



Accountability in Sri Lanka: 100-Day Report Card

Mytili Bala
CJA Legal Fellow
May 19, 2015

In January 2015, Sri Lankan voters decided that they had had enough with the Rajapaksa administration's corruption, nepotism, and flagrant disregard for the rule of law. They elected President Maithripala Sirisena and overwhelmingly backed his pledge of *yahapalanya* (good governance).

Although Sri Lanka's 26-year civil war ended six years ago today, Sirisena's election also offered the first sign of hope that the government would ensure accountability and provide closure to war-affected Tamils in the north and east of the country. With Sirisena's first 100 days in office now complete, it is worth taking stock of where we started, progress made, and concerns that remain.

Where we started

In 2011, a [Panel of Experts](#) appointed by the U.N. Secretary-General found credible allegations pointing to war crimes and crimes against humanity on both sides during the final months of the conflict. It suggested that as many as 40,000 civilians may have died between September 2008 and January 2009, mostly as a result of alleged shelling by Sri Lankan government forces. It also determined that there were credible allegations that the defeated Tamil Tigers engaged in child conscription and other serious violations of international humanitarian law.

For years, the Rajapaksa administration stonewalled attempts by the international community to promote accountability. It rejected the Panel of Experts report as "[fundamentally flawed and patently biased.](#)" The Ministry of Defense issued its own report, "Humanitarian Operation: A Factual Analysis," which asserted that government forces had implemented a "zero civilian casualty policy."

Under the Rajapaksas, any call for accountability was a [Western affront to sovereignty](#), motivated by a pro-LTTE Tamil diaspora (never mind that the international community criticized both sides). The administration suggested that the former U.N. High Commissioner's calls for accountability were motivated by her [Tamil roots](#) (never mind that Navi Pillay is a South African who decried the LTTE).

Tamils in the former warzone were prevented from [mourning](#) their dead or seeking psycho-social services. The government increased military presence in the north—which, combined with a significant increase in female-headed households post-war, led to increased reports of [sexual violence](#). Impunity for war crimes had paved the way for new human rights abuses to occur.

The Rajapaksa administration could not dismiss international pressure entirely. It created a Lessons Learnt and Reconciliation Commission (LLRC), but this was [criticized](#) for conflicts of

interest, lack of witness protection, lack of accountability mandate, and fundamental misapplication of the principles of distinction and proportionality under international law. The LLRC did make constructive recommendations regarding demilitarization, land rights, and governance, but these were never [implemented](#).

President Rajapaksa announced a Missing Persons Commission in 2013, which was criticized for [witness tampering and mistranslations](#). The Commission nevertheless received over [20,000 complaints](#)—a figure that speaks more to the severity of the disappearances problem than the credibility of the mechanism.

The international community supported calls by Sri Lankan human rights groups for accountability. When Sri Lanka failed to deliver, the U.N. Human Rights Council (UNHRC) voted to create a [U.N. investigation](#) led by the Office of the High Commissioner for Human Rights. Even as the UNHRC convened in March 2014, the Rajapaksa administration arbitrarily detained peace activists and campaigners for the disappeared under the Prevention of Terrorism Act, [declaring](#) their “Tiger links bared.”

In short, things were bad.

100-Day Report Card

President Sirisena has now been in office over 100 days. While still early, it seems fair to say that his government has done well in some areas and needs to show greater progress in others.

The change in rhetoric is welcome and significant. In February, Foreign Minister Mangala Samaraweera [told](#) a Washington audience that “[u]nlike the previous government, we are not in a state of denial, saying such violations have not happened.” He promised a domestic mechanism to bring human rights violators to justice. The government [reiterated](#) this commitment during Secretary John Kerry’s May 2, 2015 visit to the island, stating: “Ensuring accountability in the New Sri Lanka, will feature as a key component of the reconciliation process, and the architecture of a domestic accountability mechanism with international technical assistance as promised by our manifesto are now being planned.”

The Sirisena government has [invited](#) key U.N. personnel into the country, including the Working Group on Enforced and Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

Encouragingly, the government has also taken steps to rebuild trust and foster reconciliation, by:

- enacting a [witness protection bill](#) to protect those seeking justice and truth;
- codifying the right to information and independent commissions, as part of the newly-enacted [19th Amendment](#) to the Sri Lankan Constitution;
- appointing a [civilian](#) governor to replace a former military official in the north;
- appointing a [Tamil](#) as the new Supreme Court Chief Justice;
- lifting a [travel ban](#) on foreign passport holders visiting the north; and
- beginning to return Tamil lands in the north and east, most recently in [Sampur](#).

