

Sri Lanka's Authoritarian Turn: The Need for International Action

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Executive Summary

Government attacks on the judiciary and political dissent have accelerated Sri Lanka's authoritarian turn and threaten long-term stability and peace. The government's politically motivated impeachment of the chief justice reveals both its intolerance of dissent and the weakness of the political opposition. By incapacitating the last institutional check on the executive, the government has crossed a threshold into new and dangerous terrain, threatening prospects for the eventual peaceful transfer of power through free and fair elections. Strong international action should begin with Sri Lanka's immediate referral to the Commonwealth Ministerial Action Group (CMAG) and a new resolution from the UN Human Rights Council (HRC) calling for concrete, time-bound actions to restore the rule of law, investigate rights abuses and alleged war crimes by government forces and the Liberation Tigers of Tamil Eelam (LTTE), and devolve power to Tamil and Muslim areas of the north and east.

Sri Lanka is faced with two worsening and inter-connected governance crises. The dismantling of the independent judiciary and other democratic checks on the executive and military will inevitably feed the growing ethnic tension resulting from the absence of power sharing and the denial of minority rights. Both crises have deepened with the Rajapaksa government's refusal to comply with the HRC's March 2012 resolution on reconciliation and accountability. While the government claims to have implemented many of the recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) – a key demand of the HRC's resolution – there has in fact been no meaningful progress on the most critical issues:

- ❑ the government has conducted no credible investigations into allegations of war crimes, disappearances or other serious human rights violations;
- ❑ rather than establish independent institutions for oversight and investigation, the government has in effect removed the last remnants of judicial independence through the impeachment of the chief justice;
- ❑ there has been no progress toward a lasting and fair constitutional settlement of the ethnic conflict through devolution of power;
- ❑ the military still controls virtually all aspects of life in the north, intimidating and sidelining the civilian administration;
- ❑ more than 90,000 people remain displaced in the north and east, amid continued land seizures by the military, with no effective right of appeal and no fair process for handling land disputes;
- ❑ government security forces have broken up peaceful Tamil protests in the north, detained students on questionable charges of working with the LTTE and actively harassed Tamil politicians;
- ❑ the government has responded with force to protest and dissent in the south, too, deploying troops to prevent the newly impeached chief justice and supporters from visiting the Supreme Court while pro-government groups attacked lawyers protesting the impeachment.

Analysts and government critics have warned of Sri Lanka's growing authoritarianism since the final years of the civil war, but developments over the last year have worsened the situation. The president's willingness and ability to push through the impeachment – in the face of contrary court rulings, unprecedented opposition from civil society and serious international concern – confirms his commanding political position. The move completes the “constitutional coup” initiated in September 2010 by the eighteenth amendment, which removed presidential term limits and the independence of government oversight bodies. It has sent a clear message to domestic critics that their dissent is unwelcome.

The consolidation of power paves the way for moves that could further set back chances of sustainable peace. The president and his two most powerful brothers – Defence Secretary Gotabaya and Economic Development Minister Basil – have signalled their intention to weaken or repeal the provinces' already minimal powers. As the government makes explicit its hostility to meaningful power sharing between the centre and the Tamil-speaking north and east, Tamil identity and political power are being systematically undermined by the military-led political and economic transformation of the northern province.

Recent months have also seen an upsurge in attacks by militant Buddhists on Muslim religious sites and businesses. The government has done little to discourage these. Should such provocations continue, the remarkable moderation of Sri Lanka's Muslims could face serious tests. Given the country's history of violent resistance to state power perceived as unjust, the authoritarian drift can only increase the risk of an eventual outbreak of political violence.

Sri Lankans of all ethnicities who have struggled to preserve their democracy deserve stronger international support. The HRC's 2012 resolution was an important first step, but more is needed. This should begin with a stronger HRC resolution in March 2013, which must demand concrete reforms to end impunity and restore the rule of law; mandate the Office of the High Commissioner for Human Rights (OHCHR) to monitor violations and investigate the many credible allegations of war crimes committed in the final months of the war by both sides; and, where possible, identify individuals most responsible.

The Commonwealth secretary general should formally refer Sri Lanka to the Commonwealth Ministerial Action Group (CMAG), which should insist that the government take substantial steps to restore the independence of the judiciary. Were it to refuse, the Commonwealth should relocate its November 2013 heads of government meeting, currently scheduled to take place in Colombo, or at the very least participants should downgrade their representation.

All governments and multilateral institutions with active ties to Sri Lanka must rethink their approach and review their programs in light of Colombo's deepening and dangerous authoritarian drift. This includes military-to-military relations and bilateral and multilateral development assistance, including from the UN, World Bank, Asian Development Bank and International Monetary Fund.

Recommendations

To the government of Sri Lanka:

1. Comply with current and future HRC resolutions, including by implementing the core recommendations of the LLRC on governance, the rule of law, accountability, devolution of power and reconciliation, through a process that includes opposition political parties and independent civil society representatives of all ethnic communities.
2. Support meaningful reconciliation by publishing the full LLRC report in Sinhala and Tamil, allowing the national anthem to be sung in Tamil at official events and holding public ceremonies to honour the death and suffering of civilians from all communities.

To the UN Human Rights Council (HRC):

3. Adopt a new, stronger resolution on Sri Lanka at its 22nd session, which:
 - a) notes clearly the government's refusal to respect the previous resolution by failing to implement the most important LLRC recommendations and refusing to investigate credibly allegations of grave violations of international humanitarian law;
 - b) details specific measures the government must take *within the coming year*;
 - c) requests the government to investigate independently the credible allegations of international humanitarian law violations;
 - d) tasks OHCHR with monitoring and reporting to the council on progress in implementing the resolution and on any violations, and with undertaking investigations and making appropriate recommendations with respect to violations allegedly committed in the final months of the war, including by compiling a list of individuals about whom there is credible evidence.
 - e) encourages the government to invite those special rapporteurs with outstanding requests to visit Sri Lanka, and requests them to compile a joint report on the country's compliance with its international obligations.

To the Commonwealth Secretariat and member states:

4. Refer Sri Lanka to the Commonwealth Ministerial Action Group (CMAG), which should insist that the government take substantial steps to restore the independence of the judiciary, including, at a minimum, by:
 - a) reestablishing earlier constitutional provisions – abolished by the eighteenth amendment – to ensure a less politicised selection of judges;
 - b) changing current parliamentary provisions for removing senior judges to bring them in line with international standards; and
 - c) abandoning government plans to limit a chief justice's term to three years.
5. Relocate, should the government fail to make these changes, the November 2013 heads of government meeting away from Colombo, or downgrade representation to ministerial level.

To the UN Secretary-General:

6. Use his powers under section 99 of the UN Charter to establish a commission of inquiry into alleged violations of international law, should the HRC decline to do so or to task OHCHR to undertake investigations.
7. Establish a mechanism to “monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process”.

To the UN Secretariat, country team and agencies in Sri Lanka:

8. Undertake a “human rights audit”, led by the country team, of all programming to examine where and how these can better integrate human rights protection, including a survey of the protection needs of past and present humanitarian workers, both in and out of Sri Lanka.
9. Review Sri Lanka’s contributions to peacekeeping operations and reject its participation until credible investigations of war crimes allegations and prosecutions are carried out.

To the governments of India, the U.S., EU, UK, Canada, Australia, Norway, Switzerland, Japan and South Africa:

10. Investigate, gather and share evidence regarding alleged war crimes and human rights abuses by government forces and the LTTE where possible, support victims and offer witness protection when necessary.
11. Refrain from accepting the diplomatic credentials of Sri Lankan military officers against whom there are credible allegations of serious crimes; cease trainings – other than in human rights – and joint exercises with the military; and apply targeted pressure on government leaders, including restrictions on personal travel until the government complies with HRC resolutions.

To the World Bank, Asian Development Bank and International Monetary Fund:

12. Review all programs in Sri Lanka and conduct a study of governance and land issues and how these affect the sustainability and equity of their development assistance.
13. Press strongly, both privately and publicly, for the government to adopt the LLRC’s recommendations, particularly on reestablishing judicial independence and an independent bribery commission, enacting a freedom of information law, protecting the rights of citizens to speak freely and contribute to the formulation of development policies, and reforming policies on land and land disputes.

Colombo/Brussels, 20 February 2013

Sri Lanka's Authoritarian Turn: The Need for International Action

I. Introduction

Sri Lanka's 26 years of war between government forces and ethnic Tamil separatists, led by the Liberation Tigers of Tamil Eelam (LTTE), came to a cataclysmic end in May 2009, with some 40,000 civilians likely killed in the final five months.¹ Despite shocking levels of violence, many in Sri Lanka and among the country's international partners hoped that the defeat of the LTTE, itself a ruthless, ultra-violent organisation, would lead to new, more conciliatory and democratic policies. The government was called to shrink the size and role of the military, relax the grip of its security apparatus, and begin to repair the damage caused to its democratic institutions, particularly the police and judiciary, by almost 30 years of war and emergency. Many hoped that the government would end institutionalised impunity for human rights violations and open up political space for dissent, adopting a more consensual style of governance.

Expectations also ran high, particularly from India and the U.S., that the government, led by President Mahinda Rajapaksa, would offer a meaningful package of constitutional reforms, including substantial devolution of power to the northern and eastern provinces, in order to address the longstanding political marginalisation of Tamils. In other ways, too, supporters of the government encouraged it to lay the groundwork for reconciliation and the rebuilding of trust between Sri Lanka's three major ethnic communities: Sinhalese, Tamils and Muslims. As part of this, there were calls for the government to investigate the allegations of serious violations of international humanitarian and human rights law by both sides in the final stages of the war and to establish at least some degree of accountability.

Unfortunately, these hopes and expectations have not been met. By early 2012, international disappointment at the Sri Lankan government's failure to adopt constructive post-war policies reached the tipping point. At the March 2012 session of the UN Human Rights Council (HRC), a U.S.-sponsored resolution on "promoting reconciliation and accountability in Sri Lanka" was adopted with a clear majority of states, including Sri Lanka's powerful next-door neighbour, India.² The resolution

¹ See Crisis Group Asia Report N°191, *War Crimes in Sri Lanka*, 17 May 2010. For other Crisis Group reporting useful in understanding recent authoritarian moves, see, in particular, Asia Reports N°239, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, 20 November 2012; N°219, *Sri Lanka's North I: The Denial of Minority Rights*, 16 March 2012; N°220, *Sri Lanka's North II: Rebuilding under the Military*, 16 March 2012; N°217, *Sri Lanka: Women's Insecurity in the North and East*, 20 December 2011; N°209, *Reconciliation in Sri Lanka: Harder than Ever*, 21 July 2011; N°206, *India and Sri Lanka after the LTTE*, 23 June 2011; N°159, *Sri Lanka's Eastern Province: Land, Development, Conflict*, 15 October 2008; N°141, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, 7 November 2007; N°124, *Sri Lanka's Human Rights Crisis*, 14 June 2007.

² Resolution 19/2 was passed on 22 March by a vote of 24 to fifteen, with eight abstentions. The text is available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/2.

called on Sri Lanka to adopt the recommendations of President Rajapaksa's own Lessons Learnt and Reconciliation Commission (LLRC),³ appointed in 2010 as a response to growing international pressure on the need for accountability for alleged violations of international law in the final months of the war. The HRC's resolution noted with concern that the LLRC report did not adequately address these allegations and called on the government to remedy this.

This report, based on interviews with diplomats, aid workers, journalists, and community and civil society activists, analyses the policies pursued by the Sri Lankan government since the HRC resolution. It examines in detail the government's national action plan to implement the LLRC's recommendations,⁴ comparing it with the recommendations of the LLRC, the requirements of the HRC resolution and the reality of government policy. It looks at the government's increasingly overt turn to authoritarian rule, characterised by the undermining of judicial independence and an ever-greater concentration of power in the executive and military, and the risks this raises for lasting peace and democratic stability. Finally, the report considers the challenges these developments pose for the international community and the need for influential states and multilateral organisations to re-shape their policies significantly.

³ The LLRC was appointed by President Rajapaksa on 15 May 2010, and delivered its report to the president on 15 November 2011. The report was released to the public on 16 December of that year. The full text can be found at <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>.

⁴ The text of the National Plan of Action to Implement the Recommendations of the LLRC was released on 26 July 2012. The full text can be found at www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm.

II. HRC and LLRC Implementation: A Failure to Deliver

The March 2012 HRC resolution on “promoting reconciliation and accountability in Sri Lanka” was a modest but important step, which, had it been respected, would have tangibly improved the protection of rights and quality of governance for Sri Lankans. Unfortunately, the government has failed to follow through in any meaningful way on any of the nine areas of reform the resolution specified, choosing instead to push through policies that have further weakened democracy and in effect dismantled the rule of law.

The HRC resolution requested the government to implement the “constructive recommendations” of its own Lessons Learnt and Reconciliation Commission (LLRC), specifying the need to:

Credibly investigate widespread allegations of extrajudicial killings and enforced disappearances, demilitarize the north of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all and enact rule of law reforms.

The HRC also requested the government to present “a comprehensive action plan” for achieving these goals as well as “to address alleged violations of international law”, which the HRC noted had not been “adequately addressed” by the LLRC.⁵

The government’s July 2012 national action plan for the implementation of the LLRC was far from an adequate response to the council’s resolution.⁶ It committed the government to a much smaller set of actions than those recommended by the commission, which were themselves significantly less far-reaching than what is proposed in the April 2011 report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka.⁷ The action plan ignored or rejected most of the LLRC’s key pro-

⁵ The HRC resolution also encouraged the Office of the High Commissioner for Human Rights (OHCHR) and relevant special procedures mandate holders to offer advice and technical assistance to the Sri Lankan government to implement the resolution, and requested OHCHR to report back to the council on the provision of this assistance. While the government did not allow any of the special mandate holders with outstanding visit requests to travel to Sri Lanka, a team from OHCHR did visit in September 2012. The high commissioner’s report to the council, released in February 2013, found that “the Government has made commitments to only some of the [LLRC’s] recommendations”, and that “the steps taken by the Government to investigate allegations of human rights [violations] further have also been inconclusive, and lack the independent and impartiality required to inspire confidence”. “Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka”, A/HRC/22/38, 11 February 2013.

⁶ The government has established a committee of senior bureaucrats, headed by the president’s secretary, Lalith Weeratunga, to oversee the implementation of the action plan. For there to be any chance of implementing the core LLRC recommendations on governance, what is needed instead is an independent commission, staffed by prominent members of civil society representing all major communities and regions, to be given adequate resources and public powers to oversee and monitor their implementation.

