

Human Rights Concerns in Sri Lanka

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I wish to thank Chairman Chris Smith, Ranking Member Karen Bass and other members of the Subcommittee on Africa, Global Health, Global Human Rights and International Organisations for hosting a hearing on Sri Lanka this afternoon.

I wish to speak today on the pledges made by the Sri Lanka government in September 2015 to the United States and the United Nations Human Rights Council (UNHRC) to address issues of accountability for human rights violations during the country's civil war, only to renege on them later. This has given the country's military and police impunity to continue perpetrating abuses in the post-civil war period, raising the possibility of renewed conflict. At the end of my presentation, I suggest certain recommendations.

In 2015, Sri Lanka elected a new president and a new government, which calls itself the National Unity Government. The change was hailed as the dawn of a new era, friendly to human rights and democracy. But what has unfolded between then and now is not what many had hoped for.

In September 2015, in his appearance at the UNHRC as the representative of the Sri Lanka government, then Foreign Minister Mangala Samaraweera said the new regime was committed to “do right by the people of his country” because it was as the only way “to ensure justice and... lasting peace.”

The civil war in Sri Lanka is estimated to have killed 40,000 in the final three months of fighting alone. There is no estimate of how disappeared in that period. Among the remedies the government proposed at the UNHRC were four transitional justice mechanisms that included a judicial mechanism with an Office of Special Counsel, an Office of Missing Persons, a Commission for Truth, Justice, Reconciliation and Non-recurrence, and an Office of Reparations. These proposals and others, such as the repeal of the counterterrorism law – the Prevention of Terrorism Act (PTA) – and replacing it with a law more in conformity with international human rights standards, were incorporated into UNHRC Resolution 30/1. This Resolution was adopted without division with both the United States and Sri Lanka cosponsoring it.

Secretary of State John Kerry reinforced the U.S.'s concurrence with the contents of the Resolution and its support for Sri Lanka [stating](#), “This resolution marks an important step toward a credible transitional justice process, owned by Sri Lankans and with the support and involvement of the international community ... As I promised in Colombo ... the United States will remain steadfast in our commitment to walk with Sri Lanka as it takes these important but challenging steps.”

Three years later not only is the brave new world promised by the Sri Lanka government in jeopardy, but there has been very little tangible headway in implementing Resolution 30/1. Of the four transitional justice mechanisms outlined in September 2015, only the Office of Missing Persons has even been set up. Here again its members are touring the country listening to victims and not begun sittings.

The dismal lack of progress and political will was noted by UN High Commissioner for Human Rights Zaid Al-Hussein at the UNHRC's meeting in March this year. He said, “The fulfilment of the transitional justice commitments made under Human Rights Council Resolution 30/1 has been virtually stalled for more than a year ... and the structures set up to coordinate implementation have not consolidated enough or did not receive sufficient political support to move things forward.”

Rather than look at Sri Lanka's performance on upholding a gamut of human rights, I wish to focus here on three – and arguably most egregious – factors that affected the rule of law in the past and continue to do so in the present: a) disappearances, b) torture and c) militarisation.

It has to be noted that Sri Lanka ranks second only to Iraq in the number of unresolved cases of enforced disappearances (5,859 as of May 2017). These disappearances not only took place in the civil war, but during the two insurgencies against the Sri Lankan State by Sinhala youth.

Disappearances of Tamils in the civil war, involved multiple perpetrators and an array of methods. Among the perpetrators there were the Liberation Tigers of Tamil Eelam (LTTE) rebels, Tamil paramilitary groups such as the Eelam Peoples' Democratic Party (EPDP) and the Karuna Group. But by far the bulk of the acts of enforced disappearances were carried out by State actors – the military and the police.

Disappearances of Tamil civilians in the hands of State agencies was not only through routine abduction but also after Tamils surrendered to the Sri Lankan military at the end of the civil war in May 2009. The then government announced that whoever had any contact with the rebels, no matter how small, should declare it to the military and that they would be safe and treated fairly. Those who did were separated and taken away. Almost of all of them, including a catholic priest who went to ensure the safety of those taken away, were never seen again.

Due to successive Sri Lanka governments' reluctance to be forthright about disappearances or holding perpetrators accountable, the family members of the disappeared in the country's North and East have begun protests and demonstrations. Today, many families of the disappeared have said they will boycott the Office of Missing Persons set up to probe disappearances. The boycott is because they want the names of all those who surrendered to the military at the end of war and who are now disappeared to be published, before extending their cooperation to the OMP.

