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Sri Lanka: Prevention Should Be at Heart of New Human Rights Council Resolution

The UN Human Rights Council will soon discuss Sri Lanka, where the new government has scotched truth and justice efforts related to the 1983-2009 civil war. The Council should demand accountability for past crimes but stress that Colombo's present policies may spark further deadly conflict.

As the UN Human Rights Council begins its first meeting of 2021 in Geneva, high on its crowded agenda will be to decide whether to adopt a new resolution that maintains international oversight over Sri Lanka. The present one, adopted in 2015 but now expiring, won support from the Sri Lankan government of the time, which agreed to [address the legacy of the country's brutal civil war](#) and its conclusion in a wave of atrocities in 2009. But Sri Lanka's current government, led by the same nationalist politicians and generals who were in office at the war's end, has rejected the truth and accountability agenda it inherited and is working hard to end the Council's engagement. With options for truth and justice for wartime atrocities closed for now within Sri Lanka, the Council should adopt a new resolution that underscores the international interest in accountability. At the same time, the accountability agenda, which has dominated international discussions about post-war Sri Lanka over the last decade, must not divert attention from the current government's authoritarian and ethnically exclusionary policies, which may well be sowing the seeds of future violence. The new resolution should thus also focus on preventing a return to violence and be followed by a sustained international effort to persuade the Sri Lankan government to pull back from its dangerous trajectory.

The Long Quest for Accountability

Beginning in 2012, the combination of the Sri Lankan government's refusal to investigate well-founded allegations its troops committed numerous [atrocities in the final months of its war](#) against the Liberation Tigers of Tamil Eelam in 2009 and the growing authoritarianism of then-President Mahinda Rajapaksa's administration led to a series of increasingly critical Human Rights Council resolutions. Commissioned by the Council in 2014, [an investigation by the UN Office of the High Commissioner for Human Rights](#) found “reasonable grounds to believe” that both the Tigers and government security forces committed “gross violations of international human rights law, serious violations of international humanitarian law and international crimes”, possibly amounting to crimes against humanity. To this day, these allegations have never been independently investigated, much less prosecuted by national authorities.

The Sri Lankan state's blanket deflection of accountability briefly lifted in 2015 with the election of a new government, which promised to investigate and prosecute war-related crimes as part of a package of wide-ranging legal reforms and transitional justice measures that were rooted in UN Human Rights Council Resolution 30/1, which was adopted in October 2015. The government's co-sponsorship of that resolution appeared to herald a break with the decades of impunity for political crimes and human rights violations committed by state and pro-state forces. The shift triggered important initiatives in Sri Lanka, including the establishment of offices on missing persons and on reparations for war-related harms. Partly freed from previous political constraints, the police mounted serious investigations, leading to the filing of charges and a number of trials in a series of high-profile cases of corruption, abduction and political murder committed during Rajapaksa's ten years in office. By the end of 2017, however, the [government was too divided and rudderless](#) to make a strong or persuasive push on the transitional justice initiatives it had promised in Geneva or to see prosecutions of Rajapaksa-era crimes through to the end.

The door to domestic accountability and reform has since slammed shut, at least for the time being, with the powerful Rajapaksa dynasty's return to office – first with the November 2019 election of Gotabaya Rajapaksa as president, and then with the August 2020 parliamentary victory of a coalition led by his brother, former President Mahinda Rajapaksa, who is now the country's prime minister. Running on a strongly Sinhala Buddhist nationalist platform, the Rajapaksas and their party, the Sri Lanka Podujana Peramuna, promised to defend those military officers they considered war heroes against international accountability efforts and to end the “Geneva process” once and for all.

The UN Human Rights Council sessions running from late February to late March will decide whether the Rajapaksas have their way. At the centre of member states' deliberations will be a powerful [new report](#) from the High Commissioner for Human Rights, which calls for “international action to ensure justice for international crimes” allegedly committed during the 26-year civil war. Noting that Sri Lanka has “largely closed the possibility

of genuine progress being made to end impunity through a domestic transitional justice process”, High Commissioner Michelle Bachelet [asks the Council](#) to establish a dedicated mechanism to collect and preserve evidence “for future accountability processes”. She also urges member states to “investigate and prosecute international crimes committed by all parties ... including under accepted principles of extraterritorial or universal jurisdiction”; calls on governments to explore targeted sanctions against those credibly alleged to have committed grave human rights violations; and encourages the UN Security Council to consider a referral to the International Criminal Court (ICC). Although Chinese and Russian opposition would make any such referral a non-starter in New York, many victims’ groups and Tamil activists have welcomed the High Commissioner’s call as both an acknowledgement of the gravity of the crimes committed during the war and a reminder of the lack of domestic redress.

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Sri Lanka is an example of how impunity can breed further atrocity. The humanitarian catastrophe of 2009, during the final months of the civil war, was only the most recent of a long series spanning decades. The absence of justice for tens of thousands killed or “disappeared” in the left-wing Sinhala youth insurgencies and government counter-insurgencies of 1971 and the late 1980s directly fed the impunity with which police and military dealt with the Tamil militancy that began in the late 1970s and ended in 2009 with the Tigers’ destruction. It is hard to imagine breaking the cycle unless the state acknowledges its past crimes, something the present government is clearly unwilling to do. The Human Rights Council cannot change the government’s mind, but it could at least keep the pressure on Colombo by endorsing the High Commissioner’s call for international actors to take additional steps in the service of accountability.

