

## **Sri Lanka: Action Plan, But No Action**

**20 September 2012**

### **1. Overview**

In the six months since the Human Rights Council's March 2012 resolution on "Promoting Reconciliation and Accountability in Sri Lanka", the government of Sri Lanka has taken no meaningful steps to implement the resolution's core requirements or otherwise address the country's culture of impunity and deepening crisis of the rule of law. The publication of a "[national action plan](#)" to implement the recommendations of the [Lessons Learnt and Reconciliation Commission \(LLRC\)](#) does nothing to change this: the government continues to resist launching any independent investigations into alleged war crimes or other serious human rights violations and has done nothing to establish independent institutions able to hold accountable state agencies, the military, or president Rajapaksa and his family.

The past six months have also seen more murders and disappearances of political critics and proposals for new restrictions on political reporting on the internet. Despite a flurry of government claims to have reduced the role of the military in the Tamil-majority north and east, reports from the ground confirm that military control over development, the civil administration and the population at large – analysed in [Crisis Group's two March 2012 reports on the northern province](#) – remains intact. The government still refuses to restart negotiations with Tamil political leaders or hold elections to the long-promised northern provincial council. These policies are increasing frustration among Tamils and weakening support for the moderate, pro-engagement approach of the main Tamil party, the Tamil National Alliance (TNA).

### **Member states of the Human Rights Council need to demand action, not action plans.**

During the current HRC session, at the Universal Periodic Review in November, and in the run up to its March 2013 session, Council members should in particular:

- a) press the Sri Lankan government to establish truly independent bodies to investigate the many allegations of war crimes and other serious human rights violations committed during the civil war and in the three years since;
- b) insist, as recommended by the LLRC, that the government separate the police from the ministry of defence, remove the Attorney General's office from the control of the presidential secretariat, and re-establish independent commissions on police, human rights, judicial services and other important issues;
- c) press for real, not cosmetic, demilitarisation of the north and a speedy return to elected, civil, authority, reforms that are essential to lasting peace and any eventual political settlement;
- d) insist that the Sri Lankan government allow visits from the UN working group on enforced and involuntary disappearances and relevant UN special rapporteurs, including on extrajudicial, summary or arbitrary executions, and on freedom of expression. These should come in advance of any country visit by the UN High Commissioner for Human Rights.

### **2. Implementing the HRC resolution and LLRC report: A National (In)action Plan**

The HRC resolution requested the government to present a "comprehensive action plan detailing the steps that the Government has taken and will take to implement the recommendations made in the Commission's [LLRC] report, and also to address alleged violations of international law". Unfortunately,

the government's "national action plan" to implement the LLRC's recommendations, released in late July, rejects the LLRC's central findings on the need for independent investigations and the need to re-establish the independence of the judiciary, police and other important public bodies and processes. It also further weakens the LLRC's already flawed analysis of alleged war crimes, rejecting even its proposal for credible investigations into a very limited set of incidents. The action plan refuses to establish a single independent process or institution that might introduce even modest checks on presidential and military power, and often relies for its proposed investigations on the very bodies – the police and the military – accused of involvement in the crimes.

For example:

- ❑ **Independent policing:** In response to the LLRC's recommendation to establish "an independent permanent Police 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), the action plan simply claims that an "Independent Police Commission has already been established". This flies in the face of the LLRC's analysis and the fact the independence of the commission was explicitly abolished 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 plan also avoids dealing with the LLRC recommendation that the police department be made independent of the ministry of defence (par. 9.214-5), instead describing this as "an entirely policy/political issue", and passing it along, with many others, to a body that is yet to be established and may never be: [the parliamentary select committee](#) (PSC).
- ❑ **Disappearances:** The plan offers only vague responses to the LLRC's call to "take immediate steps to ensure that these allegations [of abductions, enforced or involuntary disappearances, and arbitrary detention] are properly investigated into and perpetrators brought to justice" (par. 9.46). Instead of independent investigations and prosecutions, the plan merely promises to "identify impediments, if any, to the effective enforcement of the law" and to "strengthen investigation skills of the police".
- ❑ The action plan rejects the LLRC's recommendation to appoint a "special commissioner of investigation", provided with "experienced investigators" to investigate alleged disappearances (par. 9.51). Instead the government undertakes "to invoke the present procedures as available in the Code of Criminal Procedures with priority given to such complaints".
- ❑ **Child soldiers:** 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" (par. 9.79), the action plan simply states: "Investigations completed." Despite [clear evidence gathered by the Secretary-General's office](#), there has not been a single prosecution for any of the hundreds of alleged cases of forced conscription of children by various branches of the pro-government Tamil Makkal Viduthalai Pulikal (TMVP), including one earlier headed by [Inyabarathy](#), now a presidential coordinator in the eastern province, or the TMVP's former leader and now vice-president of the Sri Lanka Freedom Party, Vinayagamoorthy Muralidharan, generally known as [Karuna](#).
- ❑ **Summary executions:** The action plan also rejects the LLRC's call for an "independent" analysis of the UK Channel 4 video to "establish the truth of otherwise" of the summary executions it appears to depict (par. 9.39). Rather than anything independent, the plan promises 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". The defence ministry and the presidential secretariat are named as the "key responsible agencies" committed to "take follow up action as appropriate".

