fonseka makes such fears even more realistic.

### C. AUTHORITARIANISM AND THE COLLAPSE OF THE RULE OF LAW

Elections will take place in a context where state officials and those working for them can violate the law with impunity and where the rule of law has largely collapsed. The Rajapaksa regime – in which the president's brothers Basil, his special adviser and de facto prime minister, and Gotabhaya, the defence secretary, play central roles – has shown it is willing to use extra-legal means to crush public dissent and weaken its political opposition. They have relied on emergency laws, popular fears of terrorism, and latent anti-Tamil sentiments to maintain their power and have continued to do so after the military victory.

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<sup>111</sup> Not all in the TNA are happy with the decision to back Fonseka, however, and some TNA parliamentarians could well leave the party in protest. The December decision by one TNA parliamentarian, S. K. Sivajilingam, to contest as an independent Tamil candidate is widely seen as benefiting – and possibly supported by – President Rajapaksa and could be the first step in the fracturing and recomposition of the TNA. Kelum Bandara, "TNA in Disarray", *Daily Mirror*, 26 December 2009.

<sup>112</sup> Fonseka's manifesto, released on 7 January 2010, does not mention any constitutional changes or political reforms to address the concerns of ethnic minorities. Fonseka had earlier taken an ambiguous position on the Thirteenth Amendment, which established provincial councils and granted them powers that have still not been implemented in practice. "I will not be able to speak of a solution right away. There will be consultations among the political parties in the opposition fold. I'm for 13-plus because we need to move beyond the Indo-Lanka accord (1987) ... the best solution would be the one which is acceptable to all communities". Satarupa Bhattacharjya, "He said the army's too strong, Sri Lanka will become like Myanmar", *Outlook India*, 14 December 2009.

<sup>113</sup> No party or coalition has ever gained a two-thirds majority since the enactment of the 1978 constitution which established proportional representation.

<sup>114</sup> "Presidential Election 2010: Media Communiqué No. 1", Centre for Monitoring Election Violence (CMEV), 2 January 2009, at <http://cmev.wordpress.com>.

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<sup>115</sup> Crisis Group interview, foreign government official, Colombo, November 2009.

<sup>116</sup> See for example "PAFFREL Election Day Report Provincial Council Elections for Western Province", People's Action for Free and Fair Elections (PAFFREL), 25 April 2009, available at [www.paffrel.lk](http://www.paffrel.lk). The election commissioner has made some encouraging moves to curb the government's illegal use of state media and other state resources, but in the past was unable or unwilling to prevent or punish abuses by government politicians. The elections commissioner has invited foreign election observers for the presidential election. Their presence could help deter some of the worst abuses.

<sup>117</sup> For a detailed analysis of the systematic abuse of state resources by the government during the current campaign, see "Report – 01", Programme for the Protection of Public Resources, Transparency International Sri Lanka, 31 December 2009, at [tisrilanka.org](http://tisrilanka.org).

<sup>118</sup> See "Presidential Elections – 2010 Field Visit Report", CMEV, 30th December 2009; and "Sri Lanka refugees may lose voting rights – monitors", Reuters, 21 December 2009. The government has dismissed such concerns. See "All IDPs eligible to vote", *The Sunday Observer*, 3 January 2010.

The human rights situation has slightly improved since the end of the war, with very few reports of extrajudicial killings, abductions and enforced disappearances received in the final months of 2009. Nonetheless, the structures that enable violations and impunity – chiefly the anti-terrorism regulations promulgated under the state of emergency and the Prevention of Terrorism Act – remain in place. Despite strong domestic and international pressure to repeal these measures and reestablish the rule of law, there is little sign the Rajapaksa government is interested in changing course. Sri Lanka continues to suffer from:<sup>119</sup>

- ❑ **Physical attacks and death threats against journalists**, as well as political and financial attempts to control the media, have continued after the war ended.<sup>120</sup> Many in Sri Lanka were shocked by the use of anti-terrorism laws to convict Tamil journalist J.S. Tissainayagam in August 2009 for writing articles that allegedly supported terrorism and aimed to incite acts of “racial or communal disharmony with clear intentions of causing disrepute to the government”. The conviction has been criticised domestically and internationally.<sup>121</sup> Tissainayagam is reportedly due to be released on bail as he awaits his appeal.<sup>122</sup>

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<sup>119</sup>For a comprehensive catalogue of abuses, see “Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka”, Commission of the European Communities, 19 October 2009, available at <http://trade.ec.europa.eu/doclib/html/145152.htm>.

