

## Sri Lanka's Attitude to International Threatening: The Upcoming UPR

Written by Chloe Desbenoit

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CHLOE DESBENOIT, SEP 3 2012

The upcoming Sri Lankan Universal Periodic Review (UPR) is due to start this November (2012) in Geneva. In 2008, Sri Lanka was reviewed for the first time as part of the first cycle of the UPR.

The UPR process was established within the framework of the Human Rights Council (HRC) and created at the same time in 2006. This unique process consists, once every four years, of a review of the human rights of all the 192 United Nations (UN) states members with regard to international human rights treaty bodies.

After the previous review, Sri Lanka accepted 52 and rejected 25 recommendations given by the UPR working group. The accepted recommendations included the strengthening and ensuring of the independence of human rights institutions, taking measures to safeguard freedom of expression, and to adopt necessary measures to safeguard the human rights of internally displaced people in accordance with applicable international standards.

Four years ago, the situation in Sri Lanka was very different. In the intervening time, the country had suffered an incredibly bloody war between the Sri Lankan army and the Liberation Tigers of Tamil Eelam, commonly known as the LTTE, a fairly brutal terrorist group. Allegations of war crimes and credible evidence of serious violations of international humanitarian and human rights laws committed by the Sri Lankan Government have been made by many, including an independent panel of experts convened by the UN. Up to 40,000 civilians (four times more than most estimates regarding the current conflict in Syria) appear to have been killed, the majority by shelling of "no fire zones" and hospitals by the Sri Lankan army- and other civilians appear to have been murdered by soldiers in cold blood.

The Government of Sri Lanka has not attempted to investigate these allegations in any meaningful way. It always rejected international procedures; insisting that the domestic process needed to be exhausted prior to any international action. For three years the international community was waiting and looking to the Government of Sri Lanka to implement constructive actions towards peace and reconciliation. Despite this opportunity, the Sri Lankan Government failed to respect its own commitments, or to live up to the recommendations of international bodies such as the Human Rights Council. Recently, and consequentially, the international dynamic has changed and Sri Lanka is losing its credibility.

In closed session it has often attempted to dismiss international pressure for an investigation into war crimes by saying these matters will be dealt with as part of the UPR process. However, as was demonstrated in the case of Syria, the UPR is simply not fit for this purpose – it is designed to monitor and improve on-going rights situations, not investigate war crimes. Moreover, despite having previously proposed using the UPR in this way, there is no suggestion that the Government of Sri Lanka is in a particular hurry to address these allegations within this process either.

In the 2008 UPR session, Sri Lanka promised, for example, to strengthen and ensure the independence of its human rights institutions by implementing the 17th Amendment which supposedly should grant institutional independence to domestic human rights and legal bodies. Not long after making this pledge, the Government nullified it by passing the

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18<sup>th</sup> Amendment which centralized the power of appointment of high state officials with the President.

Meanwhile, as many public and civil organizations have mentioned, there was generally no real progress on many of the recommendations made by the UPR in 2008. The Human rights situation in Sri Lanka, remains bleak. The lack of investigations into killings – the abductions, assaults, threats and campaigns against opponents and journalists – have been constant since the end of the war in 2009.

The upcoming UPR session is a new chance to report once more the passive attitude of Sri Lanka.

## **The Upcoming UPR Session Challenges**

The Sri Lankan Government's approach to truth and reconciliation can best be described as a smoke screen. They would like to move on from these terrible events, to be forgiven and to forget, but without first the necessary acknowledgement of accountability on the part of the perpetrator.

When the government makes commitments to the international community and fails to deliver on them, there is an erosion of trust.

The State under review is expected to examine all recommendations made, to follow up on the recommendations that have its support as well as on voluntary commitments and pledges. It has a responsibility to implement the recommendations in the final outcome. Many states expect strong action on non-cooperating States. However the HRC still hasn't decided what form this action should take.

But this upcoming UPR session must provide a positive example of what the HRC can do to improve human rights situations. Sri Lanka's on-going human rights situation and past events rank as one of the most important failures of the international community to safeguard civilian populations from their own Government.