- ❑ **Sexual violence:** The LLRC says little about allegations of rape or sexual violence and makes no specific recommendations on the issue. The action plan is entirely silent. Crisis Group continue to receive credible reports of violence against women, particularly in the north and east, with no arrests or reforms since our December 2011 report on [“Women’s Insecurity in the North and East”](#).
- ❑ **Detainees:** Despite the LLRC’s call for transparency regarding who is still in detention on suspicion of LTTE links and where, the government has still provided no complete list of detainees easily accessible to families. The government claims to have procedures in place but they are far from adequate.

### **3. Continuing trends: militarisation, authoritarianism and human rights violations**

Since March 2012, serious human rights abuses continue throughout the country, including regular **abductions and killing of political opponents**. The [7 April abduction of two leftist Sinhalese activists](#) was notable for their prompt release following strong Australian government engagement with the defence ministry. According to published reports in the local media and from activists, there were [at least 57 disappearances through the first six months of 2012](#). There has also been continued surveillance, harassment and arrests of Tamils in north and east, focusing particularly on released and “rehabilitated” suspected ex-LTTE.

**Attacks on freedom of expression** continue. In July 2012, [the government announced new regulations](#) to monitor and control web sites that publish what the government deems to be news. Under [revisions to the Press Council Act being approved by the cabinet](#) but not yet law, 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. In June 2012, [the offices of two popular news sites associated with the United National Party \(UNP\) were raided and temporarily closed](#) and charges filed against the staff. The charges were later dropped after widespread national and international protest, though [court proceedings continue](#).

There has been **no meaningful demilitarisation** of the north or east, [despite numerous claims by senior officials](#), both before and after the passage of the March HRC resolution, that the military was reducing its size and its role in civilian affairs in the north and east. The full range of problems detailed in [Crisis Group’s March 2012 reports on the northern province](#) continue, including: military-supported Sinhalaisation and continued displacement due to illegal land takeovers by the military, large numbers of troops and checkpoints, military involvement in commercial activities as well as in implementing development and humanitarian policy, and tight surveillance of the civilian population.

The government’s encouragement of Sinhala Buddhist nationalism has now affected Sinhala-Muslim relations, most notably with [the violent 20 April protest led by Buddhist monks against a mosque in the central town of Dambulla](#). The president’s silence on the case and the tacit support the attack had from some senior ministers, was particularly worrisome.

Government negotiations with the Tamil National Alliance remain stalled, with [the government insisting that the TNA join the PSC](#). This is [despite earlier promises](#) to the TNA that they would first complete their bi-lateral talks before commencing the PSC and later agreements that the bi-lateral talks would restart simultaneously with the TNA joining the PSC.

The government’s clear lack of commitment to devolution of power and power-sharing – despite its explicit promises to the UN, India and the US – and its **failure to improve political and economic conditions for most Tamils** in the north and east, is contributing to rising levels of anger and growing disenchantment among Tamils with the TNA’s moderate, pro-engagement approach.

#### **4. War Crimes Allegations**

The Council's March 2012 resolution noted "with concern that the [LLRC] report does not adequately address serious allegations of violations of international law." To date, the Sri Lankan government has still taken no steps to initiate independent investigations into any of the "vast number of credible allegations" of war crimes detailed in April 2011 [report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka](#). A detailed [U.S. State Department report released in April 2012](#) found 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."

Sri Lanka's "national action plan" does nothing to change this, and in fact waters down the LLRC's already weak recommendations. The action plan promises only that the military will within a year "complete ongoing disciplinary process being conducted in terms of Armed Forces statutes" and "upon conclusion, take follow up action to prosecute, where relevant", "us[ing] the existing system as provided for in the Criminal Procedure Code". The government gives itself five years to complete the whole process. No information has been released about which, if any, incidents or military personnel, may be under investigation. In its report to the Council for the upcoming Universal Periodic Review, the Sri Lankan government says only that "[several witnesses have testified](#)" before military courts of inquiry (par. 32).

If the process remains opaque, the conflict of interest is clear. As Crisis Group has argued since its May 2010 report "[War Crimes in Sri Lanka](#)", an international investigation remains the only credible process for learning the truth, holding perpetrators to account and defending the laws of war.

#### **5. Supporting OHCHR and special procedures mandate holders**

Council members should support the UN's role in implementing the March HRC resolution, which a) "encourages the Office of the United Nations High Commissioner for Human Rights and relevant special procedures mandate holders to provide [the Sri Lankan government] ... advice and technical assistance on implementing the above-mentioned steps"; and b) "requests the Office of the High Commissioner to present a report on the provision of such assistance to the Human Rights Council at its twenty-second session".

Member states should make clear that the Sri Lankan government is expected to:

- a) allow visits to Sri Lanka from all those UN special procedures with outstanding requests as well as any others who may wish to visit. Most urgently needed are visits from the working group on enforced and involuntary disappearances (requested visits in 2006, 2007, 2008, 2009 and 2011); and the special rapporteurs on extrajudicial, summary or arbitrary executions (request for visit made in August 2009 and December 2010) and on freedom of expression (requested visit in 2009). There should be effective follow-up on the recommendations of earlier such visits. (See [here](#) for a full list of pending requests from special procedures.)
- b) allow the High Commissioner's office to send the additional staff to Sri Lanka needed to carry out its reporting function.

These two actions should be viewed as the minimum demonstrations of good faith necessary to enable the government in Colombo to benefit from a visit to Sri Lanka by the High Commissioner for Human Rights.