

The UN Internal Review Panel Report and Sri Lanka's Urgent Need for Accountability

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Summary

With the release of the United Nations Internal Review Panel Report (IRPR), or the Petrie Report, in November 2012, the deteriorating human rights situation in Sri Lanka has once again captured the attention of the world. Since the end of the decades-long civil war in 2009, the country has made little progress in reducing pervasive human rights violations, disappearances or the maintenance of judicial independence. The IRPR, which examines the UN's actions during the final months of the civil war and its aftermath, coincides with the recently concluded Universal Periodic Review (UPR) of Sri Lanka in November 2012 wherein the Government of Sri Lanka was heavily criticised for its failure to make any serious moves towards peace and reconciliation in the post-war period. The record of the government during the past three and a half years since the demise of the LTTE has been variously criticized for ostentatious displays of triumphalism, failure to take swift and sufficient measures to relieve the catastrophic humanitarian situation, continuing human rights violations through internment, abductions, disappearances of critics of the government, and total abandonment of all measures to contribute towards resolving the underlying political problems that gave rise to the ethnic conflict. The Petrie Report does not add to the findings of the already existing Report of the Secretary General Panel of Experts on Accountability in Sri Lanka, also known as the Darusman Report, which found both the Sri Lankan military as well as the LTTE guilty of war crimes and crimes against humanity. Instead, it documents the UN's inaction when thousands of civilian were being killed and states that the UN's conduct at the end of the war marked a "grave failure" on the part of the UN.

The Report of the United Nations' Internal Review Panel¹ was released one year after Sri Lanka's self-appointed commission of inquiry, the Lessons Learnt and Reconciliation Commission, submitted its findings to President Mahinda Rajapaksa. The LLRC was established in May 2010 to investigate events between the February 2002 ceasefire with the LTTE and the end of the conflict in May 2009 and make recommendations aimed at ethnic reconciliation. When the LLRC Report was submitted, it was assumed that it was merely going to clear the government of any accountability, especially in relation to allegations of violations of International Humanitarian Law during the final military offensive against the LTTE in 2009. The outcome was, however, an unsuccessful attempt to bury questions of war crimes, with the LLRC Report stating that even though the military gave highest priority to protecting civilians, many had been killed, albeit accidentally. This was a step forward as it clearly contradicted the Government of Sri Lanka's (GoSL) previous stance insisting that there were no civilian casualties.² Given the prevarication on the part of the GoSL with regard to the implementations of the recommendations put forth by the LLRC, the UN Human Rights Council (UNHRC) passed a resolution in March 2012 titled "Promoting Reconciliation and Accountability in Sri Lanka". Although one of the results of the UNHRC resolution was the formulation of the "National Action Plan", it did nothing to change the country's culture of impunity and the fact that the government continues to resist any independent investigation into alleged war crimes or other human rights violations. This situation and the recently concluded Universal Periodic Review (UPR) session on Sri Lanka of the UN Office of the High Commissioner for Human Rights have raised many difficult questions for those interested in genuine peace and reconciliation in the country. The GoSL has consistently rejected suggestions that it allow an international role in human rights monitoring and accountability efforts, both in the context of the first UPR in 2008 and subsequently as well when calls for an independent international investigation into alleged war crimes intensified. Three and a half years since the final battle was fought and won, the GoSL continues to be evasive. Against this backdrop, the release of the Petrie Report has refocused international attention on the deteriorating human rights situation in Sri Lanka.

The Petrie Report and the UN's failure

During the internal conflict that started in Sri Lanka three decades ago, several UN agencies, along with various other Intergovernmental Organisations (IGOS) and international non-

¹ The United Nations Internal Review Panel Report (2012), available at www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf.

² "Forces maintained zero civilian casualty rate at all time", Ministry of Defence and Urban Development, Sri Lanka, December 30, 2010, available at http://www.defence.lk/new.asp?fname=20100912_01, accessed on December 6, 2012.

governmental organizations (INGOS), were based in the war-torn North and East, serving people affected in the conflict zone. The situation provided ample opportunity for these international organisations to attain an insiders' view and a better understanding of the difficulties faced by civilians living in these areas, while providing them with much needed aid. It has been widely reported that towards the end of the war, on the directive of Sri Lanka's Defence Ministry, the UN agencies as well as the other local and international organisations were compelled to leave the areas demarcated as the war zone, in spite of the large number of civilian demonstrations pleading with the UN agencies to stay because of the protection their presence would ensure. The Petrie Report asserts that the closure of offices and the subsequent withdrawal of UN agencies from the war-affected regions represent a failure on the part of the UN to "...act within the scope of institutional mandates to meet protection responsibilities" (pp. 27).

