



Ensuring Accountability and Reconciliation in Sri Lanka

INTRODUCTION

The UN Human Rights Council “calls upon the Government of Sri Lanka to implement the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity and accountability and reconciliation for all Sri Lankans”

United Nations Human Rights Council, March 2012

Global Tamil Forum (GTF) has produced an analysis of Sri Lanka’s National Action Plan (NAP). The NAP, released in July 2012, details how the Government of Sri Lanka intends to implement some of the recommendations made in the final report of the ‘Lessons Learnt and Reconciliation Commission’ (LLRC) – the domestic body appointed by President Rajapaksa ostensibly to provide accountability and promote reconciliation between ethnic communities on the island, following the end of the country’s armed conflict in 2009. An examination of the NAP is important, given that some of the LLRC’s proposals were warmly welcomed by governments and the UN. Therefore, it is imperative to ascertain whether the NAP provides a substantive mechanism to assist accountability and reconciliation or whether it is merely a means to reduce international scrutiny of the situation in the country.

In response to the Government of Sri Lanka’s slow progress in initiating meaningful measures to ensure long-lasting peace on the island in the three years following the conclusion of the war, the UN Human Rights Council (UNHRC), in March 2012, adopted a resolution on Sri Lanka as a means to help ensure accountability and reconciliation. This called on the Government to implement the constructive recommendations of the LLRC and to guarantee that the alleged war crimes and crimes against humanity committed by both the State Security Forces and the Liberation Tigers of Tamil Eelam, during the final months of the conflict, were addressed adequately.

Our evaluation of the NAP assesses whether any progress has been made on these issues. The first page of the document below provides an analysis of how the Government of Sri Lanka, through the NAP mechanism, seeks to implement the key LLRC recommendations. The second page provides a ‘traffic lights system’, which grades the proposed implementation of these recommendations against the ground realities in Sri Lanka. The recommendations listed are not representative of all those made by the LLRC, but are those detailed explicitly in the UNHRC resolution as being particularly constructive recommendations.

The NAP is a highly inadequate mechanism. Significantly, it is an action plan to implement proposals from a report, which was extensively criticised for failing to address wartime accountability issues. The report was written by a Commission deemed to be “*fundamentally flawed*” by the UN Secretary-General’s Panel of Experts on Sri Lanka. The prospects of long-lasting peace are hindered and not helped by the NAP. GTF calls on all members of the international community to hold the Government of Sri Lanka to account for its actions. We urge the establishment of a ‘Monitoring Committee of International Experts’, under the auspices of the UN, as a means to analyse the Government of Sri Lanka’s compliance with its obligations and to provide international confidence in the processes of ensuring accountability, justice, reconciliation and sustainable peace on the island, which at the moment is so sorely lacking.

Links to key documents:

- UNHRC Resolution, A/HRC/RES/19/2, ‘Promoting Reconciliation and Accountability in Sri Lanka’
<http://tinyurl.com/8dnnp85>
- Government of Sri Lanka’s ‘National Action Plan to Implement the Recommendations of the LLRC’
<http://tinyurl.com/cd8qege>
- ‘Report of the Commission of Inquiry on Lessons Learnt and Reconciliation Commission’
<http://tinyurl.com/cafkueb>
- ‘Report of the UN Secretary-General’s Panel of Experts on Accountability in Sri Lanka’
<http://tinyurl.com/3qsuxns>



Analysis of Sri Lanka's National Action Plan (NAP) detailing the steps the Government has taken and intends to take to implement the recommendations of the 'Lessons Learnt and Reconciliation Commission' (LLRC) and to adequately address the serious allegations of violations of international law, as called for by the UN Human Rights Council (UNHRC).




























Key recommendation of UNHRC resolution (*1)	National Action Plan
'address alleged violations of international law'	The NAP rules out new investigations into the few cases of alleged army and navy abuses deemed worthy of further consideration by the LLRC. Those members of the Security Forces accused of crimes will only be investigated and prosecuted by military and not independent courts. It will take years to prosecute, try and convict alleged offenders in court.
Key constructive recommendations of LLRC as highlighted by UNHRC resolution (*2)	National Action Plan
'credibly investigate widespread allegations of extrajudicial killings and enforced disappearances'	Ministry of Defence and Police Department given primacy to investigate extrajudicial killings and enforced disappearances. The NAP does not accept the recommendation of the LLRC to appoint a 'Special Commissioner of Investigation' to examine these issues – existing procedures will deal with matters of this nature.
'demilitarise the North'	NAP states that 95% of Security Forces already withdrawn from civilian duties, without giving evidence to support statement. Private land used for military purposes, including for 'High Security Zones', will be released <i>"where possible"</i> .
'implement impartial land dispute resolution mechanisms'	The establishment of a National Land Commission to implement future land policy guidelines, as required by the 13 th Amendment to the Constitution, is given no firm timeframe for creation. NAP states the Government will raise awareness of and implement land circular No 2011/4, yet this was withdrawn by the Government in January 2012, following a legal challenge that allowing the military to adjudicate in land resolution disputes was unconstitutional.
're-evaluate detention policy'	LLRC recommendations to appoint an 'Independent Advisory Committee' to monitor and examine detention and the creation of a special mechanism to probe cases of detention without trial will not be instituted under NAP – says issues can be addressed under existing system.
'strengthen formerly independent civil institutions'	NAP states that an independent Public Service Commission and an independent Police Commission, as recommended by LLRC, have been established.
'reach a political settlement on devolution of powers to provinces'	Important political issue of devolution of powers to provinces is ignored by NAP. It refers matter to the, yet to be formally established, Parliamentary Select Committee (PSC) for consideration.
'promote and protect right of freedom of expression for all'	12 month timeframe given to 'take appropriate action to ensure media freedom' and will take further 6 months to provide freedom of movement for media in North and East. NAP states that there is 'ongoing' freedom to organise peaceful events and meetings by the public and community and religious leaders. No commitment given to ensure 'right to information', as recommended by LLRC.
'enact rule of law reforms'	Establishment of a constitutional provision for judicial review of legislation and constitutional amendments is referred to the PSC. LLRC called for the need to legislate for the criminalisation of enforced and involuntary disappearances. NAP will examine need for legislation, but law will only be formulated <i>"if law reform is necessary"</i> .