⁷ “Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka”, 31 March 2011, available at <http://bit.ly/hptaok>. For Crisis Group’s analysis of the limitations of the LLRC report, see “Statement on the Report of Sri Lanka’s Lessons Learnt and Reconciliation Commission”, 22 December 2011. The LLRC was initially established in an attempt to prevent the Secretary-General from appointing his advisory panel on accountability, the so-called panel of experts. In the

posals on governance and impunity for human rights violations and watered down even its weak recommendations to investigate a small number of alleged war crimes. More than six months after its publication, the promises of the action plan remain largely unfulfilled, while the political situation has deteriorated significantly, most notably with the politically motivated impeachment of the chief justice.⁸

In what follows, the LLRC's chief recommendations in each of the areas of concern cited by the HRC resolution will be compared with the government's action plan and with actual government policy and actions since the LLRC report's publication.

A. *The Rule of Law*

1. LLRC and government action plan

The central value of the LLRC report lay in its repeated if generally implicit criticism of the extreme centralisation of power in the executive and military. Even before the impeachment of the chief justice, the Rajapaksa administration had in effect dismantled existing checks on presidential and military power. This included bringing the attorney general directly under the president's office and the police under the defence ministry and, most important, amending the constitution to give the president effective control over judicial appointments and over formerly independent commissions on police, human rights, public service, judicial services, and other issues.⁹ The LLRC argued that the current governance system is broken and that new, independent, institutions and procedures are needed to reestablish the rule of law and protect rights.¹⁰

The government's LLRC action plan rejected this central message and insisted that any improvements in human rights protection could be done within existing institutions and procedures. In response to the LLRC's recommendation to establish "an independent permanent Police Commission without delay" (para. 8.210),¹¹ the action plan simply claimed that an "Independent Police Commission has already been established". The independence of the commission was, however, explicitly re-

following months, the government relied upon the LLRC and its forthcoming report to argue that no international action on accountability and rights violations was needed.

⁸ The government has nonetheless claimed repeatedly that it has "implemented a major portion of the recommendations in the LLRC report already". "See progress', our defence in Geneva", *Daily News*, 31 January 2013. As evidence of implementing the LLRC, government spokespersons often point to the government's large-scale demining, successful resettlement of more than 400,000 internally displaced persons and rebuilding of infrastructure in the north. All of these had been achieved prior to the LLRC issuing its report, however, and none touches on the heart of the commission's recommendations, which concern the quality of governance.

⁹ The eighteenth amendment was ratified in September 2010. In addition to reasserting direct presidential control over various oversight commissions, it also removed presidential term limits. For an analysis of the eighteenth amendment, see Crisis Group Podcast, "Sri Lanka: Deciphering the constitutional coup", <http://bit.ly/XnTXmR>, 4 October 2010.

¹⁰ In a section entitled "Failure to give effect to the rule of law", the LLRC writes, "Many persons who made representations before the Commission stated that a large number of persons having political patronage had committed offences, but the long arm of the law had not reached them because of the political pressure exerted on law enforcement authorities. Along with an independent Judiciary and a transparent legal process a strict adherence to the Rule of Law is a sine qua non for peace and stability which is of the essence, if there is to be any meaningful reconciliation" (para. 8.185).

¹¹ The LLRC envisions a commission "empowered to monitor the performance of the Police Service and ensure that all Police officers act independently and maintain a high degree of professional conduct" (par 8.914).

moved in September 2010 by the eighteenth amendment, which gave the president the power to appoint all its members and removed many of its previous functions. The action plan sidestepped the equally important recommendation (para. 9.214-5), that the police service once again be made independent of the defence ministry (headed by the president's brother, Gotabaya Rajapaksa), choosing instead to pass this issue on to a proposed parliamentary select committee (PSC) that may never be constituted.¹²

Far from initiating the “credible and independent actions” called for by the HRC, the action plan refused to establish a single independent process or institution able to place any checks on executive or military power, and assumed that the police and the military can credibly investigate crimes even when they or other agents of the state are accused of being involved.

2. Impeachment of the chief justice

The already slim chances of reestablishing independent institutions and strengthening the rule of law were delivered a fatal blow with the government's November 2012 decision to seek the impeachment of Chief Justice Shirani Bandaranayake, which was finalised with her removal from office on 13 January 2013. Rather than following the LLRC's advice and restoring the independence of the judiciary and of the commissions nullified by the eighteenth amendment, the government chose to impeach the chief justice and concentrate power even further.

Appointed by President Rajapaksa less than two years earlier, Bandaranayake appears to have angered the president and his powerful brothers with a number of Supreme Court rulings. Particularly important was the 17 September 2012 decision temporarily blocking a law to establish a new department of “Divineguma” (“Uplifting Lives”) that would consolidate a range of government welfare and development programs under the economic development ministry, headed by Basil Rajapaksa.¹³ Since the provinces were managing some of these programs, the court ruled that all nine provincial councils, under the powers granted them by the thirteenth amendment, were required to approve the legislation.¹⁴

The government reacted angrily, organising a campaign against the chief justice in the influential government media and sponsoring street demonstrations. Two weeks after issuing an unusual statement condemning these and other moves as an

¹² The action plan argued that the relationship of the police service to the defence ministry is “an entirely policy/political issue”. Other proposed rule of law reforms suffer a similar fate. In a report delivered to Defence Secretary Gotabaya Rajapaksa on 24 January 2013, an army board of inquiry charged with examining the LLRC's recommendations found that “the Police in Sri Lanka should be placed under the Ministry of Defence at all times”, arguing that this is necessary in countries that “face wide spread internal disorders”. “Report of the Army Board on Implementation of the Recommendations of the Lessons Learnt & Reconciliation Commission”, January 2013, ch. 4, para. 28.

¹³ For a valuable analysis and critique of the Divineguma bill, see Centre for Policy Alternative, “Basic Guide on the key provisions in the Divineguma Bill”, 3 October 2012.

¹⁴ Some analysts argue that the Rajapaksa government was also angered by a similar ruling by the court a year earlier on the Town and Country Planning Act, which also saw the court force the government to submit the bill for approval from all provinces. See Tisaranee Gunasekera, “The Impeachment as a primer on the Rajapaksa way”, *Colombo Telegraph*, 24 January 2013.

attack on the independence of the judiciary, a senior judge and head of the judicial services commission was attacked and badly beaten by armed men.¹⁵

On 1 November, government parliamentarians initiated impeachment proceedings against Bandaranayake, charging her with fourteen counts of misconduct. She rejected all the charges and launched a strong public campaign to defend herself, with the support of an unusually broad coalition featuring the bar association, the leaders of all Sri Lanka's major religions and civil society activists, as well as most of the opposition.

Despite the widespread public resistance, a government-dominated parliamentary select committee found Bandaranayake guilty on 8 December on three counts of misconduct.¹⁶

In addition to its unusual speed, the work of the parliamentary select committee was widely criticised for its rejection of basic tenets of due process.¹⁷ Composed of a seven-four majority of government members, many of whom had already expressed their belief in the chief justice's guilt, the committee denied her sufficient time and information to prepare her defence, denied her access to documents and evidence used by the panel members, and refused to provide her legal team a list of witnesses or an opportunity to cross-examine them. Witnesses were called only after she had quit the hearings in protest at verbal abuse by government members and the denial of her due process rights.

In mid-December, the court of appeal requested the parliamentary select committee to postpone a final decision on impeachment until it had a chance to rule on a number of lawsuits against the process. The court summoned the members of the committee, as the Supreme Court had earlier in a separate case. The speaker of parliament – the president's brother, Chamal Rajapaksa – and the government members of the committee rejected both requests, citing "the supremacy of parliament".¹⁸ On 3 January, the Supreme Court ruled that the parliamentary standing orders under which the chief justice had been tried did not meet constitutional requirements. The court of appeal followed on 7 January by formally quashing the parliamentary select committee's conviction of the chief justice.

Defying clear rulings from Sri Lanka's two highest courts, as well as strong domestic opposition and growing expressions of international concern,¹⁹ parliament

¹⁵ "Secretary of the Judicial Services Commission was assaulted by a group of unidentified men", *Colombo Telegraph*, 7 October 2012; International Commission of Jurists, "Sri Lanka: ICJ deplors attack on the Secretary of the Judicial Services Commission", 9 October 2012.

¹⁶ "Sri Lanka Chief Justice found guilty on 3 charges", *Colombo Page* (www.colombopage.com), 8 February 2013. She was declared guilty of interfering with a case involving a company from which her sister bought an apartment, not declaring dormant bank accounts and remaining in office while her husband faced a bribery charge. Amal Jayasinghe, "Sri Lanka impeaches chief justice", *Australian Associated Press*, 12 January 2013.

¹⁷ Rules of evidence and due process that are routine in formal judicial proceedings do not apply under the parliamentary procedures that govern impeachments.

¹⁸ "PSC stays out of Appeal Court", *Daily News*, 3 January 2013.

¹⁹ Calls to refrain from pursuing the impeachment came from the U.S., the EU, the Commonwealth secretary general, the UN special rapporteur on the independence of judges and lawyers, and many lawyers associations around the world. Criticism was even stronger after the chief justice was removed. See, for instance, "Removal of Chief Justice 'calamitous setback' for rule of law in Sri Lanka – UN official", UN News Centre, 18 January 2013; "Dismissal of the Chief Justice in Sri Lanka", Commonwealth secretary general, 13 January 2013; and "Sri Lanka: Judges around the world con-

voted by a two-thirds majority to impeach the chief justice on 11 January, and two days later, the president ratified the decision and formally removed the chief justice from office. On 15 January, the president appointed the presidential legal adviser and former attorney general, Mohan Peiris, to replace Bandaranayake.²⁰

The pursuit of the impeachment was won partly in the street. Plans by Bandaranayake to insist on her legitimacy as chief justice by appearing in court as scheduled on 15 January were prevented when heavily armed paramilitary police were stationed surrounding the Supreme Court to block her access. That same day she was forced to leave her official residence and prevented by the police from giving a press conference.²¹ Government-sponsored posters and state media attacked many of the lawyers and activists who led the opposition to the impeachment. In the following days, at least four senior lawyers received death threats from a hitherto unknown vigilante group, "Patriotic Taskforce".²²

B. *Investigations into Serious Crimes*

The past year has seen no progress in investigating any of the hundreds of alleged extrajudicial killings and enforced disappearances committed over the past seven years. This is despite the detailed recommendations of the LLRC to "credibly investigate widespread allegations of extrajudicial killings and enforced disappearances" and the many international calls for action, not least from the HRC. Instead, political killings and abductions continued in 2012, though the number of incidents appears to have diminished in the second half of the year.²³

The government has stated that the attorney general has requested the police to reopen the investigation into the 2006 massacre of seventeen aid workers with

demn impeachment of Chief Justice Dr Shirani Bandaranayake", International Commission of Jurists, 23 January 2013.

²⁰ Known as a Rajapaksa loyalist, Peiris has been criticised for his statements before the UN Committee on Torture in November 2011 that he had information that the disappeared Sri Lanka journalist Prageeth Ekneliyagoda had in fact left the country for personal reasons and was still alive. When he was later called to court in Sri Lanka as part of a habeas corpus hearing and asked to explain and substantiate the claim, Peiris reportedly said "we do not know the truth or falsity" of the information and could not recall the source. "Sri Lankan official has 'no idea' of reporter's fate", BBC, 5 June 2012; and "The credibility gap", Ceylon Today (www.ceylontoday.lk), 7 June 2012. Peiris has also been criticised for dismissing, while attorney general in 2011, separate rape and murder charges against two government parliamentarians. "No way out for MR's Govt", *The Sunday Leader*, 20 January 2013; "Chandana Kathiriarachchi sentenced", *Daily Mirror*, 27 June 2011; "Attorney General wrong to withdraw charges – CJ", BBC, 17 April 2011.

²¹ A lawyers' demonstration against the impeachment on 10 January was attacked and dispersed by government supporters. "Thugs, hooligans attack lawyers, police look on", *The Sunday Times*, 13 January 2013. Pro-government crowds, including some senior ministers, celebrated the parliament's impeachment outside the chief justice's residence with firecrackers and traditional Sri Lankan celebratory food. "And then they came for the judges", *The Economist*, 19 January 2013; "New constitutional crisis with two CJs", *Daily Mirror*, 16 January 2013.

²² "Lawyers get threatening letters", *Daily Mirror*, 17 January 2013. This followed a poster campaign – tolerated if not organised by the government – attacking anti-impeachment protests as the work of traitors. "Two-day debate on impeachment begins", *Hindu*, 10 January 2013. Threats against lawyers opposed to the impeachment continue to be reported. "Anti-impeachment lawyers being hunted countrywide: Lawyers Collective", *DailyFT*, 15 February 2013.

²³ A study presented detailed evidence of 57 abductions and disappearances in the first six months of 2012. See Watchdog, "A disappearance every five days in post-war Sri Lanka", Groundviews (www.groundviews.org), 30 August 2012.

Action contre la faim (ACF) and the killing of five students in Trincomalee.²⁴ In both cases there is strong evidence implicating government security forces.²⁵ To date, there is no indication that substantive action has been taken in either case.²⁶

The lack of progress in investigations is not surprising given the government's categorical rejection of any independent processes or institutions aimed at effectively challenging impunity for politically motivated disappearances and extrajudicial killings. The action plan, for instance, ignored the LLRC's key recommendation to appoint a "special commissioner of investigation", provided with "experienced investigators" to look into alleged disappearances (para. 9.51). Instead, the government undertook merely "to invoke the present procedures as available in the Code of Criminal Procedures with priority given to such complaints".²⁷

The plan offered only vague responses to the LLRC's call to "take immediate steps to ensure that these allegations are properly investigated into [sic] and perpetrators brought to justice" (para. 9.46). Instead of independent investigations and prosecu-

²⁴ The government's national report to the HRC's universal periodic review (UPR) states that the two cases "were referred to the Attorney-General to ascertain whether a prima facie case exists to launch prosecutions. The Attorney-General has advised the Inspector-General of Police to conduct further investigations". "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21", A/HRC/WG.6/14/LKA/1, 10 August 2012, para. 31 (hereafter cited as "National Report to UPR"). The action plan agreed to implement the recommendations of an earlier (2007-2009) commission of inquiry, headed by retired Supreme Court Justice N. Udagama, that looked into these and other major human rights cases. That report remains unpublished, however, and its recommendations are unknown, so effective investigations and prosecutions are far from guaranteed. See Crisis Group Report, *Sri Lanka's Human Rights Crisis*, op. cit., pp. 8 and 22-6.

²⁵ Crisis Group Report, *Sri Lanka's Human Rights Crisis*, op. cit.; "Twenty years of make-believe: Sri Lanka's Commissions of Inquiry", Amnesty International, 11 June 2009; "Unfinished Business of the Five Students and ACF Cases", University Teachers for Human Rights, Special Report No. 30, 1 April 2008; "Joint Submission to the United Nations Universal Periodic Review", Action contre la faim and SPEAK Human Rights & Environmental Initiative, October 2012.