Produced by a panel appointed by the UN Secretary General and headed by Charles Petrie, the report draws on almost 7000 internal documents. Its final conclusion is the damning fact that UN agencies failed to ensure the safety of innocent civilians. A key revelation of the report is that UN staff members were in possession of reliable information showing that the GoSL was responsible for the majority of the deaths. The report reveals that two-thirds of the killings were inside safe zones unilaterally declared by the Sri Lankan government, purportedly to protect civilians. It states that "Numerous UN communications said that civilians were being killed in artillery shelling, but they failed to mention that reports most often indicated the shelling in question was from Government forces" (pp. 20). Moreover, "From as early as 6 February 2009, the SLA (Sri Lankan Army) continuously shelled within areas that became the second NFZ (No Fire Zone), from all directions, including land, sea and air. It is estimated that there were between 300,000 and 330,000 civilians in that small area" (pp. 11).

Summing up the UN's failures, the Report points out how the UN's acts of omission and commission unwittingly served the GoSL's agenda, and thus exacerbating the humanitarian catastrophe. It states:

Seen together, the failure of the UN to adequately counter the government's underestimation of population numbers in the Wannu [warzone], the failure to adequately confront the government on its obstructions to humanitarian assistance, the unwillingness of the UN in UNHQ and Colombo to address government responsibility for attacks that were killing civilians, and the tone and content of UN communications with the government on these issues, collectively amounted to a failure by the UN to act within the scope of institutional mandates to meet protection responsibilities (pp. 27).

In other words, the UN stood by and largely kept silent while a massacre of civilians was underway. In doing so, however, the UN was simply fulfilling its function as an instrument

of the major powers. The United States and European powers, along with China, backed President Rajapaksa when he unilaterally broke the ceasefire agreement with the LTTE in 2006 and subsequently turned a blind eye to mounting evidence of the atrocities and gross abuse of civilian rights. As the Petrie Report points out, there were no meetings of the UN Security Council, the Human Rights Council or the General Assembly on the appalling situation in Sri Lanka. The notion of Responsibility to Protect, the Report claims, was raised but "...to no useful result" (pp. 32). Speaking of the relationship between top UN officials and the major powers, the report states: "The tone, content and objectives of the UNHQ's engagement with member states regarding Sri Lanka were heavily influenced by what it perceived member states wanted to hear, rather than by what member states needed to know if they were to respond" (pp. 27).

With regard to the Rajapaksa government's "zero civilian casualty" claims and particularly the GoSL's assertion that it had rescued the trapped Tamils "without a drop of blood", the report reveals this to be utterly false.³ The Panel thus reported on the GoSL's denial of casualty figures and the manner in which it pitted UN officials against one another to create doubts as to the veracity of the UN's casualty figures:

The Government responded robustly to any UN suggestion that there were civilian casualties at all. Aware of disagreements among UN principals, the Government used correspondence and public statements by senior UN officials to refute the OHCHR public statement. Diplomats who had attended the UNCT's 9 March briefing and wanted the UN to take a public stand on casualties leaked the briefing materials to the media. On 24 March, the RC [Resident Coordinator] was summoned to meet with Minister of Foreign Affairs and on 25 March, the Government released a statement saying "[the RC] has stated that he is unable to confirm the veracity of the figures of civilian casualties..." and describing the numbers as having "not been attributed to any reliable or independent source" and the assertion that two-thirds of casualties had occurred in the NFZ [No Fire Zones] as "patently false" and "unsubstantiated". (pp. 12)

In the light of these incriminatory findings, the Petrie Report concludes that the United Nations did not have a vision or proper plan to deal with the catastrophic events that unfolded during the final phase of the war and immediately after it ended. The United Nations and its various bodies, which were set up to prevent precisely such atrocities, failed in their mandate to protect these civilians by letting politics and vested interests come in the way of prioritizing the lives of children, women and men who were caught in

³ "All civilians rescued without shedding a drop of blood", *The Times of India*, May 18, 2009, available at http://articles.timesofindia.indiatimes.com/2009-05-18/south-asia/28195299_1_tamil-civilians-load-sri-lankan, accessed on December 10, 2012.

the NFZs. The report concludes by stating:

“The UN’s failure to adequately respond to events like those that occurred in Sri Lanka should not happen again. When confronted by similar situations, the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities” (pp. 35).

The Secretary General in response to the Panel’s findings about the UN’s failure declared that “transparency and accountability are critical to the legitimacy of the UN [...]” and has announced that he will appoint a senior level UN team to give considerations to the report and advise him of a way forward and has promised that “other actions will follow in short order”.⁴

Problems with the Report and Colombo’s Denial

The findings of the Petrie Report are an indictment not only of the Rajapaksa government, but also of the United Nations. Previous reports such as the Darusman Report indicated that war crimes and crimes against humanity were committed by both the Sri Lankan military and the LTTE, but did not refer to the UN’s failings.