<sup>120</sup>These have included threats against the lives of *The Sunday Leader* editors Frederica Jansz and Munza Mushtaq and journalist Senaka Ekanayake. Basil Fernando, “Another journalist complains of death threats”, UPI, 23 October 2009. Numerous journalists of all ethnicities have been forced into exile. D.B.S Jeyaraj, “Senior journalist-activist Poddala Jayantha, wife & only daughter flee Sri Lanka”, [transcurrents.com](http://transcurrents.com), 4 December 2009. Over 50 Sri Lankan journalists have been forced into exile over the past few years. See also the monthly bulletins by Journalists for Democracy in Sri Lanka at [www.jdsrilanka.blogspot.com](http://www.jdsrilanka.blogspot.com).

<sup>121</sup>In response, the government claimed that Tissainayagam was not convicted for the content of his writings but because he received money from the LTTE. In fact, this was not one of the charges against Tissainayagam and no evidence to this effect was presented at trial, only that Tissainayagam had received funds from unknown sources. Crisis Group email interview, human rights lawyers, Colombo, October 2009. See Premila Canagaratna, “Ambassador Aryasinha misleads EU on Tissainayagam, LTTE and Al-Qaeda”, [transcurrents.com](http://transcurrents.com), 11 October 2009.

<sup>122</sup>“Sri Lankan editor JS Tissainayagam gets bail”, BBC News, 11 January 2010. In response to international appeals to pardon Tissainayagam, President Rajapaksa has repeatedly stated that he does not have the power to issue pardons so long as all avenues of appeal have not been exhausted. In fact, the con-

- ❑ **Abductions, forced disappearances and illegal detentions.** Disappearances and abductions – whether for ransom or to target those suspected of working with the LTTE – are much less frequent than in 2006-2008, though there have been reports of such cases since the war’s end, primarily from the Northern and Eastern Provinces.<sup>123</sup> To date, no one has been prosecuted for any of the thousands of enforced disappearances and extrajudicial killings known to have taken place from late 2005 onwards.<sup>124</sup> In addition to the 11,000 or more alleged LTTE members held in special camps in the north, another 1500-2000 suspects continue to be held under emergency detention orders or other anti-terrorism legislation, some for years without charges.<sup>125</sup>
- ❑ **Violent attacks on political opponents of the government.** The home of UNP parliamentarian Ranga Bandara was burned to the ground after he had helped lead a public campaign against the alleged construction of houses on state land by a Rajapaksa family member.<sup>126</sup> There have been frequent attacks on JVP offices and campaigners, both during the southern provincial election campaign in July and August

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stitution clearly gives him this power and it has been used in the past. Kishali Pinto Jayawardene, “A symbol of the subversion of law”, *The Sunday Times*, 6 September 2009. President Obama is reported to have written on 26 November 2009 to President Rajapaksa urging Tissainayagam’s release. “Obama sends letter to President MR for Tissainayagam’s release”, [www.lankaenews.com](http://www.lankaenews.com), 26 November 2009. The European Union has also expressed its strong concerns about the case and is reportedly pressing for Tissainayagam’s release as part of its negotiations with the government over retaining the endangered GSP+ (Generalised System of Preferences) trade preferences. For more on the GSP+ issue, see below. Crisis Group email correspondence, EU officials, November 2009.

<sup>123</sup>Crisis Group interview, human rights advocates, Colombo, November 2009.

<sup>124</sup>According to one presidential commission of inquiry, there were 3652 cases of unresolved disappearances (1830), abductions (565), killings (746) and unidentified bodies (511) between September 2006 and October 2009. Shamindra Ferdinando, “Vast majority of those reported missing found”, *Island*, 28 November 2009.

<sup>125</sup>Crisis Group interviews, human rights lawyers and advocates, Colombo, November 2009. Government officials have announced their intention to expedite cases of some 650 detainees held in prison under the Prevention of Terrorism Act. “Ministry, AG to expedite justice for PTA detainees”, *Daily News*, 9 December 2009.

