



# SRI LANKA

## **AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

At the time of Sri Lanka's first Universal Periodic Review in May 2008, government forces were engaged in a protracted armed conflict with the Liberation Tigers of Tamil Eelam (LTTE). Four years later, the Sri Lankan government has defeated the LTTE, but has failed to implement commitments made during the first review to enhance human rights protections and to account for past human rights violations. Many of the 2008 recommendations addressed ongoing human rights violations in Sri Lanka and the persistent culture of impunity; the Sri Lankan government supported recommendations to prevent torture,<sup>1</sup> enforced disappearances<sup>2</sup> and extrajudicial killings<sup>3</sup>, and to investigate, prosecute and punish perpetrators of human rights violations<sup>4</sup> – including, notably, to complete investigations into the killing of aid workers.<sup>5</sup> Sri Lanka also supported recommendations to protect the human rights of internally displaced people,<sup>6</sup> to ensure access to humanitarian assistance for vulnerable populations and to protect civilians, including human rights defenders and humanitarian workers.<sup>7</sup>

Within a matter of months following its first UPR, Sri Lanka had broken its promises. In September 2008, Sri Lanka ejected international humanitarian workers from the northern conflict region and launched its final military offensive against the LTTE. According to credible eyewitness testimony, both sides committed war crimes in the final phase of the fighting, including killings and enforced disappearance of civilians and surrendered combatants. In March 2011, the UN Secretary General's Panel of Experts on Accountability in Sri Lanka found credible estimates that as many as 40,000 civilians had been killed in the final phase of the conflict.<sup>8</sup> Sri Lankan artillery hit government-designated civilian "no fire zones" and hospitals, killing medical workers and civilians used as human shields by the LTTE. Those trapped by the fighting were denied access to sufficient food, water and medicine. When the armed conflict ended in May 2009, nearly 300,000 Tamil civilians were detained for months in closed displacement camps, guarded by the army. Some 12,000 people suspected of links to the LTTE were detained separately, and held for extended periods without charge or trial; as of April 2012 hundreds remained in detention. Eyewitnesses told Amnesty International they saw people who had surrendered to the Sri Lankan army being summarily executed. Witnesses also reported that relatives arrested by the army had been forcibly disappeared. Government critics were reportedly also persecuted, and journalists and political activists who criticized the military's treatment of Tamil civilians were attacked or arrested. To date, there has been no credible investigation of these claims and no effort to prosecute alleged violators.

In 2012, grave human rights violations continue to be reported, including arbitrary arrest and detention by the police and other members of the security forces, enforced disappearances, and torture and ill-treatment. Many of the victims are Tamils suspected of links to the LTTE, but Sinhalese and Muslim Sri Lankans are also victims. Attacks on journalists and other peaceful critics also continue. Reports of intimidation and smear campaigns against human rights defenders increased prior to the 19th session of the Human Rights Council in March 2012, which passed a resolution calling on Sri Lanka to implement the recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) and address alleged violations of international law.<sup>9</sup>

Sri Lanka has consistently rejected suggestions that it allow an international role in human rights monitoring and

accountability efforts, both in the context of its first UPR and subsequently as calls for an independent international investigation into alleged war crimes intensified,<sup>10</sup> and has refused to extend a standing invitation to UN Special Procedures.<sup>11</sup> Amnesty International views such measures as essential to ensuring lasting peace, accountability and reconciliation in Sri Lanka.

Most of the human rights concerns raised by Amnesty International in the context of the 2008 UPR remain unaddressed, and are therefore reiterated in this submission with recommendations for urgent action by the government.<sup>12</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### CONTINUED RELIANCE ON ANTI-TERRORISM LEGISLATION

Sri Lanka's armed conflict ended in 2009, but its legacy of unlawful detention practices continues. The authorities circumvent or ignore protections built into the ordinary criminal justice system, sometimes acting outside the law, but more often invoking security legislation that allows them to arrest suspects without evidence or warrants and to hold them without charge for extended periods. On 30 August 2011, the government finally lifted the state of emergency, which had been in place almost continuously since 1971. However, the repressive Prevention of Terrorism Act (PTA), which permits extended administrative detention, has been retained. The authorities also introduced new regulations under the PTA to continue detention of LTTE suspects without charge or trial. The PTA also reverses the burden of proof where torture and ill-treatment is alleged, and restricts freedom of expression and association.<sup>13</sup>

### NATIONAL HUMAN RIGHTS ACTION PLAN

During the 2008 review, Sri Lanka made a voluntary commitment to strengthen national human rights mechanisms and procedures by initiating a National Plan of Action on human rights with targets to be achieved between 2009 and 2014.<sup>14</sup> Progress on this commitment has been extremely slow. The cabinet approved the proposed Action Plan in September 2011 and finally appointed a subcommittee to oversee its implementation in February 2012. The Action Plan contains important human rights commitments that would be valuable reforms if implemented.<sup>15</sup> However, there has been little progress on implementation beyond the appointment of the subcommittee. Sri Lanka's National Plan of Action on human rights must not become yet another vehicle to evade international scrutiny and delay necessary reform.