While acknowledging the findings of the report and the UN’s admission of its own failure, questions have been raised as to the nature of the fact finding mission that preceded the report. Noting the UN Security Council’s indecisiveness regarding Sri Lanka and lack of a required mandate, Vidura notes that: “...it took more than two-and-a-half years since the end of the conflict – and only after a forceful recommendation by the PoE [Panel of Experts], and probably a ratcheting up of pressures from internal and powerful external actors – for Ban Ki-moon to commission a review.”⁵ He also draws attention to the appointment of a part-time UN staff member to head the Panel (as opposed to a team comprising of persons not attached to the UN) which brings up issues of independence and impartiality: “They had the option of drawing expert observers/participants from among the donors or other humanitarian agencies or any of the regional inter-governmental bodies that are conversant with the humanitarian reform agenda to ensure objectivity.”⁶ The final and pressing issue

⁴ “Following report on activities in Sri Lanka war, Ban determined to strengthen UN responses to crises”, UN News Centre, November 14, 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=43496#.UMhrf471Euu>, accessed on December 1, 2012.

⁵ Vidura, “Many Shades of Accountability: the UN and Sri Lanka”, *Groundviews*, November 5, 2012, available at <http://groundviews.org/2012/11/05/many-shades-of-accountability-the-un-and-sri-lanka/>, accessed on December 4, 2012.

⁶ Ibid.

is the lack of transparency, methodology and process the UN review team adopted as there is a significant absence of "...a mechanism for the affected communities and concerned activists to engage with the process and raise issues."⁷

Frances Harrison, former BBC correspondent and author of *Still Counting the Dead: Survivors of Sri Lanka's Hidden War*, adds to this debate by claiming that if the report had not been leaked to the BBC before it was released to the public, it would not have been released at all: "A reluctant UN in New York had to publish the document but chose to do so without its powerful executive summary that set the conflict in the context of post 9/11 global attitudes to terrorism that tragically skewed the reporting of the bloodshed."⁸ She cites the Executive Summary of the Report, which was first released and then withdrawn,⁹ as stating: "Some have argued many deaths could have been averted had the Security Council and the Secretariat, backed by the UN Country Team, spoken out loudly early on, notably by publicising casualty figures."¹⁰

In turn, the GoSL, finding itself under fire yet again for its conduct, promptly denied it had forced the UN or acted against it in any manner and challenged the contents of the report. The President's Special Envoy for Human Rights and Minister of Plantation Industries Mahinda Samarasinghe was quoted as having said: "We consulted with the UN and there was no intimidation of UN official. How can you intimidate the UN, the USA, Japan or any other country? These are sovereign entities".¹¹ He also added that he was unaware of any agency being asked to leave the conflict zone: "I have not heard anyone say that we asked them to go out."¹²

⁷ Ibid.

⁸ Harrison, Frances, "The UN's 'grave failure' in Sri Lanka demands an answer", *Globe & Mail*, November 19, 2012, available at <http://www.theglobeandmail.com/commentary/the-uns-grave-failure-in-sri-lanka-demands-an-answer/article5382064/>, accessed on December 4, 2012.

⁹ The Executive Summary of the Report when released to the public officially had certain parts of the recommendations blacked out. The Sri Lanka Campaign for Peace and Justice in turn published the report stating that the blacked out sections had not been electronically removed and could be retrieved, November 14, 2012. Available - <http://blog.srilankacampaign.org/2012/11/the-un-internal-petrie-report-into-sri.html>, accessed on December 5, 2012.

¹⁰ Harrison, Frances. Ibid.

¹¹ "SL denies intimidating UN workers", *Daily Mirror*, November 14, 2012, available at <http://www.dailymirror.lk/news/23485-sl-denies-intimidating-un-workers.html>, accessed on December 6, 2012.

¹² "UN failed war victims", *Ceylon Today*, November 15, 2012, available at <http://www.ceylontoday.lk/51-17096-news-detail-un-failed-war-victims.html>, accessed on December 8, 2012.

Conclusion

Though little has changed in the Government's position and 'accountability' remains an issue of contention, through the appointment of the LLRC, Military Inquiry Panels and the formulation of a National Action Plan the GoSL has, to date, been able to hold off calls for an independent international investigation. The Petrie Report has emerged at a time when the Rajapaksa Government moves to impeach the Chief Justice, continues to maintain a heavily militarised zone in the North and the East of the country, and repeatedly alludes to the abolition of the 13th Amendment to the Constitution, the constitutional chapter that deals with devolution of power.

Given the findings of this Report and the Darusman Report earlier, the UNHRC must take immediate action in the upcoming 21st session in March 2013 when the progress made by the GoSL is to be discussed. The UNHRC's previous record with regard to Sri Lanka has revealed that it has done little to find the truth – it did not convene a special session at the time the war was raging, failed to acknowledge the human rights violations taking place and in the 19th session passed a resolution that only succeeded in giving the GoSL time to establish its own domestic investigation.

Finally, the Petrie Report states that: "... in Colombo, many senior staff simply did not perceive the prevention of killing of civilians as their responsibility" (pp. 27). With this being the conclusion of the UN Internal Review Panel, the United Nations can no longer ignore the elephant in the room; it is time to address the issue of accountability and this should be a priority for senior UN officials and all UN bodies. With two combined UN sponsored reports and other independent investigations now in the public domain, all providing irrefutable evidence, the UN needs to start moving the wheels of justice with the establishment of an independent international war-crimes investigation. This could be a step towards restoring the UN's credibility, at least with regard to Sri Lanka.