That said, it is unclear how far the Council will be willing to go. An [initial draft resolution](#) from the “core group” of states – Britain, Canada, Germany, Malawi, Montenegro and North Macedonia – has disappointed many activists and survivors’ groups by pulling back from the High Commissioner’s bold calls for ICC referral, targeted sanctions and the creation of an independent evidence-gathering mechanism. With strong opposition expected from China, Russia and other supporters of Sri Lanka, the core group has chosen a relatively cautious approach, fearing the potentially lasting effects of a defeat. Even in this form, observers expect a close and hotly contested vote. Particularly important will be the degree to which Organisation of Islamic Cooperation member states act on concerns about growing discrimination against Muslims, and the level of engagement of the U.S., now back at the Council as an observer.

The Return of the Rajapaksas

But important though it is to continue pursuing accountability for past crimes, the bitter truth for survivors is that even under the most hopeful scenarios, efforts to address past abuses are unlikely to bear fruit for years, perhaps decades. Moreover, those efforts, now necessarily taking place from outside Sri Lanka, will do little to reverse the growing risks arising from the country’s rapid slide back toward authoritarian and Sinhala majoritarian rule.

The 2019 and 2020 elections marked more than the return to power of the Rajapaksa dynasty and its Sinhala nationalist policies. [The votes confirmed](#) that Sri Lanka is now firmly in the hands of its most nationalist and militarist elements. Their commitment to authoritarian, militarised governance and to the political and cultural supremacy of the Sinhala and Buddhist majority pose a growing threat to Sri Lanka’s battered democratic institutions and to its political stability.

Signs of this trend abound. The 20th Amendment to the constitution, rushed through parliament in October 2020, removed any meaningful limits on presidential power, providing the head of the executive branch with direct and near complete control of the judiciary, police and previously independent oversight bodies. Even before the amendment’s adoption, Gotabaya Rajapaksa’s first year in office saw the rapid repoliticisation of the judiciary and police. Courts have been pressured to end many of the criminal cases against members and close associates of the president’s family – some of them are now back in senior government positions – and police investigations have been closed or redirected to protect the Rajapaksas and achieve Gotabaya’s political aims. A [presidential commission of inquiry](#) charged with investigating alleged cases of “political victimisation” of Rajapaksa associates by the previous government has recommended prosecuting the police officers who investigated political crimes of the 2005-2015 era, while at the same time characterising as innocent victims a range of suspects charged in murder, abduction and fraud cases. The president has also [given unprecedented policymaking powers to serving and retired military officers](#), many of whom UN or other non-governmental investigations have implicated in human rights and humanitarian law violations.

“ The militarisation of government administration has led to an increase of state surveillance and harassment of civil society activists. ”

The militarisation of government administration has led to an increase of state surveillance and harassment of civil society activists, particularly in Tamil-majority districts. With no independent sources of protection and impunity reaffirmed for the past murders and assaults of senior journalists, self-censorship and fear run high among media personnel and civil society activists across the island. On 9 January, President Rajapaksa [publicly threatened](#) to treat an opposition parliamentarian like he did the Tamil Tigers leader, Velupillai Prabhakaran, whom he boasted to have “killed like a dog”.

The government’s Sinhala nationalist rhetoric and discriminatory policies are also leading to a dangerous rise in religious and ethnic tensions. Sensationalist media coverage of police investigations and a separate commission of inquiry into the 2019 Islamic State (ISIS)-inspired Easter bombing has already created a climate of fear and

suspicion toward Muslims among the Sinhala majority. The wholesale [replacement of the original police investigation team](#); the apparently [arbitrary arrest and detention](#) under the anti-terrorism laws of a prominent Muslim activist lawyer for alleged involvement in the Easter attacks; and the resurrection of allegations against political rivals that police investigators had previously disproved – all represent breakdowns in the rule of law.

The government’s COVID-19 policies have made matters still worse. Despite the recommendations of its own committee of medical experts and the World Health Organization, the government insists on cremating the bodies of all known or suspected victims of the coronavirus. The policy runs directly counter to Islamic religious tenets and has [generated widespread fear, anger and humiliation](#) among Muslims. Despite public protests joined by Hindus, Christians and Buddhists, as well as criticism from UN bodies, the Organisation of Islamic Cooperation and foreign capitals, the government has refused to change course.

Muslim leaders and activists have long feared that the Rajapaksa government, in both its previous and present forms, would seek to provoke a violent reaction to the harassment and humiliation that members of the Muslim minority have experienced over the past decade, first from militant Buddhists and more recently from the state itself. Notwithstanding the [2019 Easter bombings](#), which were perpetrated by a small fringe of ISIS supporters, Sri Lankan Muslims have been remarkably restrained in the face of nearly a decade of hate speech and vigilante violence. But community leaders express concern about rising anger at the forced cremation policy. Even the smallest local act of violence could provoke a major backlash and give the government a pretext for drawing public attention away from economic woes arising from the country’s debt crisis, now aggravated by losses from the COVID-19 pandemic.