²⁶ The action plan also committed the government to "conduct investigations speedily and ensure that the Rule of Law prevails" with regard to a set of specific allegations relating to government-linked armed groups and their leaders brought to the attention of the LLRC. The plan named as its possible targets "Bhareti [better known as Iniya Barathi], Karuna [V. Muralitharan, formerly head of the Tamil Makkal Viduthalai Pulikal (TMVP), now vice-president of the ruling Sri Lanka Freedom Party (SLFP)], EPDP [Eelam People's Democratic Party] extortion, and a gang led by a person called Major Seelan". Although the plan promised action within six months, to date, the government has released no indications of progress. More generally, the action plan rejected the LLRC's call for "proper investigations in respect of allegations against the illegal armed groups with a view to ... institut[ing] criminal proceedings against offenders" (para. 9.73). The LLRC report cited extensive testimony and other evidence alleging criminal activities by pro-government parties EPDP and TMVP, which both parties deny. Yet in response, the action plan simply declared that while "illegal armed groups were known to operate" during the war, "steps have been taken to completely eliminate this activity" and promises that "these measures will be continued to be implemented to ensure that these groups do not re-emerge". Credible reports, especially from the north, suggest such groups continue to operate. Crisis Group telephone interviews, community activists and journalists, December 2012 and January 2013. See also "LLRC pussyfoots around Iniya Bharathi-TNA", *The Sunday Leader*, 29 January 2012.

²⁷ The action plan was also entirely silent on the LLRC's call for the government to implement the many recommendations of past commissions of inquiry into disappearances, in particular its recommendation for "a special mechanism to address this issue and deter future occurrences" (para. 9.48). The plan finessed the LLRC recommendation to enact a law to criminalise enforced and involuntary disappearances, promising only that the issue will be considered over the next two years and action taken "if law reform is found to be necessary".

tions, the plan merely promises to “identify impediments, if any, to the effective enforcement of the law” and to “strengthen investigation skills of the police”.

In response to the LLRC’s call to “investigate any such instances where there is prima facie evidence of conscription of children as combatants and ensure that offenders are brought to justice” (para. 9.79), the action plan simply stated: “Investigations completed”. There has not been a single prosecution in any of the hundreds of cases of alleged forced conscription of children during the civil war by the LTTE and by various branches of the pro-government Tamil Makkal Viduthalai Pulikal (TMVP).²⁸

Serious human rights abuses continue throughout the country, including regular kidnappings and killing of political opponents. The 7 April 2012 abduction of two dissident Sinhala Janatha Vimukthi Peramuna (JVP) activists was notable for their being released following strong Australian pressure.²⁹ Local media and rights activists documented scores of enforced disappearances in the first six months after the release of the LLRC report, including some that followed the HRC resolution. Attempts by the defence ministry to dismiss these claims have been challenged.³⁰

The LLRC says very little about allegations of rape or sexual violence and makes no specific recommendations on the issue. The action plan is entirely silent. Yet, there are regular and credible reports that violence against women, particularly in the north and east, continues at high levels, with no reforms or reported arrests of alleged perpetrators in the security forces since the Crisis Group December 2011 report on the issue.³¹

C. *Accountability*

Nearly a year after the HRC called on the Sri Lankan government to “address alleged violations of international law”,³² there have been no credible investigations into any of the hundreds “of credible allegations” of war crimes detailed in the April 2011 re-

²⁸ In April 2012, the UN Secretary-General removed the Iniya Barathi faction from the UN list of groups using child soldiers. “Children and armed conflict: Report of the Secretary-General”, 26 April 2012. The LTTE and the TMVP had been removed from the list in previous years. In its final report on Sri Lanka, ratified by the Security Council in December 2012, the Security Council’s Working Group on Children and Armed Conflict recommended the government “continue to ensure effective implementation of its ‘zero tolerance’ policy on child recruitment, including through continued investigations of each reported case of recruitment by all armed groups, followed by prosecutions of those responsible, and to ensure appropriate follow-up to the report of the National Child Protection Authority on Iniya Bharathi”. “Conclusions on the situation of children and armed conflict in Sri Lanka”, Working Group on Children and Armed Conflict, 21 December 2012. See also “Child soldiers in Sri Lanka not a ‘closed’ issue”, *The Sunday Leader*, 13 January 2013.

²⁹ “Abducted man believes diplomats saved him from death”, *Sydney Morning Herald*, 12 April 2012.

³⁰ “A Factual Analysis of Disappearances and Abductions”, defence ministry website (defence.lk), 20 July 2012. This attempts to undermine claims found in two pieces by “Watchdog”: “New wave of abductions and dead bodies in Sri Lanka”, Groundviews (www.groundviews.org), 26 February 2012 and “Horrible rise of disappearances in post-war Sri Lanka continues unabated”, Groundviews, 5 April 2012. For Watchdog’s reply to the defence ministry’s critique, see “A disappearance every five days in post-war Sri Lanka”, op. cit.

³¹ Crisis Group Report, *Women’s Insecurity in Sri Lanka’s North and East*, op. cit. According to aid workers in the north, some police accused of rape and sexual harassment of local women are occasionally transferred to other locations, but none taken to court, as the victims fear antagonising authorities. Crisis Group interviews, February 2013.

³² The resolution also calls on the government to “take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans”.

port of the Secretary-General's experts panel on accountability.³³ While institutionalised impunity has always made it unlikely that the government would undertake or allow independent investigations into the actions of its own security forces, accountability is even less likely with the judiciary now fully under the government's control.

As the HRC noted in its 2012 resolution, the LLRC report "does not adequately address serious allegations of violations of international law".³⁴ This assessment was confirmed by a detailed U.S. State Department report released in April 2012, which cited the serious failings of the LLRC's limited and pro-military treatment of attacks on civilians in the final months of the war.³⁵ Asserting that most civilians were likely killed "in crossfire" and downplaying evidence the government shelled hospitals,³⁶ the LLRC concluded that security forces generally conducted the war in accordance with international humanitarian law.³⁷

The LLRC did, however, recommend the government pursue three lines of inquiry into alleged violations:

- ❑ "Ascertain more fully the circumstances under which specific instances of death or injury to civilians could have occurred,³⁸ and if such investigations disclose wrongful conduct, to prosecute and punish the wrongdoers" (paras. 9.9 and 9.37a).
- ❑ "Launch a full investigation into allegations of disappearances after surrender/arrest and where such investigations produce evidence of any unlawful act on the

³³ "Report of the Secretary-General's Panel of Experts", op. cit.

³⁴ For a critique of the LLRC's treatment of allegations of war crimes, see Crisis Group's "Statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission", op. cit.

³⁵ "Report to Congress: Measures Taken by the Government of Sri Lanka and International Bodies To Investigate and Hold Accountable Violators of International Humanitarian and Human Rights Law", State Department Office of Global Criminal Justice, 4 April 2012. www.state.gov/j/gcj/srilanka/releases/187408.htm. (The report is accompanied by a longer, and valuable, "Factual Supplement".) It finds that "the LLRC's recommendations fail to adequately address accountability for violations of IHL [international humanitarian law] and IHRL [international human rights law] by government security forces and LTTE cadres during the conflict". It also affirmed that "since the LLRC report was released, culpable individuals have not been identified by a credible mechanism, and no one has been held to account". This remains the case almost a year later.

³⁶ On the shelling of hospitals, of which there is much eyewitness testimony available in the public domain indicating government responsibility, the LLRC said that, although it was unable to determine responsibilities, given the significant number of testimonies confirming hospitals had been shelled, "consideration should be given to the expeditious grant of appropriate redress to those affected after due inquiry as a humanitarian gesture which would instil confidence in the reconciliation process" (para. 9.14).

³⁷ The LLRC found that the military's actions in the final phase of the war "evidenc[ed] a carefully worked out strategy of avoiding civilian casualties or minimizing them.... consistent with the position that protection of civilian life was a key factor in the formulation of a policy for carrying out military operations" and "against any proposition that deliberate targeting of civilians was part and parcel of a policy..." (paras. 9.4-9.5).

³⁸ While the LLRC report discusses eight specific reported cases of intentional military attacks on civilians, its final recommendations only cite three incidents as meriting further inquiry, though its phrasing is ambiguous: "Investigate the specific instances referred to in observation 4.359 vi. (a) and (b) and any reported cases of deliberate attacks on civilians. If investigations disclose the commission of any offences, appropriate legal action should be taken to prosecute/punish the offenders" (para. 4.360, emphasis added). The April 2012 State Department report argues that "the LLRC report does not call for investigations ... other than the three instances briefly discussed in the report". "Factual Supplement", op. cit.

part of individual members of the Army, prosecute and punish the wrongdoers” (para. 9.23).

- “Initiate an independent investigation into [the UK Channel 4 video] to establish the truth or otherwise of the allegations arising from the video footage” (para. 9.39).

To date, the government has failed to undertake independent investigations. The action plan promised only that the military will within a year “complete [its] ongoing disciplinary process being conducted in terms of Armed Forces statutes”, looking into any violations that led to deaths or disappearances. “Upon conclusion, [the government will] take follow up action to prosecute, where relevant”, “us[ing] the existing system as provided for in the Criminal Procedure Code”. The government gave itself five years to complete the whole process.³⁹

After releasing very little information about the nature of its “ongoing disciplinary processes”, the army announced on 15 February 2013 that a five-member court of inquiry had delivered the first of a two-part report to the army commander.⁴⁰ According to the army, “evidence before the Court has conclusively established that the [military’s] Humanitarian Operation was conducted strictly in accordance with the ‘Zero Civilian Casualty’ directive” and that “the instances of shellings [sic] referred to in the LLRC Report were not caused by the Sri Lanka Army and civilian casualties might have occurred due to unlawful acts by LTTE”.⁴¹ No prosecutions or disciplinary actions were announced.⁴²

With progress by the government on investigations into, and accountability for, grave violations of the laws of war, next to impossible, an international investigation remains the only plausible process for learning the truth, holding perpetrators to account and defending the laws of war.

³⁹ The action plan also rejected the LLRC’s call for an independent analysis of the Channel 4 video to “establish the truth or otherwise” of the summary executions it appears to depict (para. 9.39). The plan promised only to “assess the current processes being pursued to examine the authenticity of the allegations in Channel 4, namely the inquiry currently conducted by the Army”. Once again, the army is tasked with investigating its own possible criminal misconduct.

⁴⁰ “Inquiry reveals that the instances of shellings were not caused by the army”, Sri Lanka army website (www.army.lk), 15 February 2013. A year earlier, the government announced that a five-member army court of inquiry, headed by a major general, had been formed. “Army chief appoints Court of Inquiry”, *Daily News*, 16 February 2012. In November, as the HRC was conducting its universal periodic review, senior Sri Lankan minister Mahinda Samarasinghe announced that the court had met “approximately 30 times” and was investigating 50 incidents. According to Samarasinghe: “Investigations cover whether or not any attacks were carried out by the Army on civilians, on hospitals or in the no-fire zones including the specific instances referred to in the LLRC Report. Irrespective of whether the Channel 4 story is authentic or not, the Court of Inquiry has been mandated to take measures to ascertain whether the uniformed persons featured in the Channel 4 footage can be identified as members of the Sri Lanka Army, and other violations of military law, if any”. “Samarasinghe tells UPR army probing allegations”, *Island*, 3 November 2012.

⁴¹ The court of inquiry is also said to have found that “at all stages of the Humanitarian Operation, the Sri Lanka Army behaved as a well-disciplined military force observing the IHL and the law of war and they took all the precautions to avoid civilian casualties and all those who came under the control of the Sri Lanka Army, including surrendered/captured LTTE cadres, were treated humanely observing the IHL to the letter”. “Inquiry reveals that the instances of shellings were not caused by the army”, *op. cit.*

⁴² According to the army, the court of inquiry “will now proceed to investigate the 2nd part of their mandate, to wit Channel 4 allegation on summary executions of captured LTTE terrorists”. *Ibid.*

D. *The Detention System*

Alarmed at the large numbers of Sri Lankans detained in arbitrary, illegal ways, and concerned with the difficulty of getting reliable information of who is held and where, the LLRC made a series of important and wide-ranging recommendations for reforms of the detention system. Unfortunately, the government has done next to nothing to implement them, with the action plan rejecting or ignoring the bulk of the proposals.⁴³

1. Long-term detainees held under the Prevention of Terrorism Act (PTA)

Expressing “concern over some detainees who have been incarcerated over a long period of time without charges”, the LLRC held that “conclusive action should be taken to dispose of these cases by bringing charges or releasing them where there is no evidence of any criminal offence having been committed” (para. 970). It also urged the government to “appoint an Independent Advisory Committee to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the Prevention of Terrorism Act” (paras. 5.44 and 9.57).

The action plan made no commitment to release detainees against whom there is no evidence and it rejected the proposed independent advisory committee, choosing instead to “identify and establish procedures in the existing system to address the issue”. It promised that a “dedicated unit in the Attorney General’s Dept.” will work to reduce the number of detainees over the next two years and will report back by the end of 2012 on means to “ease the backlog” of cases.

To date, no information has been made public on the situation of long-term detainees.⁴⁴

⁴³ For instance, the action plan ignored the LLRC’s position that “no person should be detained in any place other than” “formally designated” “authorized places of detention” (9.67). It also takes no note of the LLRC’s recommendation that law enforcement officials always issue a formal receipt of arrest and provide details of the place of detention (9.67) nor its reminder of the obligation to prosecute those who fail to record an arrest, detention or transfer, or complaints of abductions (5.42). The action plan claimed merely that it will “continue current practice of informing next of kin regarding location of detainee” and notes that “NHRC (the national human rights commission) is also informed”. In practice, however, as the LLRC itself notes, many next of kin are never informed about where their family member has been taken and frequently spend long periods in anxious, often fruitless, search. The human rights commission is in fact rarely informed about detentions and has little ability in practice to assist families or visit detainees. Crisis Group telephone interviews, lawyers and activists, Colombo, January 2013. The action plan also ignored a whole set of recommendations by the LLRC designed to protect detainees from abuse and families from unnecessary trauma. This includes the principles that “an arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law; any change of the place of detention should be promptly notified to the family of the arrested person and the Human Rights Commission of Sri Lanka; magistrates should visit the places of detention every month; [and] release from detention should be done through courts” (para. 5.41).

⁴⁴ The government informed the HRC in August 2012 that 383 suspected ex-LTTE combatants “are under judicially mandated custody (remand)”, but it gave no figure for the number of long-term detainees still held under the Prevention of Terrorism Act (PTA). “National Report to UPR”, op. cit., para. 23. Colombo-based lawyers who handle such cases estimate there are roughly 500 pending as of February 2013, and that some of these detainees are being sent for rehabilitation in order to expedite their release. Since 2009, more than one third of long-term detainees are estimated to have been freed, released on bail or transferred to the rehabilitation system. Crisis Group telephone interview, February 2013.