It has to be noted that Sri Lanka ratified the International Convention for the Protection of All Persons from Disappearances on May 25, 2016. Meanwhile a case of the disappearance of 11 persons including Tamil schoolboys in 2008 is before courts. A senior officer of the Sri Lanka Navy, Commodore D. P. K. Dassanayake, and others were arrested in this regard but [released on bail](#) earlier this year. While the ratification and a magisterial inquiry are silver linings, they are nowhere near an adequate response to the crime of enforced disappearances in the country.

It has to be noted that no matter when an enforced disappearances occurs, in law it is considered an ongoing crime till the person is found, or the next of kin accept the verdict of a government's investigation. Therefore, the lack of transparency in dealing with past violations has caused bitterness and anger toward the government and has the potential to fuel future conflict.

The second example is torture. Torture was used extensively on Tamil political prisoners during the civil war by both the military and police. This was facilitated by the draconian Prevention of Terrorism Act that permitted arbitrary detention and allowed confessions admissible as evidence.

But the practice has continued even under the present government where torture is used in police stations across the country on suspects regardless of their ethnicity. In his [report](#) from a fact-finding mission to Sri Lanka in April-May 2016, Special Rapporteur on Torture Juan Menendez wrote, “Fewer cases are reported today than during the conflict period and perhaps the methods used by the police forces are at times less severe. But sadly, the practice of interrogation under physical and mental coercion still exists and severe forms of torture, albeit probably in less frequent instances, continue to be used.”

But it is Tamils who remain the bulk of those continuing to face multiple arrests, severe torture and sexual abuse even in post-war Sri Lanka. Many of those who are repeatedly arrested and tortured are ex-LTTE cadres who have undergone a so-called rehabilitation programme (so-called because within the programme itself it was reported that torture was rampant) and are supposed to be now reconciled with the State. The [International Truth and Justice Project](#) interviewed 24 persons who had been tortured and raped by Sri Lanka’s police or military in the 2016-2017 and escaped to Europe. Their personal accounts make grim reading, but what stands out is the ITJP’s categorical observation “The violations remain systematic and officially sanctioned by command structures within the security forces.”

Following the publication of the ITJP report and an expose in the [Associated Press](#), U.S. Senator Patrick Leahy [said](#), “These accounts of torture are horrific and contradict the Sri Lankan government’s professed commitment to reconciliation and justice,” adding, “I will be looking for convincing evidence that torture has ended and those responsible are being punished.”

The third element that is affecting the rule of law in Sri Lanka is militarisation of Northern and Eastern Sri Lanka, which are almost exclusively Tamil-speaking and home to the large majority of victims of the civil war. The saturation of the military in civilian areas was widespread during the years of armed conflict. As in the case of disappearances and torture, high levels of militarisation has continued after armed conflict ended as part of the post-war pacification project of the government.

Militarisation manifests itself in a number of ways in Sri Lanka. One of them is in sheer numbers. According to a [report](#) by two research organisations, Adaiyalam Centre for Policy Research and PEARL, in the district of Mullaitivu in the Northern Province, the ratio of military personnel to civilians is 1:2 – 60,000 soldiers to 130,000 civilians. Their presence is traumatising due to continuing surveillance and multiple if isolated reports of sexual abuse. Tamil people in the North and East understand that the military is present not for their security but to control and subdue the civilian population.

The military is also involved in the economic life of the community. It is occupying large tracts of fertile public and private land where it has set up camps; it owns hotels, runs wayside kiosks selling tea and snacks, as well as employs Tamil civilians in its Civil Security Department, which runs farms and offers paid employment to pre-school teachers. In communities struggling to get back productive economic life, these interventions distort markets and force residents to be dependent on the security forces for livelihoods, increasing the military’s hold on the civilian population.

Disappearances, torture and militarisation are all carryovers from the wartime Sri Lanka to the post-war period. They manifest clearly that despite the formal control of the military by civilian authority in Sri Lanka’s constitution, in reality, the military enjoys impunity for past and ongoing human rights abuses, some of which are characterised as war crimes and crimes against humanity by at least two different UN agencies. The impunity they enjoy has been

made only too clear by President Sirisena who has pledged multiple times that he would not subject any member of the military to trial for war crimes.

Will these issues create more conflict? While that cannot be predicted with certainty, atrocity prevention studies say that “weak institutional governance in countries and contexts where atrocities have previously taken place,” could create trigger new atrocities. [Attacks on Muslims](#) in February this year by Sinhala-Buddhist mobs, while units of the police and Special Task Force – both accused of atrocities in the past – looked on, is chilling reminder of how impunity fuels more lawless behaviour by those enjoy it.