<sup>126</sup>“Political opponants [sic] burnt my house’ – MP”, BBC Sinhala, 5 October 2009; and Basil Fernando, “The arson attack on Ranga Bandara’s house and office: Democracy under attack in Sri Lanka”, Groundviews ([www.groundviews.org](http://www.groundviews.org)), 6 October 2009.

2009 and since the presidential campaign began in November.<sup>127</sup>

❑ **Violation of the privileges and immunities of the UN and harassment of international NGO staff.**

The government's abduction and ex post facto arrest of two Sri Lankan UN staff members accused of working with the LTTE was only the most blatant of many violations of the UN's diplomatic privileges.<sup>128</sup> Since the end of the war the government has revoked the visas of a number of UN international staff, apparently in retaliation for critical comments they made about government policies.<sup>129</sup> Many staff with international humanitarian and aid agencies had their visas cancelled or not approved over the last years of the war. The well-founded threat of being detained, if you are Sri Lankan, or forced out of the country, if you are foreign, has led many aid workers to keep quiet. The resulting lack of vigorous internal debate has also undermined the quality of aid agencies' work.<sup>130</sup>

❑ **Routine police abuse throughout the country.** The murder of two young Sinhala men in police custody in the southern town of Angulana in July 2009 led to public outrage.<sup>131</sup> So too did a video of a mentally ill Tamil man being beaten to death by police in Colombo in October 2009. There has been a string of extrajudicial killings of "underworld" leaders alleged to have links to politicians.<sup>132</sup> The government admitted in parliament that 32 people died while in police cus-

tody in the first nine months of 2009.<sup>133</sup> The police are now more politicised than ever.<sup>134</sup> With the police coming under the jurisdiction of the ministry of defence, headed by Gotabhaya Rajapaksa, and with senior appointments to the police made the president – not the National Police Commission as required by the constitution – "the police is under the direct control of the President and his brother ... and in direct violation of the constitution. It's a directly politicised police".<sup>135</sup>

In addition, the president continues to wilfully ignore the Seventeenth Amendment by refusing to appoint the Constitutional Council. This has led to the collapse of the National Police Commission, Human Rights Commission, Judicial Service Commission and other independent commissions.<sup>136</sup> The absence of these commissions has deepened the impunity with which state officials and security forces can violate the law. There have been no serious or independent investigations into any of the thousands of alleged human rights violations committed over the last four years of the Rajapaksa government.<sup>137</sup>

#### D. THE RISKS OF POLITICAL VOLATILITY

The sudden strength of the political opposition is due in part to growing public anger at these and other excesses of the Rajapaksas. Many voters, especially in urban areas, feel the president and his family have simply gone too far.<sup>138</sup> The numerous allegations that financial corruption has worsened under the current government and involves

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<sup>127</sup> "Attacks on JVP offices continue in southern province", Tamilnet, 31 August 2009. "JVP says their supporters attacked", *The Sunday Times*, 28 November 2009.

<sup>128</sup> "UN extremely concerned over detention of staff members in Sri Lanka", UN News Centre, 10 September 2009. UN vehicles have been regularly stopped and searched in violation of UN rights and privileges. In August 2009, it was discovered that UN offices and computers in Colombo were being monitored by multiple forms of electronic surveillance. Crisis Group interviews, diplomats and UN staff, Colombo, November 2009.

<sup>129</sup> The most widely reported case was that of UNICEF's spokesperson James Elder, who was forced to leave Sri Lanka in July 2009. "Sri Lanka 'expels Unicef spokesman'", Al Jazeera, 7 September 2009.

<sup>130</sup> Many UN and INGO staff have been intimidated into internalising Sri Lanka's culture of impunity. "The culture of silence that was first only in the north and east has now filtered into everything, into all organisations, the UN, INGOs, everyone. People are afraid to voice critical comments in meetings for fear the information will get back to the government and they'll be blacklisted or have their visas cancelled. Our staff are scared". Crisis Group interview, humanitarian aid worker, Colombo, November 2009.

<sup>131</sup> Charles Haviland, "Sri Lanka outcry over police brutality", BBC News, 29 October 2009.