The HRC and the UPR session cannot let the Sri Lankan model of reconciliation without truth persist any longer. The clear violations of human rights international norms, elaborated upon below, can't be ignored and continue without negative consequences. It will also encourage other countries, such as Burma, Bangladesh, Nepal, Turkey, Indonesia, the Philippines and beyond, to follow the Sri Lankan model. If the International community continues to follow this way regarding the Sri Lankan situation then many will be encouraged to follow their example.

## **The Motion on Sri Lanka at the 18<sup>th</sup> Session of the United Nations Human Rights Council**

Recently, as a consequence of Sri Lankan inaction on the issue of accountability, in the 18th session of the United Nations Human Rights Council (UNHRC), a motion was adopted by a vote of 24 to 15. The resolution, submitted by the United States, urges the Sri Lankan Government to investigate the alleged abuses of international humanitarian law in the final stage of the war.

The UNHRC especially highlighted the failure to address accountability on the serious allegations of war crimes by the Lessons Learnt and Reconciliation Commission (LLRC); the internal mechanism mandated by the President Mahinda Rajapaksa to investigate the manner in which the war ended. The Commission has been widely criticised for its lack of independence, its failure to meet minimum international standards for investigation, the lack of witness protection, and – in the final report – the lack of accountability for those in a position of authority.

As is the usual behaviour of the Sri Lankan Government regarding the international community, they refused to compromise in any way with the US-led resolution. Clear instructions were given by President Rajapaksa to the Ministry of External Affairs: "It does not matter even if we lose but we must go down fighting" the President reportedly stated.

## **Sri Lanka Ready to Face the UPR**

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Prior to the UPR session, the Human Rights Commission of Sri Lanka, an institution established in 1996 to protect human rights and uphold the rule of law in Sri Lanka, said they were getting ready to face the review. Some discussions with Government officials had been held to implement the recommendations mentioned in the previous UPR session in 2008. Better late than never, the Sri Lankan Government seemed determined to show how wrong international opinion is about the human rights situation, and submitted its report.

Minister Samarasinghe, the Sri Lankan human rights minister recently told the Sunday Observer: "This is an excellent opportunity for Sri Lanka to demonstrate again that the resolution adopted by the Council in March was unwarranted in the backdrop of so much progress after the end of terrorism."

The more difficult task awaiting the Sri Lankan authorities is to show how they implemented the previous UPR recommendations and acted upon the recent UNHCR motion. In the UPR process the failure in implementing the previous recommendations leads to questions on what they have been doing towards implementation in the new session. Most international actors said that Sri Lanka failed to live up to the previous recommendations in a sufficient manner, often making a step forward as a compromise but then taking a further step back.

## **The Failure of Freedom of Expression**

During the first UPR session in 2008, the Government received and accepted a number of recommendations relating to the right of freedom of expression. Since then Sri Lanka has continued promoting censorship; by blocking independent media websites, and by restrictions of, and threats to, journalists. During the last 10 years, the Government has failed to secure convictions in any of the 19 cases of killings of journalists.

Moreover, there is an obvious lack of an adequate framework regarding media protection. In 1979 Sri Lanka adopted the Prevention of Terrorism Act, supposedly temporary, under which hate speech is prohibited and it is legitimate to curtail expression to avert a threat to national security. Years after the war, the vague wording of the act is used to condemn and censure everyone who formulates criticism against the Government.

Most disappearances and extra judicial killing has been conducted against those that criticise the Government, up to the point that Government supporters allegedly carry out many of the acts. An article published by Groundviews by a Sri Lankan journalist under the name of *Watchdog*, reported that in the last year the total number of disappearances was 56, some of them reported as "abductions" others as "missing".

Following the presidential elections in January 2010 a wave of political persecution of opposition leaders, activists and independent journalists swept over Sri Lanka. You may remember the story of General Sarath Fonseka, former commander of the Sri Lanka Army during the war and principal opponent to the president, who was arrested several months after the election and released only a few months ago.