The immediate solution for impunity and stopping the human rights violations is to punish those at the apex of the chain of command for their crimes through a competent court that would, in this case, have to have international judges, lawyers and investigators.

But at a more fundamental level, reasons for impunity point elsewhere: the character of the Sri Lankan State. The structure of the Sri Lankan State has entrenched one group – Sinhala-Buddhists – in power since the country’s independence in 1948. Demographic spread, the electoral system, the role of Buddhism in politics, minimal devolution of power and lopsided politics of patronage set the bar much higher for Tamils and even Muslims to be able to wield political power than it does for Sinhalese.

For instance, the military enjoys such high levels of impunity, not because its role in politics is constitutionally protected as the military’s power in Burma. It is because over 90% of the military are Sinhala-Buddhists and share their co-religionists’ ethno-nationalist project. Sinhala-Buddhist hegemony is seen in nearly all other areas of national life as well, because of the advantages rendered this group by structure of the State.

Therefore, if the structure of the State, or in other words the constitution, is recast to provide greater checks and balances against Sinhala-Buddhist domination, it would go a long way in transforming the way the State deals with a number of contentious issues including enforcing the human rights of Tamils and Muslims and accounting for past crimes against them.

Before the 2015 national elections, transforming the structure of the State through a new constitution was proposed in the election manifestos the parties that form the National Unity Government, as well as the biggest Tamil party in parliament, the Tamil National Alliance. The TNA’s vision for a power distribution through a federal constitution is not shared by the other parties. Although after the lapse of some months, sporadic negotiations seem to have been revived between the parties to finalise proposals for a new constitution, there is little evidence that it will contain measures to check the concentration of power among the Sinhala-Buddhists.

Therefore, controlling impunity enjoyed by the military through judicial initiatives in the short-term, nor in the long-term by reaching a political settlement for stable peace and reconciliation through a new constitution, appear likely at the moment unless the United States and the international community add their voices and good offices to support Sri Lankans who are calling for justice and lasting peace.

The United States remains well-placed to use its good offices to persuade the Sri Lanka government to abandon its policy of protecting the military and work towards an investigation and trial of war crimes and crimes against humanity of all warring parties in Sri Lanka’s armed conflict. The U.S. continues to have leverage because it remains Sri Lanka’s biggest export market.

Sri Lanka's elite enjoy close physical and cultural bonds with the United States, including participation in military and civilian training programmes, tourism and studying in American universities. These physical and cultural ties developed over decades will not be abandoned by Sri Lanka's elite lightly. This too is a point of leverage. Further, there is at least one person accused of war crimes in Sri Lanka who is a citizen of the U.S. – former Defence Secretary Gotabhaya Rajapaksa – while Field Marshall Sarath Fonseka, among others, is a green card holder.

Using its leverage to enforce human rights norms will be helpful in Washington's fight with Beijing to carve out spheres of influence in the Indian Ocean. After years of combating President Rajapaksa's government ties with China, there was hope that with the advent of National Unity Government things would change. But they have not altered substantially. Chinese investments are continuing to grow in Sri Lanka and military ties with Beijing have not significantly diminished either.

The time for the U.S to use its good offices to support justice and peace in Sri Lanka is now.

Recommendations:

- 1) This Sub-committee on Africa, Global Health, Global Human Rights and International Organisations and the House Foreign Affairs Committee hold more hearings on Sri Lanka, to study the issues.
- 2) Use the Global Magnitsky Act to censure and sanction Sri Lankan politicians, military and rebels who were involved in wartime atrocities
- 3) Use Congressional oversight to see that the Leahy law stringently vets individuals and military units involved in wartime atrocities and ensure that U.S. tax dollars are not used for the training of those units, in the U.S., in Sri Lanka or in a third country.
- 4) Use the power of appropriations to ensure human rights violations end and hold Sri Lanka accountable.
- 5) U.S. Congress and the Department of State ensure that a judicial mechanism and Office of Special Counsel with international judges, lawyers and investigators in decision-making positions, is set up without further delay, to bring justice for wartime atrocities..
- 6) U.S. Congress and the Department of State use all available diplomatic tools to keep Sri Lanka on the UNHRC's agenda after the current Resolution lapses in February 2019 either through a rollover Resolution or a fresh Resolution that holds Sri Lanka to strict benchmarks and timelines to implement its promises in Resolution 30/1.