### NATIONAL INSTITUTIONS

At its first UPR, Sri Lanka made specific commitments to build the capacity and enhance the independence of its National Human Rights Commission (NHRC).<sup>16</sup> However, the NHRC is as weak or weaker than it was in 2008 and contributes little to human rights protection in Sri Lanka. Its downgraded B status – as designated by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights - remains a testament to its lack of independence and effectiveness.<sup>17</sup>

During its first review, Sri Lanka also committed to "take necessary measures to enable the reconstitution of the Constitutional Council" in order to facilitate the strengthening and effective functioning of national human rights mechanisms, including the NHRC.<sup>18</sup> In spite of this, in September 2010 Sri Lanka enacted a constitutional amendment (the 18<sup>th</sup> Amendment to the Constitution), which abolished the Constitutional Council altogether and replaced it with an advisory Parliamentary Council. The amendment empowered the President to make direct appointments to the NHRC and other key institutions, including the Judicial Services Commission, the Public Services Commission and the National Police Commission. This destroyed what vestiges of political independence were left in these Commissions, and in the important institutions for which they oversaw appointments, notably, the police and the judiciary. The 18<sup>th</sup> amendment also ended the Presidential term limit.

### LACK OF WITNESS PROTECTION

At its first review Sri Lanka accepted a recommendation to introduce a Witness and Victim Protection Bill in Parliament and to implement the legislation, including by establishing the necessary institutions.<sup>19</sup> The bill was introduced, but never voted on. Sri Lanka still has no witness protection legislation, and this has had a grave impact on accountability.

## LESSONS LEARNT AND RECONCILIATION COMMISSION

President Rajapaksa established Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC) in May 2010 to investigate events between the February 2002 ceasefire with the LTTE and the end of the conflict in May 2009, and to make recommendations aimed at ethnic reconciliation. The government has promoted the LLRC as a viable domestic alternative to an international war crimes investigation, but as Amnesty International has documented, the LLRC was neither independent nor impartial in composition or performance.<sup>20</sup> The UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, established in June 2010, also concluded that the LLRC was an inadequate accountability mechanism, pointing among other things to the LLRC's lack of witness protection, which put witnesses at risk and potentially discouraged some from testifying, or testifying fully. The LLRC's final report to President Rajapaksa in November 2011 did acknowledge serious human rights violations and made important recommendations, but it fell short where war crimes were alleged, including by uncritically accepting the government's responses. The LLRC acknowledged that civilians, including those in hospitals, suffered directly as a result of LTTE and government shelling, but was unable to establish the facts about the conduct of the armed conflict. The LLRC's rejection of allegations that the government had targeted civilians and deliberately downplayed the numbers of civilians caught up in the final phase of the conflict was not warranted by the evidence.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### ARBITRARY ARREST AND DETENTION

The authorities cast a wide net in the name of public security, and their failure to follow appropriate arrest and detention procedures, such as securing arrest warrants, identifying themselves, informing individuals of the reasons for arrest, permitting those they arrested access to lawyers and an opportunity to challenge their detentions in court, makes it almost impossible for detainees to legally protect themselves. Administrative detention has become a routine tool of law enforcement; used against those the government believes may be security threats, including suspected members of armed groups, but also against their family members and colleagues, outspoken critics and other perceived political opponents of the government, including journalists. For some people, the length of detention without trial has stretched into years, and most of those in administrative detention are eventually released for lack of evidence.

The police and armed forces and affiliated intelligence units all detain and interrogate prisoners. Armed Tamil groups affiliated with the government have also captured, detained and questioned prisoners at the behest of the authorities. All these entities are accused of holding detainees incommunicado and without charge. Some detainees have been warned not to communicate with human rights organizations or otherwise reveal information about their detention under the threat of re-arrest or death. Members of the security forces have used secret places of detention to interrogate and torture detainees, some of whom have reportedly been killed. Family members of wanted suspects have been arrested, threatened or forcibly disappeared to put pressure on the individuals to surrender. People released from months or years in detention without charge often remain under surveillance by intelligence forces and are frequently required to report weekly or monthly to the police. Former detainees have been harassed and rearrested, and physically attacked; murders and enforced disappearances of newly released detainees have also been reported.