Meanwhile, long-running tensions between the Sinhala-dominated state and security forces and the Tamil ethnic minority continue to simmer. Although a return to violent militancy or terrorism appears unlikely, particularly in view of the state’s massive military presence in Tamil-majority districts of the north and east, animosity runs deep. Suffering from decades of political marginalisation and inequitable economic development, Tamils in the north east fear a slow but steady erosion of their cultural and demographic status in the region. With the military playing a direct role in district administration, and nationalist Buddhist practices given official state sanction, Tamils, like Muslims, are increasingly worried about further land seizures for military bases or Buddhist shrines and temples. Surveillance is tight and intimidation of political activists by police and military has increased. Small acts of resistance could easily turn violent and offer an excuse for the military to crack down and further entrench its power.

The Need for a Prevention Agenda

Sri Lanka has a long history of insurgencies and terrorist attacks in reaction to the political marginalisation of minorities and the state’s violations of their rights. Against this backdrop, the Human Rights Council should in the present session go beyond the focus on accountability in past resolutions to sound the alarm about the rising risks of future abuses and their potential link to violent conflict, and to put Sri Lankan leaders on notice that the world is watching.

“ The Human Rights Council should [...] sound the alarm about the rising risks of future abuses and their potential link to violent conflict. ”

The recent [High Commissioner’s report](#), which confirms [warnings made by Crisis Group](#) since late 2019, provides the basis for such a resolution by identifying “clear early warning signs of a deteriorating human rights situation and a significantly heightened risk of future violations”. The central task facing the Human Rights Council should be to name, and help contain, Sri Lanka’s growing risks of repression and violent conflict. As one Sri Lankan lawyer argued to Crisis Group: “There’s a genuine risk of major repression. ... But international scrutiny could still hold it back”.

The initial draft resolution from the core group empowers the High Commissioner’s office to continue its close monitoring and regular reporting to the Council and notes the most important of the warning signs her report highlights. The resolution could strengthen High Commissioner Bachelet’s hand by explicitly encouraging and giving her office the resources to apply the prevention tools the Council endorsed last year in [Resolution 45/31](#) on “preventing human rights violations”. This resolution asked the High Commissioner’s office to strengthen its monitoring of early warning signs and called on it to bring to the Council’s attention any situation where “patterns of human rights violations ... point to a heightened risk of a human rights emergency”. Should the situation in Sri Lanka deteriorate rapidly, the resolution could provide the basis for intersessional briefings from the High Commissioner or emergency engagement by the Council and the High Commissioner’s office.

While an unenforceable Human Rights Council resolution is unlikely by itself to turn Sri Lanka’s trajectory around, it remains an important and immediate step. It would send a clear multilateral message to the Rajapaksas, focus international actors on their harsh and dangerous policies, and galvanise efforts to keep them from either further enflaming ethnic and religious tensions or closing what remains of democratic space. Specific objectives that those with influence in Colombo might pursue within this framework include:

- ceasing arrests under the Prevention of Terrorism Act and releasing on bail or bringing to trial those detained under this legislation, including Tamils held on war-related allegations and Muslims detained for alleged involvement in the 2019 Easter suicide bombings;
- ensuring a transparent and procedurally fair process for prosecuting those against whom there is credible evidence of involvement in the Easter bombings;

- ceasing all politically motivated punishment of police and politicians who backed investigations into high-profile criminal cases related to the previous Rajapaksa government, including by discontinuing the Special Presidential Commission of Inquiry;
- ending the policy of forced cremations and all government policies that discriminate against Muslims and evangelical Christians;
- ceasing arbitrary and illegal seizures of land lived on, cultivated or used as religious sites by Tamils, Hindus and Muslims in the north and east (whether by the military or on alleged archaeological or environmental grounds) and establishing lawful and transparent processes, with multi-ethnic participation, for distributing state land and adjudicating land issues in these multi-ethnic regions;
- ending the politically motivated surveillance and harassment of NGOs and community organisations by police and intelligence personnel; and
- preserving the modest devolution of power provided for by the constitution’s 13th Amendment by holding overdue elections for provincial councils in 2021 and allowing them to operate effectively.

Outside actors wishing to press Colombo on these points have sources of leverage. Options that could be explored include the European Union formally reviewing Sri Lanka’s human rights-linked GSP+ trade privileges; international financial institutions and bilateral development agencies tightening the application of their conflict sensitivity and anti-corruption policies; the UN suspending new deployments of Sri Lankan troops as peacekeepers; and member states taking steps to pursue targeted sanctions and apply universal jurisdiction as recommended by the High Commissioner.

But while these should all be considered, right now the big push is in Geneva. If the Human Rights Council enacts a meaningful resolution that keeps accountability on the international agenda and encourages prevention, it may help generate much-needed momentum that states and other institutions can carry forward. This is where a renewed effort to prevent Sri Lanka’s further slide toward repression and increased risks of conflict urgently needs to begin.

ecoi.net summary:

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