2. "Rehabilitation"

The government regularly trumpets the success of its "rehabilitation" program for those detained at the end of the war on suspicion of involvement with the LTTE. It claims to have released virtually all of the nearly 12,000 people originally detained.⁴⁵ This is likely true, but there remains significant uncertainty about the numbers originally and currently detained.⁴⁶ Government officials regularly release new, but often conflicting, numbers, with no independent verification procedures.⁴⁷ There have also been serious concerns from the beginning about the lack of clear legal criteria under which the "rehabilitees" were being held and the clear lack of due process rights.⁴⁸

Determining the exact number of those detained in the "Preventive Accommodation and Rehabilitation Centres" (PARCS) is difficult in part because the government regularly shuttles detainees between the rehabilitation system and its prisons and detention centres for long-term detainees.⁴⁹ It has also begun to use the "rehabilitation" system, now operating under the Prevention of Terrorism Act (PTA), to punish political dissent. In November 2012, four Tamil student activists at Jaffna University were arrested under the PTA and sent to the Welikanda rehabilitation centre.⁵⁰

⁴⁵ The government stressed that, as of the end of July 2012, "from approximately 12,000 persons, at present 636 beneficiaries are undergoing rehabilitation, and 383 are under judicially mandated custody (remand)". "National Report to UPR", op. cit., para. 23.

⁴⁶ On 13 January 2013, the government released 313 detainees from one of its Protective Accommodation and Rehabilitation Centres (PARCS). One news report of the release, citing government officials, stated that 12,000 suspected ex-LTTE members had been released from the rehabilitation system, with 430 more due to be released "soon". "313 Rehabilitated LTTE members released", Lankasri News (lankasrinews.com), 13 January 2013. According to a news item of the same event on one of the government official news sites, "of the over 11,600 former rebel cadres surrendered to the military at the end of war in 2009, only a few hundred remain in rehabilitation camps now". "Govt allocates more funds for rehabilitation of ex-LTTE cadres", Sri Lankan government website (www.priu.gov.lk), 15 January 2013. Meanwhile, the website of the Bureau of the Commissioner General of Rehabilitation gives 11,989 as the total number of people to be "reintegrated" through the government rehabilitation program. However, in December 2009, Sri Lanka's ambassador to the UN, Palitha Kohona, stated "over 12,700 former combatants have been identified among the IDPs so far". "The 'Elders' statement on IDPs in Sri Lanka – sadly outdated and inaccurate – Dr. Kohona", Asian Tribune (www.asiantribune.com), 5 December 2009.

⁴⁷ With the government denying the International Committee of the Red Cross (ICRC) and the UN refugee agency (UNHCR) access to its initial screening points for those fleeing the war zone or surrendering to security forces in 2009, it has never been possible to know how many people were detained at the end of the war. While the government allowed the UN Children's Fund (UNICEF) access to the nearly 600 children detained after recruitment by the LTTE, it prevented the ICRC and all other groups access to any of the adult "rehabilitation" centres from the end of July 2009. Although the International Organisation for Migration (IOM) was allowed to meet "rehabilitees" in order to undertake socio-economic profiling, it had only very limited and monitored access to the centres and, unlike the ICRC, has no protection monitoring mandate or expertise. For earlier discussions of government treatment of surrendered and suspected ex-combatants, see Crisis Group Reports, *Reconciliation in Sri Lanka: Harder than Ever*, op. cit., pp. 17-18, and *Sri Lanka's North I*, op. cit., pp. 10-12.

⁴⁸ For two valuable studies of the legal and procedural failings of Sri Lanka's detention and rehabilitation system for surrendered or suspected LTTE members, see Valkyrie, "Reconciliation through 'Rehabilitation' & 'Reintegration' of Ex-LTTE members in Sri Lanka: Separating Fact from Fiction", Groundviews (www.groundviews.org), 19 October 2010, and International Commission of Jurists, "Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects", September 2010.

⁴⁹ See *Sri Lanka's North I*, op. cit., p. 10, note 73.

⁵⁰ They were arrested for helping organise public commemorations of Tamil war dead, including those killed while fighting with the LTTE. See Section II.E. below.

3. Database of detainees

The LLRC called on the government in both its interim and final reports, to establish “a centralized comprehensive database containing a list of detainees, which should be made available to the next of kin with names, place of detention as well as record of transfers so that families have access to such information” (para. 9.63). The action plan promised that within six months the defence ministry will “enhance” “the present database”, “with easy access to information being available to NOK [next of kin]”. The current database, however, is reportedly difficult to access and is believed to list the names and locations only of those held by the Terrorist Investigation Department (TID) of the police. It thus leaves out many, perhaps the majority, of detainees, and it is of no real help to the hundreds of families searching for those who have disappeared but are not in detention.⁵¹

The government should establish a transparent process for the arrest, detention and processing of detainees, one that guarantees basic rights of due process and the full range of protections recommended by the LLRC. In the absence of these reforms, parliament's 22 January adoption of a new law that extends from one to two days the period that the police can detain a suspect before producing him before a court is particularly dangerous.⁵²

4. Prison violence

The grave problems facing the detainees, including Tamil prisoners held for years without trial and often without charges, were highlighted by two separate prison incidents in 2012.⁵³ On 29 June, heavily armed commandos from the police Special Task Force (STF) stormed the prison in the northern town of Vavuniya to free three prison guards held by striking long-term Tamil inmates.⁵⁴ Families of the inmates

⁵¹ According to an expert on Sri Lankan detention issues, “while a detainees database is required, this doesn't really address the issue of the missing, which the government conflates with the issue of the detainees database in an effort to create the impression that a detainees database would provide answers to families of the missing. Even the TNA conflates the issue and calls for a database when they talk of the missing, as if establishing a database is going to result in families finding out the whereabouts of their missing loved ones. The majority of those who are looking for their family members are those whose loved ones went missing during the last stages or surrendered to or were arrested by the SLA [Sri Lankan army] and thereafter disappeared. The database is not going to address their issue”. Crisis Group email correspondence, February 2013.

⁵² “Parliament passes Code of Criminal Procedure Bill”, Sri Lankan government website (www.priu.gov.lk), 23 January 2013. The bill, which also gives the attorney general new powers to respond to “public disquiet”, was strongly criticised by rights groups and the opposition as designed to stifle dissent. For the JVP's criticisms, see “48 hour detention bill – a repressive bulldozer turned against masses”, *Lankatruth*, 1 February 2013. For the government's defence of the bill, see Manjula Fernando, “Move to check crime”, *The Sunday Observer*, 27 January 2013.

⁵³ There have been in the past other even bloodier incidents in Sri Lankan prisons and detention centres: more than 50 Tamil political prisoners were killed in Welikada prison in Colombo in July 1983, during the island-wide anti-Tamil riots, while in October 2000, 27 inmates were killed and fourteen injured when a Sinhala mob stormed a low-security “rehabilitation centre” for suspected members of Tamil militant groups. No one was ever successfully prosecuted in either case. See Rajan Hoole, *Sri Lanka: The Arrogance of Power: Myths, Decadence & Murder* (UTHR(J), 2001), ch. 10, “The Welikade Prison Massacres”; and Alan Keenan, “Making Sense of Bindunuwewa: From Massacre to Acquittals”, *Law and Society Trust Review*, vol. 15, issue 212 (June 2005).

⁵⁴ “Parents of dead Sri Lankan Tamil prisoner ‘denied last rites’”, BBC, 9 July 2012 and “Sri Lanka ‘must seek’ UN help over deadly prison violence”, BBC, 15 August 2012. The inmates were reportedly protesting the transfer of a fellow prisoner and were holding the guards hostage until prison officials

and Tamil politicians accused the STF and prison officials of subjecting the recaptured inmates to severe beatings as punishment for the uprising.⁵⁵ 32 inmates had to be transferred to hospitals, some in intensive care; two later died of their injuries.⁵⁶ Despite demands from family members, activists and opposition politicians, there has been no independent investigation.

Just months later, on 9 November, the STF was involved in an even more deadly incident, when at least 27 prisoners were killed and more than 59 people injured during a day-long siege and gun battle in Colombo's main Welikada prison.⁵⁷ Some families and activists claim that many of the inmates killed were in fact murdered by the STF and army reinforcements after they had regained control of the prison.⁵⁸

E. *Freedom of Expression*

Expressing concern about the failure to “conclusively investigate” and “bring to justice” those responsible for “attacks on journalists and media institutions and killing of journalists”, the LLRC urged the government to “expeditiously conclude investigations [into past attacks] so that offenders are brought to book without delay”. It also said that “all steps should be taken to prevent harassment and attacks on media personnel and institutions” (para. 9.115), in order to “promote and protect the right of freedom of expression for all”.

Since the release of the LLRC report, however, there has been no progress in holding anyone to account for any of the more than dozen attacks on journalists since 2006, including the January 2009 murder of *Sunday Leader* editor Lasantha Wickrematunga and the 2010 disappearance of political cartoonist Prageeth Ekneliyagoda.⁵⁹ The action plan promised only that within twelve months the police and media ministries – neither of which has shown a willingness or ability to address the crisis – would “take appropriate action to ensure media freedom” and “complete investigations into current cases”.

produced the missing prisoner to prove he was alive and had not been tortured. The government claimed that among the prisoners were senior LTTE commanders. “How the Vavuniya prisoner rebellion was crushed by the STF”, *The Nation*, 8 July 2012.

⁵⁵ See “Three urgent demands submitted to President Rajapaksa over Vavuniya jail issue”, DBS Jeyaraj blog (dbsjeyaraj.com), 5 July 2012.

⁵⁶ A government doctor declared that the first inmate, Ganesan Nimalaruban, had died of heart failure. His family was denied for weeks the right to claim his body and bury him in his home village near Vavuniya. “Parents of dead Sri Lankan Tamil prisoner ‘denied last rites’”, op. cit. The second murdered prisoner, Dilrukshan Mariadas, had reportedly been missing for years. His parents did not know he was alive until they visited him in the hospital, in a coma. Athula Withanage, “Vavuniya killing is just the tip of the iceberg” - Mano Ganesan”, *Journalists for Democracy in Sri Lanka*, 13 July 2012.

⁵⁷ Violence reportedly erupted when the mostly Sinhalese prisoners resisted STF efforts to seize drugs and other contraband. “Prisoners at war”, *The Sunday Times*, 11 November 2012.

⁵⁸ The government claimed the prisoners had obtained weapons and were killed in exchanges of fire. “Sri Lanka’s prison clash ‘a massacre’”, BBC, 11 November 2012. The government has reportedly appointed a three-member commission of inquiry into the Welikada killings and the Human Rights Commission has launched a separate probe. “Justice in the aftermath”, *Ceylon Today* (www.ceylontoday.lk), 18 November 2012.

⁵⁹ “Call for truth about cartoonist’s disappearance three years ago”, *Reporters Without Borders*, 24 January 2013.

In the first six weeks of 2013, two Tamil newspaper distributors in Jaffna were physically assaulted,⁶⁰ while a journalist with the Jaffna-based Tamil newspaper *Uthayan* was badly beaten in December 2012.⁶¹ *Uthayan's* editor was forced into exile in mid-2012 after being seriously assaulted.⁶² While violence against journalists in the south is less frequent than before, attacks continue: on 15 February 2013, an investigative journalist specialising in corruption issues was shot and seriously wounded.⁶³ Threats to harm those who challenge or ask difficult questions of the government remain common. In October 2012, *Sunday Leader* editor Fredrica Jansz fled Sri Lanka with her family and is now seeking political asylum following a series of threats.⁶⁴ Despite his public threats to “break the limbs” of Sri Lankan activists who had lobbied in support of the March 2012 HRC resolution in Geneva, Mervyn Silva remains a cabinet minister, with no official reprimand or public criticism by the president or other senior officials.⁶⁵

In July 2012, the government announced new regulations to monitor and control websites that publish anything the government deems to be news.⁶⁶ Under revisions to the Press Council Act being approved by the cabinet but not yet law,⁶⁷ the punishments for anyone found by the government to have misused the sites would be severe. Numerous websites critical of the government remain blocked for Sri Lankan readers.⁶⁸ In June 2012, the offices of two news sites associated with the United National Party (UNP) were raided and temporarily closed and charges filed against the staff.⁶⁹ The charges were later dropped after widespread national and international protest, though court proceedings are ongoing.⁷⁰ The government continues to resist calls, including from the LLRC, to enact a right to information bill.⁷¹

⁶⁰ Ramanan Veerasingham, “Tamil newspaper distributor attacked in garrison town of Jaffna”, Journalists for Democracy in Sri Lanka, 7 February 2013.

⁶¹ “Uthayan journalist allegedly assaulted while taking pictures”, *The Sunday Times*, 2 December 2012.

⁶² “Media freedom needs closer attention in Sri Lanka’s post-war politics”, International Federation of Journalists, 11 October 2012.

⁶³ “Sri Lanka Sunday Leader reporter Faraz Shauketaly shot”, BBC, 16 February 2013.

⁶⁴ Ben Doherty, “Editor seeks political refuge abroad”, *The Age*, 10 November 2012. For Jansz’s account of what she claims were Gotabaya Rajapaksa’s threats against her, see “Gota goes bezerk”, *The Sunday Leader*, 8 July 2012. Rajapaksa admits the conversation was an angry one, but denies he made any threats. “Gotabaya Rajapaksa responds to allegations by Frederica Jansz”, DBS Jeyaraj blog (dbsjeyaraj.com), 14 July 2012.

⁶⁵ Silva is cabinet minister for public relations and public affairs. After a number of his closest aides were arrested for the January 2013 murder of a political rival and critic of Silva, he was forced to resign his position as the ruling party’s chief organiser of the important Kelaniya electorate. “Sri Lankan minister’s secretary accused of murder to make a confidential statement to magistrate”, Colombo Page (www.colombopage.com), 1 February 2013.

⁶⁶ “Sri Lanka to bring laws, charge annual fees from news websites”, Lanka Business Online (www.lbo.lk), 12 July 2012.

⁶⁷ Katrina Kaiser, “Press freedom under attack In Sri Lanka: Website office raids and online content regulation”, Electronic Frontier Foundation, 30 July 2012.

⁶⁸ In addition, there are frequent ad hoc blocks on Tamil language news sites when they publish stories that anger authorities. See “A new spate of web censorship in Sri Lanka?”, Groundviews (www.groundviews.org), 26 June 2012.

⁶⁹ “Police raid Sri Lanka Mirror and Sri Lanka X News”, BBC, 29 June 2012.

⁷⁰ “Eight online journalists and an office assistant freed but investigation continues”, Reporters Without Borders, 4 July 2012; “Court releases Srilankamirror journalists”, *Sri Lanka Mirror*, 18 September 2012.

⁷¹ The action plan rejected the LLRC’s recommendation that “legislation should be enacted to ensure the right to information”, leaving it to the “Cabinet to decide the suitable time frame for drafting

Finally, disturbed by the numerous complaints of political meetings, protests and religious gatherings being prevented or broken up by the military and police, especially in the north, the LLRC requested the government to “ensure people, community leaders, and religious leaders have the freedom to organize peaceful events and meetings without restrictions” (par 9.118). With the action plan merely promising that district secretaries and the public administration ministry would “monitor ... whether there are constraints to enjoying this freedom”, there has been no improvement since the release of the LLRC report.