### ENFORCED DISAPPEARANCES

Despite commitments made by Sri Lanka during its first UPR to prevent, investigate, prosecute and punish cases of enforced disappearances, Amnesty International continues to receive reports of enforced disappearances, including of activists protesting human rights violations by the authorities.<sup>21</sup>

### TORTURE AND ILL-TREATMENT

As documented in Amnesty International's October 2011 Briefing to the UN Committee against Torture,<sup>22</sup> Amnesty International continues to receive reports from survivors that torture and other cruel, inhuman and degrading treatment or punishment of detainees remain common and widespread in Sri Lanka despite laws that prohibit torture and ill-treatment. Legal and procedural shortcomings contribute to this failure, as does the lack of political will on the part of the authorities to eradicate the use of torture and ill-treatment and to bring those responsible to justice in fair trials. During the previous review, Sri Lanka supported a recommendation to implement the recommendations of the Special

Rapporteur on Torture after his mission to Sri Lanka.<sup>23</sup> These included legal and practical reforms aimed at preventing torture and ill-treatment, investigating and prosecuting such complaints and caring for victims.

## EXTRAJUDICIAL EXECUTIONS

Extrajudicial killings by alleged military operatives and suspicious deaths in police custody continue to be reported; with police often claiming that the victims were killed trying to escape. Impunity remains the rule in these cases.<sup>24</sup>

## IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

The vast majority of human rights violations are never investigated, let alone heard in court. Those that make it to trial rarely conclude with a conviction; defendants are acquitted for want of evidence; witnesses refuse to testify; hearings are subject to repeated delays; even the prosecution has failed to appear in court in key human rights cases. This is not simply a problem of inadequate resources or institutional capacity (although these too are often obstacles); but due to a lack of political will by the authorities. In the 2008 review, Sri Lanka rejected recommendations to combat impunity and to ratify the Rome Statute of the ICC.<sup>25</sup> Amnesty International strongly believes it should do both. Impunity for human rights abuses is perhaps the greatest obstacle to communal reconciliation in Sri Lanka; admitting its failures to protect citizens against abuse, seeking the truth where violations are alleged, offering redress (including both compensation and justice) to the many thousands of victims and survivors, and confirming its commitment to international justice would go a long way to repairing the damage done by decades of ethnic conflict.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### **Amnesty International calls on the government of Sri Lanka to:**

#### *Anti-Terrorism Legislation*

- Repeal the Prevention of Terrorism Act and abolish the system of administrative detention;
- Ensure that security measures adopted in the context of armed violence comply with international human rights law, in line with commitments made during the previous review, but not yet implemented;
- Release all individuals arrested under emergency or anti-terrorism laws, unless they are charged with recognizable criminal offences and remanded by an independent, regularly constituted court. Any trials must be held promptly and in regularly constituted courts with all internationally recognized safeguards provided.

#### *National Human Rights Action Plan*

- Promptly implement the concrete human rights commitments contained in the National Human Rights Action Plan, particularly those that will protect against ongoing gross violations of human rights and ensure an end to impunity.

#### *National Institutions*

- Strengthen and ensure the independence of human rights institutions such as the National Human Rights Commission, in line with commitments made during the previous review but not yet implemented.

#### *Witness Protection*

- Initiate and implement effective witness and victim protection, in line with commitments made during the previous review but not yet implemented.

#### *Lessons Learnt and Reconciliation Commission (LLRC)*

- Initiate prompt and effective investigation of witness testimony and written submissions to the Lessons Learnt and Reconciliation Commission (LLRC) that allege violations of human rights or humanitarian law. Effective witness protection must be provided to all witnesses as the cases proceed. No amnesties should be considered or granted for perpetrators of violations of human rights or humanitarian law identified by the LLRC investigations, regardless of their status or role in the government.

#### *Arbitrary Arrest and Detention*

- Release all detainees, including all persons held in “rehabilitation camps” unless they are charged with internationally recognizable crimes and tried in full conformity with international standards for fair trial and without recourse to the death penalty. Implement all court rulings (such as Supreme Court decisions in fundamental rights cases and writs of habeas corpus) ordering release of detainees without delay;
- Immediately end all use of incommunicado detention;
- Immediately close all unofficial and secret places of detention and enact legislation to make it illegal to detain anyone in any place other than an officially recognized detention facility, acknowledged and accessible to families, lawyers and courts, as well as the independent monitors.

