

REPORT TO CONGRESS

Measures Taken by the Government of Sri Lanka and International Bodies to Investigate and Hold Accountable Violators of International Humanitarian and Human Rights Law

This report is submitted pursuant to the Conference Report (H. Conf. Rep. No. 112-331) accompanying the Department of State, Foreign Operations and Related Programs Appropriations Act, 2012 (Div. I, Pub.L. No. 112-74). Since the last report by the Department of State to Congress on August 11, 2010, significant new allegations of violations of international humanitarian law (IHL) and international human rights law (IHRL) have been raised regarding the conflict in Sri Lanka. The UN Panel of Experts (POE), appointed by Secretary-General Ban Ki-moon, released a report that, without reaching factual conclusions or assigning individual culpability, identified what it characterized as credible evidence of violations of IHL and IHRL by both the Sri Lankan Security Forces and Liberation Tigers of Tamil Eelam (LTTE) cadres. The POE report recommends steps to address those allegations, including both new domestic and an international accountability mechanism, but neither has yet been created.

The Government of Sri Lanka publicly released the Lessons Learnt and Reconciliation Commission's (LLRC) final report on December 16, 2011. The report called for investigations into, and possible prosecutions for, specific instances of reported cases of deliberate attacks on civilians by Sri Lankan Security Forces, reports of enforced disappearances, and reports of mistreatment of LTTE detainees. The LLRC's recommendations related to demilitarization, freedom of expression, land reforms, and rule of law issues are also particularly significant. If fully implemented, these recommendations could provide the Government of Sri Lanka with an opportunity to promote national reconciliation and assist in revitalizing many of Sri Lanka's democratic institutions. However, the report fails to adequately address allegations that LTTE cadres and Sri Lankan Security Forces violated IHL and IHRL during the final months of the conflict.

The LLRC report expressed concern that its recommendations, like those put forward by similar commissions before it, would not be implemented by the Government of Sri Lanka, specifically pointing to the lack of implementation of its September 2010 interim recommendations. Since the LLRC report was released, culpable individuals have not been identified by a credible mechanism, and no one has been held to account. The Government of Sri Lanka also informed the Department of State that it created a cabinet sub-committee to develop a plan to implement the LLRC recommendations. The constitution and work-plan of that

sub-committee is not yet known. Further, the Sri Lankan government informed the Department of State that the Sri Lankan Army has constituted a five-person court of inquiry headed by a Major General to investigate the specific allegations identified in the LLRC report. Subsequent media articles report that the court of inquiry will also review video material depicting summary executions by Sri Lankan forces. According to government officials, the court can refer the cases of culpable individuals to the Attorney General for prosecution. The Sri Lankan Army also formed a board of inquiry to provide recommendations for military reform based on the LLRC findings. Several Government of Sri Lanka interlocutors also informed Department of State officials that the Sri Lankan Attorney General was actively reviewing an undefined set of allegations to determine whether sufficient evidence exists to bring criminal charges.

Relating to detention, according to information provided by the Government of Sri Lanka to the Department of State, as of February 10, there were 228 individuals in detention under investigation and 892 individuals in rehabilitation. The government permits international humanitarian organizations access to some detention facilities where former LTTE combatants are detained, including the facility in Boosa, where approximately 200 detainees are held. The government denies that detention facilities operated by military intelligence exist. Humanitarian organizations are not allowed to visit suspected illegal detention facilities operated by paramilitary groups. International humanitarian organizations have only been allowed to visit detainees in rehabilitation facilities upon release.

On March 22, the UN Human Rights Council (HRC) adopted a declaratory resolution that notes with concern that the LLRC report does not adequately address serious allegations of violations of international law and, among other things, calls upon the Government of Sri Lanka to implement the constructive recommendations made in the LLRC report.

While this report draws attention to open questions regarding allegations of violations of IHL and IHRL, it is not meant to be a legal determination confirming any of those allegations.

I. EFFORTS AT ACCOUNTABILITY

A. The Panel of Experts (POE)

On June 22, 2010, UN Secretary-General Ban Ki-moon appointed a three-member Panel of Experts (POE) to advise him on the nature and scope of allegations of

violations of IHL and IHRL during the final stages of the conflict. On April 12, 2011, the POE submitted its report to the UN Secretary-General. The report highlights a number of allegations of violations by the government it describes as credible, including: large-scale shelling of “No Fire Zones,” systematic shelling of hospitals, and summary execution, rape, and torture of surrendering LTTE cadres and civilians fleeing the conflict zone. The report also highlights a number of allegations against the LTTE it describes as credible, including using civilians as a strategic buffer, forced labor, and summary executions of civilians attempting to flee the conflict zone.

B. The Lessons Learnt and Reconciliation Commission (LLRC)

On May 15, 2010, President Rajapaksa established the LLRC under the Special Commission of Inquiry Law of 1978. Pursuant to this law, the LLRC was charged with determining, among other things, the causes of the conflict, identifying those responsible and recommending lessons learned from the conflict and methods for civilian restitution. On December 16, 2011, the government publically released the LLRC’s final report. The report makes significant observations and recommendations with respect to the origins of the conflict, land reforms, restitution, and other efforts to reconcile the ethnic communities of Sri Lanka. The report also suggests that the government investigate specific allegations of direct attacks on civilians, launch a full investigation into reports of enforced disappearances and abductions, fund an independent investigation into the veracity of videos showing summary executions, and investigate allegations of detainee abuse, torture, and summary execution. However, the LLRC’s recommendations fail to adequately address accountability for violations of IHL and IHRL by government security forces and LTTE cadres during the conflict.