<sup>132</sup> Sarath Kumara, "Sri Lankan government launches 'war on the underworld'", transcurrents.org, 4 August 2009.

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<sup>133</sup> "Deaths in police custody increase", BBC Sinhala, 9 September 2009.

<sup>134</sup> See Basil Fernando, "Dealing with law and order as an issue of the Presidential elections", Groundviews (groundviews.org), 1 December 2009.

<sup>135</sup> Crisis Group interview, diplomat, Colombo, November 2009. This raises a policy question about the assistance the Sri Lankan police receives under a USAID-implemented reconstruction and stabilisation project underway in the east and planned for the north. Though the funding originates as "section 1207" money from the Defense Department, USAID is barred from carrying out programs operating under the command of the military. Crisis Group telephone interviews, Washington DC, 8 January 2010.

<sup>136</sup> In a recent discussion with journalists, President Rajapaksa reportedly expressed his intention to continue to refuse to appoint the council. Shamindra Ferdinando, "17th Amendment 'no, no' from Mahinda Rajapaksa", *The Island*, 29 November 2009.

<sup>137</sup> See, for example, "Twenty years of make-believe: Sri Lanka's commissions of inquiry", Amnesty International, 11 June 2009.

<sup>138</sup> Crisis Group interviews, Colombo, November 2009.

the Rajapaksa brothers themselves have played an important role in this.<sup>139</sup>

The parties backing Fonseka are publicly campaigning to end these abuses of power. The platform of the United National Front coalition<sup>140</sup> supports abolishing the executive presidency and reverting to a Westminster-style parliamentary system with an executive prime minister, the appointment of the Constitutional Council and independent commissions, the protection of media freedom, and the end of the state of emergency.<sup>141</sup> The JVP, which is independently backing Fonseka as a “common candidate”, supports the same basic package of governance reforms.

In their quest to dislodge the Rajapaksas from power, the joint opposition is taking a huge gamble. “The opposition seems so dazzled by the prospects of being able to give Mahinda a run for his money that they seem to have forgotten all the risks involved”.<sup>142</sup> Almost as questionable as Fonseka running on a platform supporting the rights of Tamils is his attempt to portray himself as a proponent of democratic governance and the rule of law. In fact, “Fonseka is known as someone who doesn’t tolerate dissent”<sup>143</sup> and is widely believed to have con-

trolled a special squad of commandos involved in disappearances and attacks on journalists.<sup>144</sup>

It is also not clear how the parties supporting Fonseka would be able to hold him to his pledges of good governance if he were elected, particularly the promise to abolish his own job of executive president.<sup>145</sup> Once elected, Fonseka would have immense powers and will, in addition, be backed by important sections of the army. Further, the post of executive president can be abolished or changed only through a constitutional amendment requiring a two-thirds majority in parliament. The outcome of the parliamentary election in April or May 2010 would thus be decisive.

There is a real risk of political instability should Fonseka win. Subsequent parliamentary elections could be volatile, with parliamentarians switching parties and jockeying for power in the wake of the sudden loss of Rajapaksa influence. The Rajapaksas would likely throw everything they have into preserving a power base in parliament. No matter who wins the presidential election, many fear there will be some amount of violent score-settling, as the winner seeks payback from those on the losing side seen as disloyal.<sup>146</sup>

The increasingly bitter rivalry between Fonseka and the Rajapaksa family has led to a series of public charges and counter-charges accusing each side of committing war crimes. In a 13 December newspaper interview, Fonseka accused defence secretary Gotabhaya Rajapaksa of ordering, without Fonseka’s knowledge or consent, the May 2009 battlefield executions of LTTE leaders, along with some 60 of their family and staff, as they emerged with white flags in a prearranged surrender.<sup>147</sup> Raja-

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<sup>139</sup> For details of the Fonseka campaign’s allegations of financial corruption under the Rajapaksa government, see “Rajapakse regime’s track record in corruption and terrorism”, *transcurrents.com*, 3 January 2010. None of the alleged deals involve the president himself, but rather those in his inner circle, including family members. Government ministers responded by presenting documents they say reveal Fonseka benefited from corrupt weapons contracts while army commander. “Fonseka unravelled”, *Daily News*, 6 January 2010 and “Fonseka accused of arms corruption”, *BBC Sinhala*, 3 January 2010. See also Kishali Pinto Jayawardene, “Mega corruption and an election”, *The Sunday Times*, 6 December 2009.