In late November 2012, military and police broke up lamp-lighting ceremonies conducted by Jaffna University students to commemorate civilians and LTTE fighters killed in the war.⁷² Student protests the next day were violently dispersed by the police and military. Dozens of students were arrested or questioned over the next two weeks, with four student leaders sent for “rehabilitation” under the PTA.⁷³ The police and military also regularly question northern Tamil politicians – including the leaders of the Tamil National People’s Front (TNPf)⁷⁴ and senior Tamil National Alliance (TNA) parliamentarians⁷⁵ – and have disrupted protests by both parties.⁷⁶

legislation”. The suggestion that such legislation might eventually be drafted ignores the government’s failure to take up the draft legislation on the right to information that was prepared in 2004. In 2011, the government defeated an attempt by the opposition UNP to table its own freedom of information bill in parliament. “Govt. rejects our right to know”, *The Sunday Times*, 26 June 2011.
⁷² The commemorations took place on 27 November, the LTTE’s traditional “heroes day”.

⁷³ Police and military officials were quoted as saying the students had links with the LTTE, which remains banned as a terrorist organisation in Sri Lanka. “Sri Lanka arrests: Jaffna police detain ‘terror’ suspects”, BBC, 6 December 2012. Two students were freed on 22 January 2013, while the other two were released on 13 February on orders of President Rajapaksa. “Sri Lanka releases Tamil students”, Press Trust of India, 23 January 2013; “Release Jaffna undergrads – President”, *Daily News*, 13 February 2012. The students were the focus of widespread and sustained protest and lobbying by Tamil politicians and community leaders, as well as Tamil organisations in the diaspora. Despite intense pressure from the military, Jaffna University remained closed for nearly six weeks, as students, with the support of most faculties, boycotted classes, demanding the student leaders be freed. The university reopened on 8 January. See “Quiet efforts of Jaffna university vice-chancellor succeed in two undergraduates being released after rehabilitation”, DBS Jeyaraj blog (dbsjeyaraj.com), 23 January 2013. According to a lawyer who followed the case, “to my knowledge lawyers were not allowed to visit them while they were at the rehab centre. Only parents and university officials had access”. Crisis Group email correspondence, February 2013.

⁷⁴ For instance, TNPf leader Gajen Ponnabalam was called for questioning by the Terrorism Investigation Department (TID) in late December 2012. TNPf offices are regularly visited and searched by police and the military. A poster denouncing and claiming to detail the alleged links of TNA and TNPf members with other pro-LTTE elements in Jaffna was distributed in the town in December 2012, following the police and military crackdown on student protests and attempts to commemorate Tamils who died in the war. The poster is widely believed to be the work of government security services. Crisis Group telephone interview, community activists, January 2013. For a copy of the poster, see “Colombo posters wage war against all shades of Tamil nationalism”, TamilNet, 30 December 2012.

⁷⁵ On 12 January 2013, the offices of TNA parliamentarian S. Sritharan were raided by TID officers. The police reported finding explosives and illegal pornography. Sritharan’s private secretary was arrested – photos of him with a bag of condoms and watching pornographic videos on his computer were later leaked to the public. Sritharan and his staff deny the charges and claim the police planted the evidence. “TNA MP’s Sec: I was forced to watch porn while being videoed”, *The Sunday Times*, 27 January 2013.

⁷⁶ “‘Crude oil attacks’ target TNPf organisers of civil protests: Gajendrakumar”, TamilNet, 17 July 2012; “Jaffna peaceful protest disrupted by masked men”, Journalists for Democracy in Sri Lanka,

There have also been violent attacks by police on peaceful protests in Colombo and elsewhere in the south: military shootings of protesters in Negombo and Colombo in 2012 remain unpunished.⁷⁷

F. *Demilitarisation of the North*

Attacks on political organising and protest in the north are only one of the many negative effects of the heavy presence of the military in the north and east, their intimate involvement in development activities and their de facto control over the civilian administration, as detailed in Crisis Group March 2012 reports.⁷⁸

The LLRC expressed its own concerns about the counterproductive effects of the military's unprecedented role in the north and east and argued that "the Security Forces should disengage itself from all civil administration related activities as rapidly as possible" (par 9.134) so that "the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people ... to enable the people to return to normal civilian life and enjoy the benefits of peace" (para. 9.227). In response, the action plan tasked the defence ministry to "formulate [a] plan for further reducing involvement of Security Forces in civilian work" while asserting that "95% [of security forces are] already withdrawn from civilian duties".⁷⁹

While there appears to have been a slight reduction in the number of troops in Jaffna, overall troop levels throughout the province remain extremely high.⁸⁰ According to the best available estimates, some 150,000 soldiers are stationed in the north and east.⁸¹ The military continues to be deeply involved in civilian administration at all levels in the north and plays a central role in managing economic development and physical reconstruction of the region, both directly and indirectly through retired Major General G.A. Chandrasiri, northern province governor, and the military-dominated Presidential Task Force for Resettlement, Development and Security – Northern Province. The military has also deepened its economic role in the north,

18 July 2012. For more on the repression of political protest in the north, see Crisis Group Report, *Sri Lanka's North I*, op. cit., pp. 13-16.

⁷⁷ "Fisherman killed as Sri Lankan police fire on protest", World Socialist Website, 16 February 2012; "A government not bound by the law", *The Sunday Times*, 19 February 2012.

⁷⁸ Crisis Group Reports, *Sri Lanka's North I*, and *Sri Lanka's North II*, both op. cit.

⁷⁹ This final claim is meaningless, as there is no evidence given for what percentage of the military was earlier "engaged in civilian duties", nor how many might be involved in determining development policies and controlling civilian life in other ways. The government's national report for the HRC's universal periodic review claims that "the role of the military in the North today is confined solely to security related matters", and that "the military is no longer involved in civil administration in the North and East and the Police Department now continues its responsibility of maintaining law and order". "National Report to UPR", op. cit., para. 35-36

⁸⁰ According to the government, "with the termination of military operations and the gradual restoration of normality, the strength of the military in the North has been reduced considerably. The present strength in the Jaffna Peninsula is approximately 15,000". "National Report to UPR", op. cit., para. 35. Jaffna represents only a small part of the northern province, and was not the centre of LTTE organisation in the final decade of the war, which role was filled by the much larger Vanni region, where most of the troops in the north are stationed.

⁸¹ Crisis Group interviews, researchers, February 2013. For two separate well-researched estimates of troop numbers in the north and east, see "Notes on the Military Presence in Sri Lanka's Northern Province", *Economic and Political Weekly*, vol. XLVII, no. 28, 14 July 2012; "How credible are the latest official claims concerning troop reductions in Jaffna?", Groundviews (www.groundviews.org), 10 July 2012.

including through new tourist resorts,⁸² and it continues to closely monitor the work of humanitarian organisations and local NGOs, as well as the local population as a whole. As a northern rights activist sums up:

Militarisation is increasing, not decreasing ... The military has actually been making their role even more visible. They are doing everything, from teaching to selling vegetables, even tourism. And instead of demilitarising, the government is militarising new groups – including by recruiting vulnerable groups of Tamils, much like the LTTE.⁸³

G. *Land Dispute Resolution*

The problem of internal displacement in Sri Lanka is far from resolved. While the government has claimed that “resettlement is now completed and no more IDPs [internally displaced persons] or IDP camps will be in the island”,⁸⁴ independent analysts estimate 93,000 Sri Lankans – including many Muslims forced from the north in 1990 by the LTTE – remain internally displaced.⁸⁵

The military's ongoing seizure of public and private land, especially in the north, is one of the chief sources of anger among Tamils and a major obstacle to reconciliation. While there has been since the end of the war a significant reduction of the extent of land held as high security zones, an estimated 26,000 people remain unable to return to their lands due to military occupation, with at least 18,000 in the Jaffna

⁸² “Sri Lanka military opens more hotels, creates resort brand”, Lanka Business Online (www.lbo.lk), 9 November 2012; Paul Miles, “Sri Lanka criticised over ‘war tourism’”, *Daily Telegraph*, 4 January 2013.

⁸³ Crisis Group telephone interview, February 2013. The December 2012 hospitalisation under secretive conditions of thirteen new Tamil women army recruits sparked controversy. According to eyewitnesses, some of them appeared psychologically distraught; concern was worsened when families and even government doctors were initially denied access to the women. “13 Tamil women recruited for army unexpectedly admitted to psychosomatic unit”, Uthayan (onlineuthayan.com), 13 December 2012. The women were among more than 100 recent female recruits, many of whom later complained they were enlisted on false pretences, having been hired on non-standard contracts and misled about the nature of their employment, salaries and work conditions. See “Tamil women coerced into joining the military – A statement of concern”, Women's Action Network, December 2012.

⁸⁴ “All IDPs Resettled”, defence ministry website (defence.lk), 26 September 2012. A 300-page overview of post-war activities in the north published by the government offers more realistic, but still misleading claims about the progress of resettlement. See “From conflict to stability: Northern Province Sri Lanka”, Presidential Task Force for Resettlement, Development and Security – Northern Province, January 2013.

⁸⁵ Most of these 93,000 live with host families. “Numbers of IDPs in Sri Lanka”, Internal Displacement Monitoring Centre, 24 January 2013. The exact number of IDPs is impossible to know. The UN has not been allowed to conduct a census of the displaced population, despite the government committing to this in the 2012 Joint Plan of Assistance for the Northern Province. For an extensive discussion on this issue, see Crisis Group Report, *Sri Lanka's North II*, op. cit. In addition to those displaced within Sri Lanka, there are also more than 100,000 Sri Lankan Tamils living as refugees in India, mostly in Tamil Nadu. Only about 6,000 have returned to Sri Lanka since the end of the war, with fewer arriving each year. Many cite security concerns as their reason to remain in India. “Sri Lanka: Refugees in India reluctant to return”, IRIN, 4 September 2012. “UNHCR: Over 1,200 Lankan Tamils living in India return home”, Press Trust of India, 12 January 2013. For more on the situation of Sri Lankan refugees in India, see Crisis Group Report, *India and Sri Lanka after the LTTE*, op. cit.

peninsula alone.⁸⁶ The government's much publicised closure of the once huge Menik Farm displacement camps in August 2012 was achieved only by forcibly relocating to a new site the final 350 people whose land in the village of Keppapulavu has been seized by the military.⁸⁷

In spite of the LLRC's concern that private lands in the north and east continued to be held by the military and other government agencies, often without compensating the owners, the action plan did not commit the government and its agencies to refrain from using private lands.⁸⁸ At the same time, there are increasing numbers of credible reports of military officials in the north and east pressuring residents to sell their land to the military or to business interests to which local commanders are believed to have links.⁸⁹

Even in the best of situations, handling the many complex land issues and competing claims from residents of the north and east would require the government to proceed carefully and with the active participation of all communities. Rather than offering reassurance that this will be its approach, the government's plan to "implement" the LLRC's recommendations raises numerous doubts, as it ignores or rejects many of the LLRC's most serious concerns on issues of land.

The LLRC recommended that in handling land disputes and distribution in the north, the government should "confine the participation of security forces officers to expediting the release of maximum extents of lands being utilized for security purposes (para. 9.134)".⁹⁰ Rather than committing to this approach, the action plan

⁸⁶ "Update: May-November 2012", IDP Protection Working Group, p. 5.

⁸⁷ "Sri Lanka: Final batch of Menik Farm IDPs relocated", IRIN, 28 September 2012. "Relocated to nowhere", Ceylon Today (www.ceylontoday.lk), 29 September 2012, and "Militarized charity and land grabbing: Experience of Keppapulavu in the Vanni", Groundviews (www.groundviews.org), 15 January 2013. For more on displacement from Keppapulavu, see Crisis Group Report, *Sri Lanka's North II*, op. cit., p. 19. The UN has been criticised by local activists and staff of humanitarian NGOs for not resisting what they considered the forced relocation of the Keppapulavu families. Crisis Group interviews, December 2012. UNHCR maintains that "international agencies were present during the move" and that "no overt coercion was witnessed. Although persons agreed to depart Menik Farm, most were clear that they agreed to a temporary move and did not consider Keppapulavu to be, for them, the durable solution of relocation. They insisted instead on their preference for eventual return to their areas of origin. As a matter of principle, UN or other international organisations decided not to provide transport for this final group movement from Menik Farm to Keppapulavu or reception assistance to persons once arriving. The humanitarian community continues to refrain from engagement with the Keppapulavu site until clear information (ideally in writing) is provided to affected populations from authorities about a schedule for future access to currently closed areas of origin, or compensation in lieu of access.UNHCR continues to consider these persons as still IDPs". Crisis Group email interview, UNHCR official, Colombo, February 2013. In public statements at the time, the UN recognised that "military occupation of private homes and lands affects many people who have gone back to their villages in former conflict areas in the north" and that "it is important that the displaced people should be able to make an informed and voluntary decision about their future, including being part of the planning and management of their re-settlement". "Sri Lanka's displacement chapter nears end with closure of Menik Farm", UNHCR, 27 September 2012; "UN hails closing of Sri Lankan displaced persons camp", UN News Centre, 25 September 2012.

⁸⁸ Instead, the plan promised within twelve months to "formulate a Policy to deal with the issue of settlements".

⁸⁹ Crisis Group telephone and email interviews, human rights activists, February 2013. Local commanders are believed to receive a commission for land sold to such businesses.

⁹⁰ A July 2012 government circular on land issues in the north and east was struck down by the Court of Appeal, after being challenged by the TNA on multiple grounds, including the role given to

referred the issue to a proposed new “land commission”, which will “consider the feasibility of the implementation of such recommendations”.

With regard to the many reports and growing evidence of government-supported movements of Sinhalese into the north and east, the LLRC proposed the government issue a statement of principle that “land policy of the Government is not an instrument to effect unnatural changes in the demographic pattern of a given Province” (para. 9.124). The action plan refused to make such a commitment.

H. *Devolution of Power*

Prospects for a lasting political settlement have worsened considerably since mid-2012, with little chance that the government will offer reforms that meet the aspirations of even the most moderate Tamil political constituencies.⁹¹ Since breaking off talks with the TNA in January 2012, the government has made no serious efforts to return to the negotiating table. The TNA has made a number of major concessions in an attempt to start bilateral talks,⁹² but the government has insisted that discussions on constitutional reforms for power sharing and devolution of power take place through an all-party parliamentary select committee (PSC).⁹³

While the TNA has agreed in principle to join the PSC, they worry that it is merely a tactic for the government to avoid taking any position of its own and to prevent any expanded devolution. The Tamil party has therefore pressed the government to commit to at least a basic framework agreement before the PSC takes up the issue.⁹⁴

The parliament's role in the impeachment of the chief justice has provided further grounds for TNA scepticism. The government has argued a PSC is needed in order to guarantee the wider political consensus needed for a lasting solution. The impeachment reveals, however, that far from being an independent body, the parliament is in effect controlled by the executive and loyally carries out the policies of the president and the ruling family.