While the Commission’s report identifies eight cases of alleged attacks against civilians by Sri Lankan security forces, it only calls for further investigation of three of them. This stands in stark contrast to the vast number of credible allegations examined in the POE report and the 208 instances of harm to civilians or civilian objects identified in the Department of State’s 2009 Report to Congress. While the Government of Sri Lanka’s public statements indicate it maintained a policy of “zero civilian casualties” and the only civilian deaths occurred during crossfire, the POE estimated that civilian casualties in the final months of the conflict ranged from 10,000 to 40,000. This strongly suggests the need for further investigations. The LLRC report also inadequately addresses allegations of government shelling on civilians in “No Fire Zones” (NFZs), a series of three protected areas unilaterally declared by the government. The LLRC report

concludes that although civilian casualties occurred, the security forces did not deliberately target civilians and “there appears to have been a *bona fide* expectation that an attack on LTTE gun positions would make a relevant and proportional contribution to the objective of the military attack involved.” Reports from the POE and the UN directly contradict these conclusions. Moreover, the LLRC report raises but does not resolve questions about why the Government of Sri Lanka created additional NFZs after becoming cognizant that the LTTE would exploit such zones to launch attacks, to which the government would respond, putting civilians at risk. More needs to be done to investigate why the government decided to create subsequent NFZs.

While the LLRC recognized that hospitals and other humanitarian objects were shelled, it concluded that the security forces did not deliberately target these objects and that the context of the shelling was a “confused picture.” In contrast, the POE report concluded that security forces repeatedly shelled humanitarian objects whose locations it knew due to reports from the UN and ICRC. These allegations implicate grave breaches of IHL and merit further investigation. The LLRC and POE reports both address the supply of humanitarian aid to the conflict zone. Although only the POE concluded that the government deliberately underestimated the number of civilians in the conflict zone, both reports call for an investigation into the flow of medical supplies.

The LLRC report also fails to critically analyze or investigate the “white flag” incident, in which high-level LTTE leaders were allegedly shot despite assurances from the Government of Sri Lanka that they could safely surrender. While the circumstances surrounding the incident remain uncertain, the POE concluded that the LTTE leadership intended to surrender. However, the LLRC only mentioned the above incident briefly, citing testimonies that dismiss the allegations. The Department of State does not take a position regarding the allegations concerning this incident but notes that the discrepancy between the POE and LLRC reports merits further investigation. The LLRC’s report also addresses video recordings that purportedly depict Sri Lankan soldiers summarily executing bound prisoners. On May 23, 2011, UN Special Rapporteur Christof Heyns released a report to the HRC that found the video evidence credible. The LLRC Report concludes that the video’s authenticity cannot be verified through available forensic information and calls for the government to “institute an independent investigation into this issue.”

The POE Report briefly discusses allegations of sexual and gender-based violence by government security forces during the final days of the conflict. The Panel pointed to several videos that strongly suggest that women were raped or otherwise

sexually assaulted before being executed, but made no definitive conclusions. The LLRC report does not address allegations of sexual and gender-based violence.

Finally, the LLRC report makes a number of important recommendations regarding the government's detention policy and the use of child soldiers that the government should implement as soon as possible. The Commission also expressed concern and recommended that the government investigate reports alleging enforced disappearances, and recommends that the government investigate such reports. The Sri Lankan government should immediately undertake an independent, transparent, and impartial investigation into these reports as called for in the LLRC report.

II. CONCLUSION

The Department of State continues to encourage the Government of Sri Lanka to fulfill the LLRC's recommendations. In addition, the Department of State believes that the Government of Sri Lanka should establish an independent mechanism to investigate the credible allegations that the LLRC failed to address, including the targeting of civilians, the shelling of No Fire Zones, the killing of surrendering LTTE cadres, sexual and gender-based violence, supply of humanitarian relief, enforced disappearances, and arrest and detention policies, among others. Each investigation should be independent of government influence and transparent, and provide adequate witness protection.

As a long-time friend of Sri Lanka, the United States supports Sri Lanka's efforts at reconciliation. Accountability for violations committed by both sides of the conflict and justice for the victims are critical features of that reconciliation because it allows communities to affirm a common commitment to principles of justice and to cope with the years of ravages from armed conflict. Any credible accountability effort must be even-handed and hold both parties to account. Truth and accountability for the crimes committed during the last months of the conflict would prevent impunity and undermine those who wish to make the LTTE into future heroes. Sri Lanka's peaceful future depends on trust - trust between Sri Lankans of all backgrounds, and trust between Sri Lankans and their government. That trust depends on acknowledgment of truth and justice for victims, and responsible, transparent, and systematic efforts to deal with past wrongs and secure protections against their recurrence.

A factual supplement to this report is available on the Department of State website at: <http://www.state.gov/j/gcj/srilanka/index.htm>