These steps are significant, though more can be done. Many thousands of acres of civilian lands remain in Army custody. An asset freeze remains in place for diaspora members sweepingly accused by the previous administration of having LTTE ties. The witness protection bill may exempt officials who leak information “in good faith” or under orders. The government needs to repeal or reform the draconian Prevention of Terrorism Act and scale back police security structures, which continue to harass civilians in the north and east.

But where progress is most sorely needed is on issues of truth and justice: the Sirisena administration needs to do much more to promote the rights of war affected communities to seek the truth and pursue accountability for disappearances, war crimes, and crimes against humanity.

Steps for Promoting Truth

Families of the disappeared continue to [press](#) the government for answers. Many testified before the Missing Persons Commission that their loved ones were last seen alive in government custody. Others have reason to believe that their relatives are still alive, locked away in [secret camps](#). Families have repeatedly asked the government to release the names, dates of birth, and places of detention of those currently in custody, and (if persons remain in custody) to permit regular access. The chairman of the Missing Persons Commission [echoed](#) this request. As stated by U.N. Special Rapporteur [Pablo de Greiff](#), knowledge of who remains in custody lies squarely within the government’s control.

The Sirisena administration must respond to the families’ reasonable request for information. A prompt reply will go a long way in overcoming a significant trust deficit with war-affected Tamil communities. If disappeared persons are no longer in custody, the government must investigate and account for what happened to those individuals in a prompt and transparent manner. The government should accept the [ICRC’s offer](#) of assistance and establish a missing person’s unit to track disappearances. It should also enact legislation to recognize involuntary or enforced disappearance as a criminal offense, as Sri Lankan groups recommend [[CPA](#), [LST](#)].

Apart from addressing disappearances, the government should commit to a genuine truth-seeking process to address the grievances of all of Sri Lanka’s ethnic communities stemming from decades of war and displacement.

Steps for Promoting Justice

Despite the rhetoric on accountability, the new government has maintained the Rajapaksa government’s stance on the ongoing U.N. war crimes investigation. It has declined to invite the U.N. investigators to the country and insists that any accountability process must be domestic.

However, given Sri Lanka’s track record of [impunity](#), calls for a domestic process raise concerns. It was the failure of domestic accountability that [obligated](#) the international community to step in. The Sirisena administration prompted further concern last week when it [promoted](#) as Army Chief of Staff Major General Jagath Dias, who is [alleged](#) to be responsible for war crimes during the final phase of the civil war.

At a minimum, certain [reforms](#) are needed to ensure that a domestic process is credible:

- The government should appoint a special prosecutor, autonomous from the attorney general, to investigate alleged war crimes. This idea is not new: Sri Lanka's 1994 and 1998 disappearances commissions made the same recommendation.
- The sheer volume and complexity of these cases will require specialized courts. The government should create special trial and appeals chambers, preferably with national and international staff, to investigate, prosecute, and adjudicate war crimes cases.
- Sri Lanka's criminal code lacks statutes criminalizing war crimes and crimes against humanity and does not recognize command responsibility, joint criminal enterprise, and other recognized theories of liability under international law. The government should enact new legislation in these areas to signal a commitment to accountability and human rights. While ordinarily, such statutes would not apply retroactively, article 13(6) of the Sri Lankan Constitution allows retroactive application for offenses criminalized by customary international law at the time of commission.

In recent weeks, a specialized corruption task force has arrested high-ranking former officials for alleged bribery and corruption. Basil Rajapaksa has been [arrested](#) for alleged corruption pertaining to redevelopment schemes in the former war zone, and Gotabhaya Rajapaksa was called in for questioning. Progress in corruption investigations demonstrates what could be possible if the government makes a genuine commitment to accountability for war crimes and post-war violations.

Above All, a Need for Consultations

Any transitional justice process will be ineffective without community support. It is concerning that the Sirisena administration has yet to hold meaningful consultations with relevant stakeholders in designing Sri Lanka's transitional justice framework. The government should consult with victims and survivors, community and religious leaders, lawyers, and civil society organizations. It should be transparent about the intended nature of domestic frameworks for truth and justice and solicit community engagement in refining and shaping those frameworks. This requires far more than sporadic meetings in Colombo or soliciting comments at a late stage in the process.

In short: given where the administration started, it has come a long way. Still, it has to make more progress to help all of Sri Lanka's communities transition from a divided past to a shared future. Sri Lanka has a real opportunity to stand as a model for South Asia and the broader international community, if it commits more fully to truth and justice.

Mytili Bala is the Robert L. Bernstein International Human Rights Fellow at The Center for Justice and Accountability, a San Francisco nonprofit that works to hold perpetrators individually accountable for human rights abuses, develop human rights law, and advance the rule of law in countries transitioning from periods of abuse.