<sup>140</sup> The UNF is comprised of the UNP, the SLMC, the SLFP splinter group headed by Mangala Samaraweera, the Democratic People’s Front headed by Tamil activist Mano Ganesan, and a handful of smaller parties. There is much unhappiness within the UNP about the decision – supported by party leader Ranil Wickremasinghe – to back a non-UNP candidate for the presidency. Many of Wickremasinghe’s rivals in the party see Fonseka as a stalking horse for Wickremasinghe. See “Did the US persuade General Fonseka to contest for Presidency?”, *Sri Lanka Guardian*, 17 November 2009.

<sup>141</sup> The UNP has reportedly won Fonseka’s agreement to all these measures. “Enter the political General”, *Sunday Times*, 29 November 2009.

<sup>142</sup> Crisis Group interview, Western ambassador, Colombo, November 2009.

<sup>143</sup> Crisis Group interview, retired government official, Colombo, November 2009.

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<sup>144</sup> Crisis Group interviews, journalists, rights activists and political analysts, Colombo, November 2009. “S Lankan general ‘behind attacks’”, *BBC News*, 8 July 2008.

<sup>145</sup> “JVP in agreement with General”, *BBC Sinhala*, 2 December 2009. To date, Fonseka has not signed any formal pledge to abide by the commitments to the UNF and JVP reforms platform. The last two presidents, Chandrika Kumaratunga and Mahinda Rajapaksa, had both pledged to abolish the position but decided otherwise once in office. There is also a danger of Fonseka exploiting differences between the JVP and UNP, who have a long history of bitterness and violence between them, in order to strengthen his position. Many believe Wickremasinghe plans to become the prime minister in a Fonseka presidency; the JVP is not likely to accept this.

<sup>146</sup> Crisis Group interviews, political analysts, diplomats, human rights advocates, Colombo, November 2009.

<sup>147</sup> Fonseka’s charges confirmed reports from numerous diplomatic and other sources. Just hours before they were shot dead on the morning of 18 May, the LTTE political wing leader, B. Nadesan, and the head of the LTTE peace secretariat, S. Puleedevan, are known to have secured an agreement from the highest levels of the Sri Lankan government and military

paksa and others in the government denied the charges and accused Fonseka of betraying the country and destroying the army's reputation in a quest for political power.<sup>148</sup> The next day, Fonseka changed his story, stating that the army had committed no war crimes and that it was he who had ordered that all terrorists be killed.<sup>149</sup> Fonseka has also publicly implied that the Rajapaksas were responsible for the January 2009 assassination of editor Lasantha Wickramatunga.<sup>150</sup> Rajapaksa responded by accusing Fonseka of the crime.<sup>151</sup>

The existence of a strong challenger to President Rajapaksa at least helps prevent the further development of an arrogant and entrenched Rajapaksa dynasty. None-

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to accept their surrender under protection of a white flag. The government claimed afterwards that they were shot from behind by LTTE fighters as they left their bunkers. How Puleedevan, Nadesan and the others died and whether there was an order from Colombo to execute them needs a proper investigation. Crisis Group interviews, June, July, November 2009. For a useful analysis of the case and of the deaths of Nadesan, Puleedevan and others, see D.B.S. Jeyaraj, "Surrendered LTTE leaders were killed by Sri Lanka Special Forces", *Tamilweek.com*, 29 December 2009.

<sup>148</sup> Don Asoka Wijewardena, "Fonseka accused of betraying Gota, armed forces", *The Island*, 14 December 2009. Government officials also pointed to the reports that in a post-war address to the army, Fonseka appeared to have endorsed the execution of surrendering LTTE fighters. Fonseka is reported to have said: "I managed the war like a true soldier. ... I got messages not to shoot those who are carrying white flags. ... [T]he decisions about war should be taken by the soldiers in the battlefield. Not the people in A/C rooms in Colombo. Our soldiers have seen in life the kind of destruction carried out by those people before they decided to come carrying a white flag. Therefore, they carried out their duties. We destroyed any one connected with the LTTE. That is how we won the war". Rajiva Wijesinha, "Media reports and human rights queries", *The Island*, 21 December 2009.