#### *Enforced Disappearances*

- Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner, in line with commitments made during the previous review but not yet implemented;
- Facilitate without delay the visit requested by the Working Group on Enforced and Involuntary Disappearances.

#### *Torture and ill-treatment*

- Implement the recommendations of the Special Rapporteur on torture, including to strengthening legal safeguards for eliminating all forms of ill treatment or torture in prisons and detention centres, in line with commitments made during the previous review but not yet implemented.

#### *Death Penalty*

- Abolish the death penalty and commute all death sentences to terms of imprisonment.

#### *Extrajudicial Executions*

- Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards, in line with commitments made during the previous review but not yet implemented.

#### *Impunity*

- Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law, in line with commitments made during the previous review but not yet implemented.

#### *Ratification and implementation of international human rights treaties*

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ratify the Rome Statute of the International Criminal Court;
- Establish procedures in law to consider modalities for implementing the views of the UN Human Rights Committee.

<sup>1</sup> UN Document A/HRC/8/46, *Report of the Working Group on the Universal Periodic Review of Sri Lanka*, recommendations 82.16 (Denmark) and 82.19 (Iran).

<sup>2</sup> A/HRC/8/46, recommendations 82.18 (Japan) and 82.27 (Sweden).

<sup>3</sup> A/HRC/8/46, recommendation 82.26 (Canada).

<sup>4</sup> A/HRC/8/46, recommendations 82.17 (Poland); 82.18 (Japan), 82.21 (Sweden), 82.26 (Canada), 82.27 (Sweden), and 82.29 (Greece).

<sup>5</sup> A/HRC/8/46, recommendations 82.15 (United States) and 82.26 (Canada). Sri Lanka accepted a recommendation by the USA to “[e]nsure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal investigative powers to their full extent.” It also accepted Canada’s recommendation that it “[i]nvestigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards.” Canada’s full recommendation added “in order to combat impunity for human rights violations,” which Sri Lanka rejected, and specifically referred to the public hearings of the Commission of Inquiry which implicated members of the Government and security forces in the August 2006 murder of workers of Action Contre le Faim and the January 2006 killing of five boys in Trincomalee, to which Sri Lanka made no comment. (See, A/HRC/8/46 page 6, para. 21.) The ACF case has not been prosecuted despite significant evidence linking Sri Lankan security forces to the killings. The Sri Lankan government has never made public the results of its investigation into the ACF case – one of 16 cases deemed “serious violations of human rights” that were the subject of a Presidential Commission of Inquiry established in November 2006. For more information see, *Sri Lanka: Twenty years of make-believe. Sri Lanka’s Commissions of Inquiry*, Amnesty International, 11 June 2009, ASA 37/005/2009, <http://www.amnesty.org/en/library/info/ASA37/005/2009/en>

<sup>6</sup> A/HRC/8/46, recommendations 82.32 (Belgium), 82.33 (Finland), 82.34 (Austria), and 82.35 (Portugal).

<sup>7</sup> A/HRC/8/46, recommendation 82.14 (Canada, Ireland),

<sup>8</sup> Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, p. 41, para 137

<sup>9</sup> Human Rights Council, Nineteenth session, Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General,

United States of America: Resolution: "Promoting reconciliation and accountability in Sri Lanka," 8 March 2012, A/HRC/19/L.2, <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/115/97/PDF/G1211597.pdf?OpenElement>

<sup>10</sup> A/HRC/8/46, paragraphs 8 and 84. In March 2011 UN Secretary General Ban Ki-moon's Panel of Experts on Accountability in Sri Lanka found credible allegations that war crimes had been committed by both sides in the final phase of Sri Lanka's armed conflict with the LTTE and advised the Secretary General to "immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions: (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings; (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations: and (iii) Collect and safeguard for appropriate future use information provided to it that is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system." Sri Lanka denounced the Panel and its findings.

<sup>11</sup> A/HRC/8/46, paragraph 11.