Should the PSC ever take up the issue of devolution of power, a deal acceptable to Tamils seems increasingly unlikely. Reversing years of assurances to the international community that the government would expand devolution beyond the current

army officers in the various local committees empowered to handle land disputes. The attorney general assured the court that the circular would be withdrawn and policies reformulated, but the action plan promised to “ensure implementation” of the circular's provisions. For more, see Crisis Group Report, *Sri Lanka's North I*, op. cit., pp. 30-32.

⁹¹ The LLRC found that “the root cause of the ethnic conflict in Sri Lanka lies in the failure of successive Governments to address the genuine grievances of the Tamil people” (para. 8.150). The report called on the government “to launch a good faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre. This consensus should be one that will enable peoples' participation in governance decisions affecting them and avoid costly and unnecessary duplication of political, bureaucratic and other institutional structures that hamper efficient, cost effective and transparent governance” (para. 8.225).

⁹² For details, see Crisis Group Report, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, op. cit., pp. 9-10.

⁹³ The PSC, formally established by parliament in November 2011, would have a strong majority of members from the government coalition. The TNA, JVP and UNP have all refused to name their members, arguing that the government is not interested in serious negotiations. For more on the PSC, see *ibid.*, pp. 9-10.

⁹⁴ The TNA's suspicions have been fueled by the government's repeated broken promises during bilateral negotiations. For details, see *ibid.*, pp. 9-10.

constitution,⁹⁵ President Rajapaksa and his brothers Basil and Gotabaya have recently made clear their determination to weaken the powers of provincial councils through either the repeal or revision of the thirteenth amendment. In his November 2012 budget speech to parliament, the president announced that “a change in the prevailing Provincial Council system is necessary to make devolution more meaningful to our people. Devolution should not be a political reform that will lead us to separation but instead it should be one that unifies all of us The elimination of provincial disparities using national standards is the main weapon through which national reconciliation can be promoted”.⁹⁶

The idea that centrally controlled economic development – rather than devolution of power – should be the main source of “reconciliation” has been a fundamental part of post-war policy but has been rejected by virtually all Tamils.⁹⁷ Colombo-driven and military-led development in the north and east has already badly damaged the chances of reconciliation, increasing ethnic tensions and undermining the political and economic status of Tamils.⁹⁸ Following the impeachment of the chief justice, a government move to weaken the provincial council system is now expected in 2013, perhaps even before the long-delayed elections to the northern provincial council, now promised for September 2013.⁹⁹

The powers of provincial councils are very limited, but with a regime so committed to further centralising power, control of the northern council is likely to be of less value than usual. The central government is reportedly already using staff and systems set up under the newly established department of Divineguma to consolidate the control of the north.¹⁰⁰ The governor of the northern province, retired Major General G. Chandrasiri, has also actively asserted his powers, including through recent

⁹⁵ This includes promises made to the HRC and adopted in the council's May 2009 pro-government resolution on Sri Lanka. For a longer list of government promises to senior international leaders, see *ibid*, p. 10.

⁹⁶ Annual Budget Speech to Parliament, 8 November 2012, full text available at www.srilankaguardian.org/2012/11/the-budget-speech-2013_8767.html. TNA leader R. Sampanthan criticised the president's change in position in a strongly worded parliamentary rebuttal. See “If 13A modified, Lanka's future in danger – Sampanthan”, *Asian Tribune*, 17 November 2012. For Gotabaya's statements on the need to repeal the thirteenth amendment, see Crisis Group Report, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, *op. cit.*, p. 11.

⁹⁷ Chief Justice Bandaranayake made herself an enemy of the regime at least in part by her insistence – in judgments on the Divineguma bill and on the Town and Country Planning Act in 2011 – that parliament respect the right of provincial councils to approve any legislation that affects their powers in the area of development under the thirteenth amendment. See “The Impeachment as a primer on the Rajapaksa way”, *Colombo Telegraph*, 24 January 2013. The Divineguma bill, which was passed on 8 January 2013 by parliament after being approved by all eight existing provincial councils, removes any ambiguity about the Rajapaksa government's will to centralise power in the executive and in the family. “Divi Neguma bill passed”, *Colombo Gazette* (colombogazette.com), 8 January 2013.

⁹⁸ For details on the negative consequences of the government's military-led economic and political policies in the northern province, see Crisis Group Report, *Sri Lanka's North II*, *op. cit.*

⁹⁹ Basil Rajapaksa has been quoted as announcing that a new amendment to replace the current provincial council system will be presented to the PSC sometime in 2013. “19th Amendment for new devolution package”, *Sunday Times*, 11 November 2012.

¹⁰⁰ Crisis Group telephone interviews, NGO staff and rights activists, February 2013. On Divineguma, see note 13 above.

regulations imposing new monitoring and reporting requirements on UN agencies and local and international NGOs.¹⁰¹

There are also indications that the government has begun undermining the ability of the Tamil and other parties to campaign effectively. The January 2013 decision to withdraw central government funds from elected TNA-controlled local authorities is widely seen as an effort to weaken the party's ability to deliver services to its constituencies in the north.¹⁰² The decision runs counter to the government's stated position in support of strengthening decentralisation. The regular police and military pressure on northern Tamil politicians detailed above seems designed to distract and weaken them in advance of provincial elections. There are also reports of attempts to redraw constituency boundaries and to change electoral registers in order to strengthen the position of the ruling Sri Lanka Freedom Party (SLFP) and their Tamil and Muslim political allies, the Eelam People's Democratic Party (EPDP) and All Ceylon Muslim Congress (ACMC).¹⁰³

Until the government is convinced to change fundamentally its approach to Tamil political aspirations, or a new one is elected, any meaningful political solution or expanded devolution of power is extremely unlikely. The best that Tamil parties and foreign partners can currently hope for is to preserve the thirteenth amendment and resist the completion of the regime's apparent plan to undermine the Tamil character of the north and east. This should begin with efforts to ensure that the northern provincial council elections are relatively free and fair.

The Sinhala Buddhist nationalism that the government cultivated to help win the war and consolidate its power in the years since has begun to turn on Muslims as well as Tamils.¹⁰⁴ Radical Buddhist groups, led by monks, attacked and damaged mosques in Anuradhapura in 2011 and in Dambulla in 2012.¹⁰⁵ More recently, a group calling

¹⁰¹ The "Provincial Policy Directives of Hon. Governor on programmes of UN Agencies, INGOs and NGOs in Northern Province" were announced on 16 January 2013 and impose an additional layer of approval, reporting and monitoring of the work of local and international humanitarian and development NGOs, in addition to the already tight scrutiny imposed by the military-dominated presidential task force in Colombo. For more on PTF and military control of humanitarian and civil society groups in the north, see Crisis Group Report, *Sri Lanka's North II*, in particular pp. 12-15.

¹⁰² "Govt. withdraws funds from TNA councils", *Sunday Times*, 27 January 2013. The government claims the funds were not withdrawn, but returned to the treasury because they had not been utilised. "TNA didn't use funds, which reverted back to Treasury – officials in Jaffna", *Daily News*, 13 February 2013.

¹⁰³ Crisis Group telephone interviews, lawyers and rights activists, Colombo, February 2013.

¹⁰⁴ According to a Colombo-based analyst, "given that President Rajapaksa has no defining economic or political ideology with which to galvanise support, he has only Sinhala Buddhist nationalism to fall back on. So as other problems and reasons for discontent grow, he'll have trouble cracking down on groups like Bodu Bala Sena [a radical Buddhist group] – unless he were to surprise us all and radically shift his policies towards accommodation. But that would carry great risks, too". Crisis Group telephone interview, November 2012. See also "Civil Society statement on Anti Muslim Rhetoric and Attacks", *Colombo Telegraph*, 15 February 2013. According to the 2011 census, Muslims make up over 9 per cent of the population. "Population by ethnic group according to districts, 2012", Sri Lanka Department of Census and Statistics, at <http://bit.ly/Rqiggq>.

¹⁰⁵ "Muslim shrine destroyed in Anuradhapura", BBC, 15 September 2011. For photos of the Anuradhapura attacks, which reveal the inaction of senior police officers, see <http://bit.ly/VdxRE2>. "Muslims strike over Dambulla mosque", BBC, 26 April 2012; "MRG concerned about the attack and relocation of a mosque in Sri Lanka", Minority Rights Group International, 26 April 2012. For a useful overview of the attack and the range of reactions, see "The attack on the Dambulla mosque", Sri Lanka Campaign for Peace and Justice, 17 May 2012.

itself Bodu Bala Sena (Buddhist Power Force) has organised a series of demonstrations against the slaughter of animals for Halal meat and what they see as growing Muslim fundamentalism.¹⁰⁶ Muslim businesses in the Colombo area have been targeted for closure in violent public protests.¹⁰⁷ A notice sent to all households in a Muslim village in Kurunegala district was addressed to “the pariah Muslim who steals the wealth of the majority Sinhalese” and threatened: “you will be dead within the month of March 2013”.¹⁰⁸

To date, the government has done little to prevent the attacks.¹⁰⁹ Muslim political party leaders, almost all of whom are part of and beholden to the government, have largely remained silent, though recent incidents have forced some to speak out.¹¹⁰ “Threats against Muslims are intensifying and turning violent”, said a Muslim professional. “People are getting beaten up. Shops burnt, then Sinhala landlords are asking shopkeepers to vacate their premises. People are really frightened and expecting some sort of an attack or conflagration ... The government is not doing anything, and I am not sure that they can control this thing that they started even if they want to”.¹¹¹

The increasingly provocative attacks from Bodu Bala Sena and their like have begun to energise the already growing, but still modest, fundamentalist forces among Muslims, thus threatening to create the very reality which Buddhist nationalists purport to be resisting. Unless Muslim political leaders can persuade the government to control its extreme Buddhist allies, there is a real danger of new communal clashes and the loss of one of Sri Lanka's few bright spots – the longstanding political moderation of Muslims.¹¹²

¹⁰⁶ In one demonstration, monks and their supporters burned an effigy of “Allah”. “‘Hela Sihila Hiru’ stages provocative anti-muslim demonstration with placards and effigy of ‘Allah’ in north-western town of Kuliyaipitiya”, DBS Jeyaraj blog (dbsjeyaraj.com), 28 January 2013. For a useful analysis about the rising power of radical Buddhist groups and their relationship with the Rajapaksa regime, see “Muslims are the new Tamils”, *The Asian Tribune*, 27 January 2013.

¹⁰⁷ “Protest outside Maharagama clothes store”, *Sunday Times*, 20 January 2013.

¹⁰⁸ The message was signed “Collective of Buddhist Organizations”. Crisis Group email interview, Muslim community activist, February 2013.

¹⁰⁹ President Rajapaksa met with five leading monks of Bodu Bala Sena on 26 January 2013. He reportedly told them that “acts aimed at breaching the goodwill and the harmony between ethnicities will not be allowed under any circumstance”, and “urged the group to help maintain the ethnic harmony in the country and not to arouse communal feelings”. The monks reportedly claimed their organisation's name was being used by others for attacks they did not support. “Sri Lanka President asks Buddhist group not to arouse ethnic tensions in the country”, Colombo Page (www.colombo-page.com), 27 January 2013.

¹¹⁰ See, for instance, “Hakeem slams hate campaign against Muslims”, Colombo Gazette (colombogazette.com), 20 January 2013. Despite the rise in anti-Muslim sentiments and the unwillingness of the government to act firmly against it, Muslim ministers are expected once again to play a key role in lobbying Muslim governments not to support a second HRC resolution critical of the Sri Lankan government. The political and economic support Sri Lanka receives from Muslim-majority countries will likely be one factor pushing President Rajapaksa to rein in radical Buddhist groups. Crisis Group telephone interview, rights activists, Colombo, February 2013.

¹¹¹ Crisis Group email correspondence, Muslim professional, February 2013.

¹¹² On Sri Lankan Muslims, see Crisis Group Report, *Sri Lanka's Muslims: Caught in the Crossfire*, op. cit. See also Crisis Group Report, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, op. cit., pp. 24-27.

III. A Real Action Plan

Were the Sri Lankan government serious about responding positively to the HRC and adopting the LLRC's reforms in the areas specifically mentioned in the HRC resolution, it should, at a minimum, take the following actions:¹¹³

Investigations: The government should establish a special investigative team independent of the inspector general of police, the military and the attorney general, to conduct effective and independent investigations leading to prosecutions for the 2006 massacres of ACF aid workers and five students in Trincomalee, the murders and disappearances of journalists, the hundreds of cases reported to the LLRC of people disappearing after being taken into army custody, and the many reported rapes and sexual assaults at the end of the war and in its aftermath.¹¹⁴

Independent institutions and the rule of law: The government must cease its interference in the work of the police and the judiciary and allow them to actively and freely investigate and prosecute crimes, beginning by removing the police service from the control of the defence ministry. The government should bring parliamentary provisions for removing senior judges in line with international standards.¹¹⁵ Ultimately, the eighteenth amendment must be reversed and the full independence of a range of commissions – human rights, police, bribery and judicial services – restored, including provisions to ensure a less politicised selection of judges.

Freedom of expression: The government must effectively investigate and prosecute those guilty for attacks on and murders of journalists, end ongoing intimidation of journalists and political critics, remove blocks on and controls over websites critical of the government, and enact a meaningful right to information law.

Demilitarisation: The military should cease its control over development and humanitarian projects, allow the civilian administration to function freely, withdraw from all commercial activities, reduce the number of troops and the size and number of military bases and checkpoints, end intrusive and threatening military surveillance of the population, and return all land seized and held without due process or compensation. The government should end its practice of using the Public Security Ordinance to grant policing powers to the military each month and should disarm all armed groups working with the military or other government agencies.

Devolution and a political settlement: The government should begin genuine negotiations with the TNA on an outline of an agreement on effective devolution of powers to the provinces, to be presented to the parliamentary select committee where

¹¹³ For a valuable and ambitious civil society proposal for how the government should implement the LLRC recommendations, see "Giving reconciliation in Sri Lanka a better chance: A Shadow Action Plan for the LLRC", The Social Architects, Groundviews (www.groundviews.org), 23 December 2012.

¹¹⁴ For details, see Crisis Group Report, *Women's Insecurity in Sri Lanka's North and East*, op. cit.

¹¹⁵ Among the relevant documents setting out international standards for the removal of judges – which include the right to a fair hearing, the right to independent review, and the right to proceedings in accordance with established standards of judicial conduct – are the 1995 Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region and the 1985 UN Principles on the Independence of the Judiciary. For details, see *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, Practitioners Guide No. 1*, International Commission of Jurists, 2007, chapter 7.