<sup>149</sup> Kelum Bandara, "Gen. says no war crimes here", *Daily Mirror*, 15 December 2009. Fonseka was reported to have sued *The Sunday Leader* newspaper for printing a false and defamatory story. *The Sunday Leader* stands by the accuracy of the interview and says Fonseka has taken no legal action. See Frederica Jansz, "Her story", *The Sunday Leader*, 3 January 2010.

<sup>150</sup> Yohan Perera, "'I'll show who killed the journalists' says General Fonseka", *Daily Mirror*, 1 January 2010.

<sup>151</sup> "Attacks on media: The story unfolds", *The Sunday Times*, 13 December 2009. Sarath Fonseka is believed by many to have deliberately tried to threaten Gotabhaya Rajapaksa by leaking in October 2009 the news that the U.S. government was seeking to question him on [Gotabhaya's] role in the war. In response, Rajapaksa and his supporters used Fonseka's initial acceptance of the request to meet with officials of the U.S. Department of Homeland Security to question Fonseka's loyalty to the nation. "Why General Fonseka decide to meet U.S. authorities without the knowledge and consent of Sri Lanka Government?", *Asian Tribune*, 2 November 2009.

theless, Fonseka's own authoritarian tendencies and lack of political experience undermine the credibility and chance of success of the opposition campaign for media freedom, rights protections and governance reforms. Recent history gives little reason to be optimistic that once elected either Rajapaksa or Fonseka will make any serious attempt on his own to curb impunity and put in place meaningful safeguards for the protection of rights.

## V. CONCLUSION

Despite the lack of political progress since the end of the war, new political space has emerged thanks to the conflict between Gen. Fonseka and the Rajapaksas and the consequent divisions among hardline Sinhala nationalist parties. This rift, and the renewed vigour of opposition parties, has put governance reforms and a transition from militarised, anti-terrorist politics on the agenda, despite Fonseka's limitations as an agent of change. The longer there is no renewed Tamil militancy, the harder it will be for the government, whoever is in power, to use anti-terrorist laws and rhetoric to mobilise political support and stifle dissent.

Donor governments and international financial institutions should try to expand this small window and strengthen voices for reform by collectively pressing for democratisation and demilitarisation. The European Union's concerted attempt to use the review of GSP+ tariff benefits as an incentive for the government to make human rights and governance reforms has been admirable, if so far unsuccessful. The 18 December 2009 recommendation by the European Commission to suspend the benefits is almost certain to be ratified by member states in early 2010.<sup>152</sup> The EU is expected to publish a "road map" that will list the concrete actions Sri Lanka would have to take to regain the reduced tariffs. Colombo will then have another six months to respond positively.

Other donors should increase the EU's leverage by collectively conditioning additional development assistance on the Sri Lankan government taking meaningful steps to reestablish the rule of law for all Sri Lankans and address the longstanding and legitimate grievances of Tamil-speaking minorities.<sup>153</sup> All Sri Lanka's commu-

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<sup>152</sup> "Trade concessions to Sri Lanka at risk", BBC Sinhala, 17 December 2009.

<sup>153</sup> The US appropriations bill signed into law on 16 December 2010 contains clauses, initiated by Senator Patrick Leahy, that conditions new military and development assistance (including funding by international financial institutions to which the U.S. contributes) on Sri Lanka making concrete governance reforms. These include prosecutions of soldiers credibly alleged to have committed abuses, freedom of movement for

nities recognise the state is abusive and needs to be held to account. Large numbers of Sinhalese and Muslims, not just Tamils, are already deeply disenchanted with routine police abuse and with the lawlessness and abuses of power under the current regime. Clear international support for reforms that all Sri Lankans would benefit from and might be willing to support – ending emergency rule, establishing the Constitutional Council and independent commissions, depoliticising the judiciary, preventing everyday police torture and curbing impunity for state offences – are crucial. Some significant demilitarisation and democratisation of the north, including sharing power with minority communities in the north and east, should also be a condition for non-humanitarian assistance.<sup>154</sup> Whichever candidate is elected president, donors should press for the implementation of measures similar to those in the Fonseka-TNA program for the normalisation of war-affected areas. Without this, the development of the north and east is almost certain to be ethnically biased and the source of new grievance.