<sup>12</sup> Amnesty International assessed the outcome of Sri Lanka's first periodic review in 2008, noting that member states participating raised concerns about the lack of protection of civilians caught in the internal conflict; enforced disappearances, unlawful/extrajudicial killings; torture and other forms of ill treatment, threats to freedom of expression, the need to strengthen national human rights institutions, attacks on dissent and ongoing impunity for human rights violations. Despite Sri Lanka's commitment in 2008 to address some of these concerns through a National Plan of Action on the Protection and Promotion of Human Rights, almost nothing was done. Most of the human rights concerns raised by Amnesty International at the time remain and are therefore included in this submission with recommendations for action by the government to address them. Sri Lanka rejected 26 recommendations made by member states during its first periodic review, nearly half of which urged it to establish an independent human rights monitoring mechanism, in cooperation with the High Commissioner for Human Rights. (See, Sri Lanka: Eighth Session of the UN Human Rights Council: Review of Sri Lanka under the Universal Periodic Review: Amnesty International's reflections on the outcome, June 2008 AI Index: ASA 37/023/2008 (Public).

<sup>13</sup> For a more detailed discussion of Sri Lanka's Prevention of Terrorism Act see *Forgotten Prisoners*, Amnesty International, 8 March 2011, ASA 37/001/2011, <http://www.amnesty.org/en/library/asset/ASA37/001/2011/en/64530ad7-76a6-4fb1-8f46-996c8543daf8/asa370012011en.pdf>. See also, *Briefing to the UN Committee Against Torture*, Amnesty International, October 2011, ASA 37/016/2011, p.5

<http://www.amnesty.org/en/library/asset/ASA37/016/2011/en/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf>

<sup>14</sup> A/HRC/8/46 paragraph 87 (Sri Lanka, Voluntary Commitments of the State Under Review)

<sup>15</sup> Among its many commitments, the Action Plan contains a pledge to review and potentially revise the Prevention of Terrorism Act to bring it in line with international standards; measures to ensure that all deaths alleged to have been committed by the Police or the Security Forces are investigated; a proposal to amend the Penal Code to make "the causing of disappearances" a criminal offence; amendments to Police Orders and Military Directives that would hold commanders responsible for unlawful detentions or enforced disappearances by subordinates; and a pledge to "expedite" the enactment of the Witness and Victim Assistance and Protection Bill (which has remained stalled in parliament since 2008).

<sup>16</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/8/46, Recommendation 82.2 (Czech Republic, Ukraine); 82.3 (Republic of Korea);

<sup>17</sup> In 2007 the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions (ICC) downgraded the Sri Lanka Human Rights Commission from Status A to Status B (observer status), indicating that the Commission was no longer in full compliance with the UN Principles Relating to the Status of National Institutions (Paris Principles).

<sup>18</sup> A/HRC/8/46 paragraph 89 (Sri Lanka, Voluntary Commitments of the State Under Review)

<sup>19</sup> Recommendation 82.28 (Austria)

<sup>20</sup> *Sri Lanka: When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission*, Amnesty International, 7 September 2011, ASA 37/008/2011, <http://www.amnesty.org/en/library/info/ASA37/008/2011/en>.

<sup>21</sup> A/HRC/8/46, recommendations 82.18 (Japan) and 82.27 (Sweden). Political activists Lalith Kumar Weeraraja and Kugan Muruganandan, disappeared in Jaffna on 9 December 2011 en route to an organizational meeting for a Human Rights Day rally by families demanding the release of Tamil detainees held without charge. Colleagues believe they were abducted by the Sri Lankan army. Weeraraja and his family had received previous threats warning against his involvement in politics in Jaffna, including a phone call on 6 December threatening to "remove" Lalith from Jaffna. He was reportedly attacked and injured during a demonstration in Jaffna in November 2010, and had been arrested and interrogated by the Sri Lankan army in early 2011. Eyewitnesses reported seeing the two men being forced into a van by a group of unidentified individuals in civilian dress. Locals informed the police who retrieved Kugan's motorbike from the scene but failed to inform the family.

<sup>22</sup> See, *Briefing to the UN Committee Against Torture*, Amnesty International, October 2011, ASA 37/016/2011, p.5

<http://www.amnesty.org/en/library/asset/ASA37/016/2011/en/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf>.

<sup>23</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Sri Lanka, A/HRC/7/3/Add.6, 26 February 2008.

<sup>24</sup> Police alleged that Asanka Botheju drowned in the Kelaniya river, Colombo, on 30 August 2011 while identifying a weapons cache. He had been illegally detained for 19 days. Gayan Saranga from the town of Dompe died on 29 September 2011. Police claimed he fell from a police vehicle while being taken to identify stolen property. Witnesses said he was tortured at the police station.

<sup>25</sup> A/HRC/8/46, paragraphs 52 and 84.