Muslim, Tamil and all parties could then join in a time-bound process of finalisation. Negotiations on constitutional arrangements must be accompanied and strengthened by the demilitarisation of the north and east as well as other policy changes, including an end to land takeovers, Sinhalisation and the destruction of Hindu and Muslim religious sites. Free and fair elections to the northern provincial council should be held as soon as possible, without prior gerrymandering or weakening of provincial council powers.

Land issues: The government should formally abandon the north-east land policies announced in the July 2011 circular, and establish a national land commission to propose future national land policy guidelines, as required by the thirteenth amendment. Its work should involve the participation of the TNA, Muslim parties and local residents in north and east.

Detention policies: There must be no further delay in making available a register of the names of all those currently in detention on suspicion of involvement with the LTTE. All detainees – whether suspects/surrendered from 2009 or longer-term detainees – must either be charged or released.

Other reconciliation gestures: The government should publish and make easily available the full LLRC report in Sinhala and Tamil; allow once again the national anthem to be sung in Tamil at official events; and establish inclusive public ceremonies designed to recognise and honour the death and suffering of civilians from all ethnic communities.

To respect the HRC's call to "address alleged violations of international law" would require going beyond the LLRC's extremely limited proposals. At a bare minimum, the government would have to:

- ❑ Establish a new investigative body, independent of the military and the attorney general's department, and composed of non-political appointees nominated by both the government and opposition parties and fully empowered and resourced to investigate and prosecute alleged violations. Their investigations must provide effective protection – preferably with international assistance – to all key witnesses, including government doctors who worked in the "no-fire zones". It should also allow for video-testimony from outside Sri Lanka, as during hearings of the Udalagama commission of 2007-2009.¹¹⁶
- ❑ Task the new investigative body to look into the following allegations: a) attacks on hospitals and makeshift medical centres, particularly the multiple attacks on the hospital at Puthukkudiyaruppu (PTK), b) attacks on civilian concentrations and c) those end-of-war disappearances and executions about which there is already compelling evidence in the public domain, including regarding the alleged perpetrators. These include the killings of "Colonel" Ramesh, LTTE newsreader Isaipriya, the son of LTTE leader Prabhakaran, and the unknown victims in the Channel 4 execution videos.¹¹⁷

¹¹⁶ On the Udalagama Commission, see note 25 above.

¹¹⁷ For information on these and other incidents, see Crisis Group Report, *War Crimes in Sri Lanka*, op. cit.

- Institute a fair and transparent process for investigating alleged LTTE abuses and for the fair trial of field commanders or other mid- or senior-level LTTE leaders now in custody and against whom there is credible evidence of grave breaches of international law or serious violations of domestic law (eg, child conscription, murder, torture).¹¹⁸ These investigations should ultimately include ex-LTTE leaders now with the government, such as V. Muralidharan (“Karuna”), S. Pathmanathan (“KP”), George Master and Daya Master – and any others who may be held in secret detention centres.

¹¹⁸ For information on alleged crimes committed by the LTTE in the final months of the war, see Crisis Group Report, *War Crimes in Sri Lanka*, op. cit., pp. 24-27.

IV. What the International Community Should Do

A. Responding to Sri Lanka's Twin National Crises

The policies of the current government pose a formidable challenge to the international community and demand a serious rethink of international strategy. Unfortunately, international institutions and influential governments have, since the final years of the civil war, remained consistently behind the curve: too slow to recognise the speed and seriousness of Sri Lanka's humanitarian and political crises, and too quick to accept the government's assurances – whether on protecting civilians during the war, devolving power beyond the thirteenth amendment or respecting the rule of law and ending impunity.

The dominant framework used by most international partners to understand Sri Lanka's post-war developments – one of slow, disappointing, partial progress that needs to be deepened and sped up – is now clearly inaccurate and unhelpful. In light of the increasingly obvious manifestations of authoritarianism, governments, multi-lateral institutions and influential states should abandon the government's misleading narrative of progress. Even the evident material improvements in the northern province are to a large degree counterproductive for real reconciliation, instead opening the way for economic, political and demographic processes that threaten to erase the Tamil and Tamil-speaking character of the region.

Indeed, both of Sri Lanka's twin national crises have grown worse in the year since the HRC's resolution:

- ❑ Tamil identity and political and economic power in the north and east are under unprecedented threat.¹¹⁹ Government policies increasingly appear designed to achieve a goal long sought by extreme Sinhala nationalists: to eliminate the ability of Tamils to claim the north and east as their area of historical habitation where they have a right to some considerable degree of self-rule.
- ❑ The island-wide crisis of democratic governance has also deepened with the impeachment of the chief justice and the government's refusal to implement the central political and legal reforms recommended by the LLRC. Rather than establish independent institutions and share power, it has brought under executive control not only the judiciary, but also the previously robust form of parliamentary politics.

There will be no easy answers, and lasting solutions to deep-rooted ethnic governance issues must ultimately come from Sri Lankans. Influential governments and international organisations can nevertheless work to resist the consolidation and legitimisation of the government's authoritarian turn by adopting the following principles:

¹¹⁹ As well as the military control, land seizures and political disenfranchisement discussed above, it also includes cultural and demographic Sinhalisation. According to a community activist in the north, "at latest count, 27 *dagobas* [Buddhist shrines] have come up in Kilinochchi, Mullaitivu, Mannar and Jaffna. But how many Sinhalese are there in these districts? This count doesn't include temples in police and military camps. These are just the huge ones The whole Tamil identity in these areas is being changed. The military is forcefully taking over a community's visible identity. Socio-cultural rights are now being deprived, not just political and civil rights. At least people during the war had access to their land and could feed themselves. But now people's control over the land and their livelihood is under serious threat". Crisis Group telephone interview, February 2013.

- international engagement and assistance should respect the “do no harm” principle by not empowering or legitimating those forces that are undermining the democratic institutions necessary to lasting peace and inclusive development;
- governments should uphold international humanitarian and human rights law, investigate alleged violations and hold perpetrators accountable; and
- international institutions should preserve the integrity and effectiveness of their working principles. For development agencies this means insisting on the political conditions necessary for inclusive and equitable development, including the ability of beneficiaries to express themselves freely and assert their rights, and actively working to prevent corruption and theft of local and international resources.¹²⁰ For the UN, this also means integrating principles of human rights and civilian protection in its programming whenever possible.

B. *Reorienting International Engagement – Beyond the UNHRC*

A strong follow-up to last year's HRC resolution on Sri Lanka remains important. But the passing of regular HRC resolutions must not become a substitute for a broader set of diplomatic strategies aimed at supporting accountability and reconciliation and the eventual return of democratic governance in Sri Lanka. For that, work on a much broader set of issues and by a wide range of actors is needed.

1. The Commonwealth

The Commonwealth has an important role to play. In light of Sri Lanka's unambiguous and repeated violations of the organisation's principles, and in light of its refusal to take substantial moves to restore the independence of the judiciary, the secretary general should formally refer Sri Lanka to the Commonwealth Ministerial Action Group (CMAG).¹²¹ Canada has already called on the CMAG to put Sri Lanka on its

¹²⁰ The parliamentary Committee on Public Enterprises (COPE) and Public Accounts Committee (PAC) have in recent years produced valuable reports regarding alleged widespread corruption in government programs and in the privatisation of state enterprises. See “COPE Exposure & Beyond”, Transparency International (Sri Lanka), January 2012. A useful overview of corruption and the ineffectiveness of various institutions with anti-corruption mandates can be found in “Sri Lanka”, “Countries at the Crossroads 2012”, Freedom House. See also information on allegedly corrupt state privatisation deals published by the Sri Lanka Corruption project of the Government Accountability Project, at <http://bit.ly/9HcDwr>. One significant and much-discussed source of illegal financial gain is the alleged manipulation of prices on the Colombo Stock Exchange. The last two chairpersons of the Securities and Exchange Commission resigned and publicly complained about their inability to enforce regulations against insider trading and other fraud due to political pressures. “SEC chairman ousted as probes on 17 ‘players’ near completion”, *The Sunday Times*, 19 August 2012; “Sri Lanka SEC head resigns to ‘uphold principles’”, Reuters, 1 December 2012. See also “Manipulation in the Sri Lankan Stock Market”, Transparency International (Sri Lanka), 24 July 2012.

¹²¹ After meeting government official in Colombo on 10-13 February, Secretary-General Kamalesh Sharma announced additional technical assistance and expertise designed to strengthen the independence of the judiciary, elections, human rights commission and the media. The statement also welcomed the government's “recognition of the need for change [in how senior judges are removed], to ensure that any such process in future ... does not call into question Sri Lanka's commitment to the independence of the judiciary and separation of powers”, and pledged Commonwealth expertise to assist in any legislative changes needed. There was no indication that the Sri Lankan government had committed to make any of the substantial legal and constitutional reforms on these issues recommended by the LLRC. “Statement by Commonwealth Secretary-General Kamalesh Sharma on

agenda.¹²² Other Commonwealth governments should endorse this position and press the group to act.

The CMAG should insist that the Rajapaksa government take substantial steps to restore the independence of the judiciary. At a minimum, this would mean a) the reestablishment of earlier constitutional provisions – abolished by the eighteenth amendment – to ensure a less politicised selection of judges and b) changes to the current parliamentary provisions for removing senior judges to bring them in line with international standards, and c) the reversal of government plans to limit a chief justice's term to three years.¹²³

Should the government fail to make substantial reforms, the Commonwealth must change the location of its November 2013 heads of government meeting, currently scheduled to take place in Colombo, or governments must downgrade their level of representation at the meeting.

2. UN Human Rights Council's 22nd session

The HRC's 2012 resolution helped shift the dominant international narrative on Sri Lanka away from the government's misleading story of progress and reconciliation and toward a more accurate understanding of the country's deepening crises. But it was only a start. In its upcoming 22nd session, beginning 25 February 2013, the HRC should adopt a new, stronger resolution that:

- ❑ clearly notes the refusal of the Sri Lankan government to respond positively to the council's previous resolution by failing to implement the most important LLRC recommendations and refusing to investigate credibly allegations of grave violations of international humanitarian law;
- ❑ details specific measures Sri Lanka must take *within the coming year* in each of the previously noted area of concern in order to be deemed to be implementing the LLRC report;
- ❑ requests the government to investigate the credible allegations of international humanitarian law violations detailed in the UN Secretary-General's panel of experts report, to be conducted by an independent prosecutor separate from the attorney general's department; and
- ❑ tasks the OHCHR with (a) monitoring and reporting to the council on Sri Lanka's progress in implementing the resolution and on any ongoing violations and issuing an interim report ahead of the HRC's September 2013 meeting, and, (b) in the absence of adequate domestic measures, with undertaking investigations and

conclusion of his official visit to Sri Lanka", 13 February 2013. On 13 January, Sharma "reiterate[ed] the Commonwealth's profound collective concern" at the impeachment of the chief justice, which "will be widely seen ... as running counter to the independence of the judiciary, which is a core Commonwealth value". "Dismissal of the Chief Justice in Sri Lanka", 13 January 2013.

¹²² "Canada renews CHOGM threat", *The Sunday Leader*, 2 December 2012. Canada's position has been laid out clearly by Senator Hugh Segal, the government's special envoy for Commonwealth renewal. See "Scoping the Opportunity: One Year Before Colombo", speech to Commonwealth Advisory Board symposium, 16 November 2012.

¹²³ The government is reportedly planning to introduce a constitutional amendment that would limit a chief justice's term to three years and that would give the status of law to parliamentary standing orders, thus removing a key reason the chief justice's impeachment process was nullified by the Court of Appeal. "19th Amendment on the way", *The Sunday Times*, 20 January 2013.

making appropriate recommendations with respect to violations of international humanitarian and human rights law, including extrajudicial killings, sexual violence and enforced disappearances, allegedly committed in the final months of the war, including by compiling a list of individuals about whom there is credible evidence of responsibility;

- encourages the government to invite the special rapporteurs on independence of judges and lawyers, torture, human rights defenders, freedom of expression, freedom of association and assembly, freedom of religion and extrajudicial, summary or arbitrary executions, as well as the working group on enforced and involuntary disappearances to visit Sri Lanka; and request the special rapporteurs to compile a joint report to the council on Sri Lanka's compliance with its international obligations in each of their areas of specialisation.

3. The role of the UN Secretary-General

The UN Secretary-General has played an important role in keeping Sri Lanka and issues of accountability on the international agenda, particularly through the reports of the two panels he established: the panel of experts on accountability, which reported to him in April 2011,¹²⁴ and the panel that reviewed the UN's performance in the final stages of the war, which reported in November 2012.¹²⁵ Nonetheless, there is more that he can and must do. Should the HRC continue to refrain from establishing its own commission of inquiry into alleged violations of international law, or decline to task OHCHR to conduct investigations, the Secretary-General should use his powers under section 99 of the UN Charter to establish such a commission.¹²⁶ Prior to doing so, he should act on another of his experts panel's proposals and establish a mechanism to "monitor and assess the extent to which the Government of Sri Lanka

¹²⁴ "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka", op. cit.

¹²⁵ "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka", November 2012, available at <http://bit.ly/TEMLxV>. The report is often referred to as the Petrie Report, after the head of the panel, Charles Petrie. The report's hard-hitting executive summary, removed just prior to publication, can be found at <http://bit.ly/WGL1KY>.

¹²⁶ The panel recommended that "the Secretary-General immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions: (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings; [and] (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations". "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka", op. cit., para. 444. When releasing the expert panel's report, the Secretary-General announced that he had been "advised that this will require host country consent or a decision from Member States through an appropriate intergovernmental forum". "Secretary-General releases expert panel's report on accountability with respect to final stages of Sri Lanka conflict", UN News Centre, 25 April 2011. According to the internal review report, "the UN Office of Legal Affairs advised [in 2009] the Secretary-General that he had the authority, under Article 99 of the UN Charter, to establish Commissions of Inquiry". "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka", op. cit., para. 38. Article 99 of the UN charter states that "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security".

is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations".¹²⁷

The Secretary-General and senior UN leadership should also take steps to better coordinate the various strands of UN policy on Sri Lanka. This would include follow-up actions on the 2011 panel of experts' report, on the HRC resolution(s) and on the 2012 report of the UN internal review panel, especially as it relates to current UN programming in Sri Lanka.¹²⁸

4. Other avenues for justice

Regardless of what action the Human Rights Council and the Secretary-General ultimately take on accountability, individual member states should actively assist in the pursuit of accountability and help ensure international humanitarian and human rights law is respected. Those governments that have called for an independent investigation into allegations of war crimes – especially India, the U.S., UK, European Union (EU), Norway, Switzerland, Canada, Australia, and South Africa – should also act on their own.

They should actively investigate alleged violations by both the government and the LTTE and gather and secure evidence where possible.¹²⁹ There is evidence outside Sri Lanka, thanks in part to the thousands of survivors and eyewitnesses now living in the diaspora and the availability of satellite imagery. Governments should agree to share evidence with credible investigating authorities and also need to send clear signals to potential witnesses that they are willing to offer them meaningful protection, including through the provision of refugee status.¹³⁰

5. Vetting

Governments should refrain from accepting the diplomatic credentials of any senior Sri Lankan military officer who commanded a unit during the war and against whom there are credible allegations of war crimes, until they have been cleared by a thorough and independent investigation.