Sri Lanka's peace will remain fragile so long as the many credible allegations of violations of international humanitarian and human rights law by senior government and LTTE leaders are not subject to impartial investigation. The truth of what happened during the course of the war, especially in its last months, must be established if Tamils and Sinhalese are to live together as equal citizens. UN officials and major world leaders must go beyond their regular pro forma statements about accountability.<sup>155</sup> Instead, there should be a clear rejection

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of the displaced, access for humanitarian agencies and the media to IDPs and steps to promote reconciliation, including devolution of power under the current constitution.

<sup>154</sup> With most foreign governments focused on the internally displaced in the north, little international attention has been paid to the need for devolution. Nonetheless, donor governments should continue to press for "a political process in Sri Lanka, which will meet the legitimate interests and aspirations of all communities, including the Tamils and the Muslims, within the framework of a united Sri Lanka". "Suo moto statement to parliament on 'recent developments in northern Sri Lanka'", S.M. Krishna, Minister of External Affairs, 4 December 2009.

<sup>155</sup> "I would like to ask the Sri Lankan Government to recognise the international call for accountability and full transparency. And whenever and wherever there are credible allegations of violations of humanitarian law, there should be a proper investigation". UN Secretary-General Ban Ki-moon, "Secretary-General's press encounter following the Security Council's informal interactive discussion on Sri Lanka", New York, 5 June 2009. "The other area we need to keep focusing on is accountability for violations of international humanitarian law and international human rights law by both sides during the conflict. You will see that there was a U.S. Congress report, which raised some concerns about this. The president has appointed a committee of experts to look into those, allegations

of Sri Lanka's brutal and illegal mode of counter-insurgency, which is already being viewed as a model by other states with restive minorities and ethnic insurgencies.<sup>156</sup> Credible international investigations are necessary and should help reestablish the rule of law within Sri Lanka.<sup>157</sup> Only when political and legal reforms have begun will there be any chance at a true accounting for the terrible violence that all communities in Sri Lanka have undergone, and for any hope of genuine reconciliation between them.

**Colombo/Brussels, 11 January 2010**

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in that report, and we will see how that progresses in terms of providing the kind of accountability process there which we and others are certainly looking for," Under-Secretary-General for Humanitarian Affairs and UN Emergency Relief Coordinator John Holmes, press conference on Sri Lanka, New York, 23 November 2009, at [www.unmultimedia.org](http://www.unmultimedia.org). On 7 January 2010, the UN special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, announced that independent experts commissioned by his office believed a video apparently showing the summary execution of captured Tamils by Sri Lankan soldiers to be authentic. Alston called for the establishment of an independent inquiry to look into these and other allegations of war crimes in Sri Lanka. Alston's statement and the expert reports can be found at [www2.ohchr.org/english/issues/executions/index.htm](http://www2.ohchr.org/english/issues/executions/index.htm).

<sup>156</sup> See V.K. Shashikumar, "Lessons from the War in Sri Lanka", *Indian Defence Review*, vol. 24, no. 3 (July-September 2009).

<sup>157</sup> The October 2009 report from the U.S. State Department offers a catalogue of reported violations of international humanitarian law, ranging from government shelling of hospitals and areas with heavy concentrations of civilians and of the LTTE killing Tamils who attempted to flee areas under their control. "Report to Congress on Incidents During the Recent Conflict in Sri Lanka", U.S. Department of State, October 2009. The report was mandated by the 2009 Supplemental Appropriations Act. The alleged incidents are consistent with thousands of civilian deaths. Unfortunately, few resources were devoted to the congressionally mandated report, and no use was made of the satellite imagery or information gathered by other government departments. Even so, the report is a damning indictment of both sides and makes the case for a serious, well-financed and independent investigation all the more compelling. The "committee of experts" appointed by President Rajapaksa to look into the incidents listed in the State Department report is composed of retired officials and prominent figures known to be close to the government and can hardly be taken as anything other than a public relations gesture. The deadline for its report has recently been extended until April 2010. "War crimes probe request 'referred'", BBC Sinhala, 29 December 2009.