## **Post Conflict Living with Many Difficulties to Face**

To date, there are still around 120,000 Internally Displaced People (IDP) living in camps, welfare centres or with host communities, sometimes even in the jungle without a roof over their head. In 2008 the Government agreed to ensure the return and the restitution of housing and lands for these people, as well as their right of protection and safety. In theory the Government had created resettlement programs to help people to return, or at least to improve their life conditions, but in practice it failed to implement any of those. Women's groups have also complained that despite the large number of female headed households amongst the IDPs, these schemes are designed without any consultation with female IDPs. The situation regarding the IDPs continues to be a matter of concern, especially with regards to the re-settlement scheme, essential social services, housing, health care, and food.

## **Still Looking for Peace and Reconciliation**

The peace and reconciliation process remains largely uncompleted, even if the Government of Sri Lanka has given some commitments, more precisely on ensuring a cessation of discrimination against ethnic minorities or ensuring a

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limited internal accountability process. Of course, the LLRC was set up to address the alleged human rights and humanitarian violations during the last stage of the war and the report contains some really promising recommendations. But, despite this, the underrepresentation of Tamils, the absence of impartiality, the lack of accountability and the inexistence of legal obligations showed how the Sri Lankan Government failed to ensure justice.

Sri Lanka's UPR report has been completed and was dispatched to the Committee on July 23 with confidence by Mahinda Samasinghe, the Minister for Reconciliation. The authorities believe they have done enough. Samarasinghe must be careful not to misplace this confidence as most of the previous recommendations of the review in 2008 have been implemented.

## **The Troika: Allies or Enemies?**

The three countries designated to form the new troika will have to review Sri Lanka's performance and decide how much effort the Sri Lankans have put into improving the human rights situation in Sri Lanka. Benin, Spain and India were randomly appointed to review Sri Lanka's UPR. All three voted in favour of the resolution on Sri Lanka submitted by the US at the UNHRC sessions in March 2012.

In the first UNHRC session in 2009 Sri Lanka managed to defeat the resolutions forwarded by the Western countries with the support of its allies from various quarters of the world; most prominently from China, India and Russia. In the last session, in 2012, the US-led resolution was adopted with 24 votes in favour, 15 against and 8 abstentions. India voted in favour of the resolution. China, however, firmly backed Sri Lanka once again.

For India this was a dramatic twist indicating a change of stance by the South Asian regional power. However, being one of the most important Sri Lankan supporters, they were able to ask successfully that the US tone down the text of the draft resolution as a condition of voting in support. Thus India had, one more time, a key role in monitoring Sri Lanka's post war progress among the international community.

The Sri Lankan government has on various occasions acted against India since the conclusion of the UNHRC sessions in March. The Sri Lankan authorities first voted against the Indian candidate at the election for the International Court of Justice (ICJ) and then the Presidential Secretary, Lalith Weeraratne, criticized India's role during Sri Lanka's conflict. Further, in April 2012, a Indian parliamentary delegation called for a demilitarisation of former war zones in Sri Lanka and a devolution to the ethnic Tamil minority. President Mahinda Rajapaksa first promised visiting Indian dignitaries that he would implement the "thirteen plus amendment" on full powers to provincial councils, and then denied having given any assurance of such devolution. Sri Lanka may regret reproaching their historically close friend for their recent position.

This is especially true as relations between US and India are getting stronger; as mentioned by Leon E. Panetta, the US Defence Secretary, "strategically, we see India as a partner with whom we have a lot of common interests and a lot of areas where we can work well together".

Since early 2004, the USA and the world's largest democracy have been pursuing a "strategic partnership" that is based on shared values and generally convergent geopolitical interests. Both countries articulated their shared vision in numerous topics such as the economy, technology, security – including plans for civilian nuclear cooperation and for peace, stability, and prosperity in the South Asian subcontinent and the rest of Asia. Hillary Clinton, the Secretary of State, wrote in June 2012 that "Together, we can turn strategic fundamentals into strategic partnership".

The upcoming UPR session will be an important test for the Sri Lankan authorities. But we have to hope that it won't, once again, result in a mere commitment to give Sri Lanka more time; a request which has become a speciality of the Sri Lankan representatives. It is a test for the UPR too; to show to the international community that it can effect change regarding a clear matter of concern such as the human rights situation in Sri Lanka.

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*The views expressed in this article are her own and do not necessarily reflect the organization.*

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