Until such an investigation has been undertaken, the UN should review Sri Lanka's contributions to peacekeeping operations and refrain from accepting the participation of its troops and officers.

¹²⁷ "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka", op. cit., para. 444. When releasing the panel of experts report on accountability, the Secretary-General announced that "the monitoring and repository functions" of the "mechanism" that the panel of experts recommended he establish "will continue to be performed by the United Nations Secretariat". "Secretary-General releases expert panel's report", op. cit. It does not appear, however, that the Secretariat has established the kind of dedicated and well-resourced monitoring mechanism that is required.

¹²⁸ The Secretary-General has appointed a committee, based in New York and headed by senior UN civil servant Michael Keating, to examine how to implement the Petrie report. In addition, individual agencies have their own processes underway to consider how the Petrie report applies to their own work worldwide. To date, however, there is no process established to consider the implications of the report for the UN's work within Sri Lanka. Crisis Group telephone and email interviews, senior UN officials, February 2013. See Section IV.B.8 below for more on how the UN country team in Sri Lanka should respond to the report of the internal review.

¹²⁹ For more on options for justice in foreign jurisdictions and the U.S. in particular, see Crisis Group Report, *War Crimes in Sri Lanka*, op. cit., pp. 34-36.

¹³⁰ For additional steps governments can take to assist in successful legal action, see *ibid*, p. 36.

The UN's newly devised policy for vetting all appointments to UN positions is a welcome step forward, though the fact that the vetting is to be done by contributing states, and not an independent body within the organisation, means the plan still falls short of the independent review that is needed.¹³¹ Nonetheless, the plan has positive features. OHCHR, for instance, should be encouraged by member states to make the most of its role in assisting the UN Secretariat's "information exchange mechanism" to be established, including by making reference to the reports of UN bodies and other credible independent organisations.

6. Military-to-military relations

All governments with ties to the Sri Lankan military should review these relations. Until an independent body has conducted a credible investigation of alleged war crimes by Sri Lankan forces, and anyone against whom there is evidence has been prosecuted, governments should cease all joint exercises with and training programs, other than human rights trainings.¹³² No country should send militaries to attend the next Sri Lankan "Defence Seminar" scheduled for September 2013.¹³³

7. Targeted pressure on and non-cooperation with the regime

Influential governments have shied away from taking what they consider a confrontational stance toward the government and the Rajapaksa family, largely for fear of reducing their leverage and possibly pushing the government to align more closely

¹³¹ Approved in December 2012 by the Secretary-General's Policy Committee, and to be managed by the UN Secretariat Working Group on Human Rights Screening, the policy has three main components: a) member states who nominate or provide personnel to the UN are requested to screen their personnel and to certify that they have not committed, or are alleged to have committed criminal offences and/or violations of international human rights and humanitarian law; b) individuals who seek to serve with the UN are requested to self-attest that they have not committed, or are alleged to have committed, such crimes; and c) the UN intends to set up an information exchange mechanism and procedures to support the exchange of information on prior human rights conduct of candidates/nominees. The policy is to be applicable to all staff in the Secretariat, including in peacekeeping operations and Special Political Missions. Crisis Group interviews, UN officials, New York, January 2013.

¹³² Human rights trainings should nonetheless be limited to individuals not alleged to have been involved war crimes or other violations of international law. Current U.S. law sharply restricts military assistance to Sri Lanka, including defence export licenses and military equipment or technology sale or transfer, conditioning any such aid on the secretary of state's certification that Sri Lanka has met a series of human rights and governance criteria. These include investigating and prosecuting alleged violations of international humanitarian law, cooperating with any UN investigation into such allegations, respecting due process, the rights of journalists, the rights of citizens to peaceful expression and association, and policies for reconciliation and justice including "devolution of power as provided for in the Constitution of Sri Lanka". Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012. The U.S. military conducts some training of Sri Lankan soldiers and assists in humanitarian demining and aerial and maritime surveillance. Those military officers who receive training are also subject to vetting under the "Leahy Amendment", which bars U.S. military assistance anywhere in the world to "any unit of the security forces of a foreign country if the secretary of state has credible evidence that such unit has committed gross violations of human rights". Sec. 620J of the Foreign Assistance Act of 1961 (P.L. 87-195, as amended).

¹³³ The 2013 seminar on "Post Conflict Sri Lanka: Challenges and Regional Stability", is the third in a series of annual meetings organised by the Sri Lankan military, designed to share its experience of "defeating terrorism" and its strategy for post-war reconstruction and reconciliation. Details on all three meetings can be found at www.defseminar.lk.

with China.¹³⁴ However, as the continuing deterioration in rights protection and democratic governance makes clear, the policy of maintaining leverage by tempering criticism and continuing significant financial support has not yielded results.

Without breaking off engagement on all areas of mutual interest, it is well past time for concerned governments to begin to place targeted pressure to signal the seriousness of their concern. Among other steps, they should consider restrictions on personal travel until the government complies with HRC resolutions.

8. Review of UN policies in Sri Lanka

UN agencies based in Colombo should review their full range of programming in light of the report of the UN's 2012 internal review panel, headed by Charles Petrie.¹³⁵ One central lesson of that report is that for the UN to live up to its mandate, human rights and civilian protection must be made central to its programming and not sacrificed in the name of maintaining access for humanitarian or development programs.¹³⁶ While the current post-war context is different than what prevailed during the high levels of violence in 2008 and 2009, standards of democratic governance have in fact declined and protection issues remain urgent today.

The UN country team should begin by conducting a "human rights audit" of all their programming, to examine where and how they can better integrate human rights protection into their work. Its human rights adviser should be in charge of the audit.

In light of credible reports that some humanitarian workers, including at least some former UN staff members, remain at risk of reprisal from the Sri Lankan gov-

¹³⁴ China has been Sri Lanka's largest single source of financing for post-war infrastructure development, providing \$785 million in loans and grants in 2011, amounting to over a third of Sri Lanka's foreign financing commitments that year. From 2007 to 2011, China offered loans and grants totaling \$2.1 billion, and disbursed some \$1.2 billion, mainly for the construction of roads and bridges, power and energy infrastructure, and a port and an airport, both in President Rajapaksa's home district of Hambantota. The total project portfolio funded by China in 2011 was \$2.5 billion. "Annual Report", finance and planning ministry, 2011, pp. 189-193. China has also provided important international political support to Colombo, particularly in the UN Security Council, and was the most important supplier of weapons in the final phase of the war against the LTTE. For analysis of the complicated relationship between Sri Lanka, China and India, see Crisis Group Report, *India and Sri Lanka after the LTTE*, op. cit., pp. 17-20.

¹³⁵ According to senior UN staff in Colombo and Geneva, there is no current or planned process to review the organisation's activities in Sri Lanka in light of the Petrie report. Crisis Group telephone and email interviews, February 2013. The Petrie report recommends that the UN "offer to engage with the Government of Sri Lanka regarding those elements of the report that are applicable to ongoing UN action in Sri Lanka". "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka", op. cit., para. 87(g). According to a senior humanitarian worker who attends UN-led humanitarian country team meetings, "the Petrie report hasn't phased anyone. Things are still going on as before. There was no discussion of the report [at country team meetings] when it came out". Crisis Group interview, January 2013. The UN resident coordinator in Sri Lanka, Subinay Nandy, states that with the newly launched 2013-2017 programme framework for UN work in Sri Lanka, "there will be systematic evaluation and monitoring of UN programmes here as will be evaluations and assessment under individual agency programmes". Crisis Group email correspondence, February 2013.

¹³⁶ Among other things, the report criticised how "a number of UNCT and UNHQ senior staff perceived" "as dilemmas or as conflicting responsibilities" the challenges of "delivering assistance while at the same time responding to serious violations of international law that may require the UN to issue criticism of the same Government". "Report of the Secretary-General's internal review panel on United Nations action in Sri Lanka", op. cit., para. 75.

ernment,¹³⁷ UNHCR, as the only agency in Sri Lanka with a robust protection mandate and experience, should be tasked with conducting a survey of the protection needs of past and present humanitarian workers, both in and out of the country.¹³⁸ It should work with other agencies to ensure their protection and, when needed, their safe relocation to another country.

9. Review of development assistance

Development organisations – including the World Bank, Asian Development Bank, and UN agencies – should review their programs in Sri Lanka in light of the effective dismantling of judicial independence and the military's central role in governing and setting the development agenda in the north and east.¹³⁹ The starting point should be the recognition that physical and economic development is not a good in itself without functioning democratic institutions. As Tamils and Muslims in the north and east are learning, in the absence of an independent judiciary, representative rule and the right to speak freely, “development” can empower forces that undermine individual and collective rights.¹⁴⁰

The response of development organisations to the dismantling of the rule of law and democratic governance – seen most clearly in, but not restricted to, the north and east – should not immediately be to impose strict conditions on aid or withdraw assistance to populations in need. They should instead first undertake to do more to prevent their programs from assisting in Sri Lanka's authoritarian turn.

This will require pressing the government strongly, both privately and publicly, to restore the independence of the judiciary and of the bribery commission, enact a freedom of information law, protect the rights of citizens to speak freely and contribute to the formulation of development policies, and adopt the LLRC's recommendations on land and land dispute resolution mechanisms, beginning with the removal of the military from all involvement in land issues.

As part of the programming review, the World Bank and Asian Development Bank, ideally in collaboration with the UN and bilateral development agencies, should conduct a study of governance and land issues and how these affect the sustainability and equity of their action. They should examine the widespread reports of land seizures and the alleged role of the military in supporting them, as well as the effectiveness of current procedures available to Sri Lankans to contest or prevent their land from being arbitrarily taken. The banks' largest contributing governments – the

¹³⁷ Crisis Group interviews, human rights activists, aid workers, former UN employees, January 2012.

¹³⁸ Recent budget reductions have significantly weakened UNHCR's capacity in Sri Lanka, despite the serious remaining needs of the displaced and recently resettled in the north and east. Crisis Group telephone interviews, UN officials, Colombo, February 2013. Donors should increase support to UNHCR, including for the protection of humanitarian workers.

¹³⁹ The World Bank's current programming in Sri Lanka is detailed in its Country Partnership Strategy, 2013-2016, which was formally approved in May 2012. “World Bank Group New Country Partnership Strategy for Sri Lanka”, 22 May 2012. The World Bank's program anticipates total lending of just over \$1 billion in FY2013 and FY2014. The ADB's Country Partnership Strategy, 2012-2016, was finalised in October 2011. The ADB's total lending envelope for 2013-2015 is \$926 million. “Country Operations Business Plan: Sri Lanka 2013-2015”, December 2012.

¹⁴⁰ See Crisis Group Reports, *Sri Lanka's North II*, *Sri Lanka's Eastern Province: Land, Development, Conflict*, both op. cit., and Asia Report N°165, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, 16 April 2009.

U.S., Japan, China, India, Britain, France, Germany, Canada and Australia – should insist that such a review take place.¹⁴¹

The International Monetary Fund (IMF), which has loaned Sri Lanka more than \$2.6 billion since mid-2009, should insist on significant governance reforms before it agrees to any additional assistance.¹⁴² Along with the two banks and bilateral donors, the IMF should press the government to restore the independence of the judiciary and of the bribery commission, and enact a freedom of information law – all needed to ensure the transparency and integrity necessary to sustainable and equitable economic growth.¹⁴³ The IMF should also insist that the government live up to its previous pledges to reduce the military budget significantly.¹⁴⁴

¹⁴¹ The six largest contributors, by percentage, to the ADB are the U.S. (15.65), Japan (15.65), China (6.46), India (6.35), Australia (5.80) and Canada (5.25). “Annual Report 2011”, Asian Development Bank, vol. 1, 11, April 2012. The largest contributors to the World Bank are, in declining order, the U.S., Japan, Germany, France and the UK. See “Voting Power”, World Bank website, at <http://go.worldbank.org/AXK8ZEAD10>.

¹⁴² In January 2013, the government announced its intention to seek another \$1 billion loan from the IMF for budgetary support, but the IMF reportedly declined to offer any assistance. “Sri Lanka seeks budget support loan from IMF: Treasury Secretary”, Lanka Business Online (www.lbo.lk), 4 January 2013; “Sri Lanka not seeking fresh IMF loan, as earlier planned”, *The Sunday Times* (online), 12 February 2013.

¹⁴³ The opposition UNP has asked the IMF and World Bank to press the government to enact “financial and right to information legislation” needed to ensure transparency in the distribution of funds. “Govt. silent over WB, IMF funds: UNP”, Digathanews.com, 14 June 2012.

¹⁴⁴ In its July 2009 letter of intent with the IMF, the Sri Lankan government promised “savings in military spending beginning with the 2010 budget” and “cuts in military and other expenditures”. “Sri Lanka: Letter of intent, memorandum of economic and financial policies, and technical memorandum of understanding”, 16 July 2009. In practice, the military budget has increased significantly in absolute terms each year since the end of the war, and was increased by nearly 25 per cent in the 2013 budget. “Sri Lanka raises taxes to boost defence spending”, AFP, 8 November 2012. However, as a percentage of gross domestic product, military expenditures had fallen slightly as of early 2012. For the IMF’s position on the issue, see “IMF Confirms, in its Fashion, Sri Lanka Defense Spending Increase”, *Inner City Press*, 23 February 2012.

V. Conclusion

Sri Lanka's democratic governance has deteriorated dramatically since the end of the war. The institutions designed to check and influence the executive – always relatively weak in the strong presidential system – have been badly damaged, with the parliament, and now the judiciary, in effect now arms of the executive. The executive, in turn, is controlled by an unusually small group of people, mostly of the same family. Spaces for dissent and resistance – particularly in the courts and civil society – that were open even during the years of war have gradually been closed. While protest is still possible, and can sometimes have modest effects, the costs for those who pursue it to the point of threatening the government's plans can be high.

Influential governments and the international community need to recognise these profound changes and reformulate their policies accordingly. They must abandon the idea that post-war Sri Lanka is slowly moving toward reconciliation, that institutions and social relations damaged by decades of war are gradually returning to normal, or that the government will grow more comfortable sharing power and releasing its grip on the north and east once the ghosts of the LTTE have faded. Instead, the will to centralisation and the disdain for democracy, human rights and the rule of law must be recognised as the central characteristics of the Rajapaksa regime, increasing social tensions and possibly provoking new communal violence.

Devising effective responses will take patience and cooperation among multiple governments and multilateral institutions. There are no guarantees that ways can be found to persuade the Rajapaksa government to shift course any time soon. But even without succeeding in doing so, it is still important to defend the values and integrity of international law and organisations, and to prevent them from being used to further entrench an authoritarian regime.

Colombo/Brussels, 20 February 2013

Appendix A: Map of Sri Lanka