(*1) The UNHRC Resolution specifically called on the Government of Sri Lanka to provide accountability for allegations of war crimes and crimes against humanity during the armed conflict in Sri Lanka. This serious issue was not properly addressed by the report of the LLRC.

(*2) The LLRC recommendations listed in this section were given explicit mention in the UNHRC Resolution on Sri Lanka, as key proposals for implementation. They do not provide a comprehensive list of all the recommendations made by the LLRC.



The National Action Plan and the ground realities in Sri Lanka - The Traffic Light System offers an assessment of the Government's progress or otherwise in implementing the LLRC's key recommendations and in providing accountability for alleged laws of war violations.

Key recommendation of UNHRC resolution	Ground realities	Progress (red) (amber) (green)
'address alleged violations of international law'	40,000 Tamils died in the final months of Sri Lanka's armed conflict, with many more unaccounted for. Grave abuses were allegedly committed by both sides during the war and a credible, independent investigation of these matters is a duty under international law. The NAP's attempt to provide accountability is derisory and the initiation of military courts of inquiry will not provide the impartial and credible investigations necessary to ensure accountability and justice for the victims.	  
Key constructive recommendations of LLRC as highlighted by UNHRC resolution	Ground realities	Progress (red) (amber) (green)
'credibly investigate widespread allegations of extrajudicial killings and enforced disappearances'	The Government agencies given primacy to investigate extrajudicial killings and enforced disappearances by the NAP have turned a blind eye to these matters and are even allegedly complicit in their perpetration. There can be no confidence that they will adequately probe these issues, especially given that Sri Lanka still has 5,671 outstanding cases currently under review by the UN Working Group on Enforced and Involuntary Disappearances.	  
'demilitarise the North'	The provincial governors of the North and East are retired, senior military officers. In May 2012, John Rankin, Britain's High Commissioner to Sri Lanka, criticised the " <i>disproportionately high military presence in North Sri Lanka</i> ".	  
'implement impartial land dispute resolution mechanisms'	Lack of recourse to land dispute resolution mechanisms meant that in June 2012, the Tamil National Alliance (TNA) – the democratically elected representative voice for the Tamil people in Sri Lanka - was forced to contact the UN in protest, when the Sri Lankan security forces forcibly occupied the lands belonging to civilians in the North.	  
're-evaluate detention policy'	Special mechanisms to examine detention policy will not be implemented under the NAP and it makes no mention of repealing the draconian anti-terror legislation used to detain people without charge for lengthy periods.	  
'strengthen formerly independent civil institutions'	The Public Service Commission and Police Commission are not independent. Appointments to the Commissions are made by the President under the terms of the 18 th Amendment to the Constitution, which further entrenches executive power. There are no plans for this to change.	  
'reach a political settlement on devolution of powers to provinces'	According to the TNA, the proposed PSC is a " <i>strategy adopted by the government to delay the process of finding a solution to the ethnic question</i> ". In 2009 President Rajapaksa gave a commitment to the UN Secretary General to devolve power and work towards a lasting political solution. This has still not happened.	  
'promote and protect right of freedom of expression for all'	Student Union leaders in Jaffna have been attacked for organising protests against the Government. TNA MPs have been harassed and had political meetings broken up by 'unidentified groups' and the security services. Websites and newspapers critical of the Government are shutdown and Minister Mervyn Silva threatened to " <i>break the limbs</i> " of journalists and human rights activists who oppose the Government.	  
'enact rule of law reforms'	The PSC is not a body that has universal support in Sri Lanka. In addition, it is virtually impossible to enact credible and independent rule of law reforms when the President has the power to appoint the Attorney General, and key officials to the judiciary, including the Chief Justice and judges in the Supreme Court and the Court of Appeal.	  

Traffic Lights:  Red = Danger; Requirement not met  Amber = Some Progress  Green = Making satisfactory progress