



**USAID**  
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# DEMOCRACY AND GOVERNANCE

## SRI LANKA ASSESSMENT

**DECEMBER 2006**

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# DEMOCRACY AND GOVERNANCE

## SRI LANKA ASSESSMENT

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# ACRONYMS

CFA	Cease Fire Agreement
DG	Democracy and Governance
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
JHU	Jatikha Hela Urumaya
JVP	Janatha Vimukthi Peramuna
IDP	Internally Displaced Person
IGP	Inspector General Police
LTTE	Liberation Tigers of Tamil Eelam
NHRC	National Human Rights Commission
NUA	(Muslim) National Unity Alliance
NPC	National Police Commission
PAFFREL	People's Action for Free and Fair Elections
PSM	Peace Secretariat for Muslims
PTA	Prevention of Terrorism Act, in place from late 1990s to 2002
PA	People's Alliance
P-TOMS	Post-Tsunami Operational Management Structure
PR	Proportional Representation
SFLP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
SLMM	Sri Lanka Monitoring Mission
TNA	Tamil National Alliance
UNP	United National Party
UPFA	United People's Freedom Alliance

## EXECUTIVE SUMMARY

### I. Purpose and Methodology

This report summarizes the findings of a team of two American political scientists commissioned by USAID to assess trends in democratic institutions and governance in Sri Lanka since 2001. The team reviewed current research on the country and interviewed more than 85 key respondents and 175 ordinary citizens over the course of three weeks in November 2006. The interviewees, resident across the country, came from all classes, professions and ethnic groups and spanned the political spectrum. Key respondents came from government, political parties, non-governmental and people's organizations, the media, academia, and donor and international organizations.

### II. Summary of Conclusions

The assessment team found a substantial consensus of opinion that the democracy and governance environment has deteriorated since 2005, and that the speed of the decline has increased in recent months. Several Sri Lankan sources saw the political situation as so dire that they doubted that Sri Lankan institutions and actors could reverse the trend line. Many voiced a need for external checks because they believed that internal ones were not working. These opinions are consistent with several major political indices which show a decline in Sri Lanka's scores in recent years.<sup>1</sup> While the Freedom House political rights and civil liberties index scores have been stable at "partly free" since 2003, a downward trend is noted for this year.

The most significant development is the erosion of already limited checks and balances on executive authority. The best example of this is the appointment by the president of commissioners to the several independent agencies established to prevent the politicization of public sector institutions and check the abuse of power. The president made these appointments due to a stalemate between two smaller political parties over which had the right to appoint the tenth and final member of the independent Constitutional Council, the body charged with naming commissioners. The judiciary's independence also seems to have weakened, its effectiveness is less than optimal, and its fairness has been called into question. Significant power sharing with local and provincial government has never been fully implemented, and the limited framework for devolution fails to address an issue at the heart of the long-standing ethnic conflict.

Other important changes in recent years include the emergence of significant fragmentation in the East, with the rise of the LTTE-breakaway Karuna paramilitary group, the articulation of independent (but not unified) Muslim views on governance and devolution, and the creation of a significant new IDP population due to the renewal of fighting. The population in the East has become far more vulnerable to human rights abuses, including killings, abductions and disappearances. There have been examples of LTTE attempts to prevent people from fleeing areas of fighting and of government pressure to force them to return to unstable areas. In addition, the government has placed some restrictions on the access of humanitarian agencies to vulnerable populations in the north and east. The recent institution of new emergency regulations, similar to those that were part of the Prevention of Terrorism Act (the PTA, in place until the ceasefire was signed in 2002), may affect adversely the efforts of humanitarian agencies, peace activists and organizations, and think tanks and media that oppose or wish to report fully on

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<sup>1</sup> World Bank governance indices, Freedom House [Freedom in the World](#) indices, Reporters without Borders and Freedom House press freedom indices, and Transparency International's index of corruption perception surveys. See [www.worldbank.org/wbi/governance/govdata](http://www.worldbank.org/wbi/governance/govdata); [www.freedomhouse.org](http://www.freedomhouse.org); [www.rsf.org](http://www.rsf.org); and [www.tisirilanka.org](http://www.tisirilanka.org).

specific government policies and practices. It is also likely to have a negative impact on ordinary Tamil civilians, if the consequences of the earlier PTA are at all relevant.

There also appears to be a marked increase in harder line ethnic, nationalist and militaristic rhetoric in the media and among politicians in several political parties and groups. There has been significant violence against Tamil and non-nationalist sources of media.

Despite growing problems, there have been positive political developments. There was a notable reduction in electoral violence in the 2004 and 2005 elections. The creation of the Presidential Commission of Inquiry (with the participation of international experts) to examine several major human rights cases is a good step. Finally, the establishment of the Memorandum of Understanding between the major political parties could permit more effective peace negotiations as well as the achievement of the two-third parliamentary majority needed to approve constitutional amendments designed to address some long standing political issues.

The government is considering several important political reforms, including changing the electoral system from a proportional representation system to a mixed system of proportional and first-past-the-post representation. A mixed system is likely to provide more stable majorities in parliament and could improve the accountability of MPs to their constituents by creating smaller, single-member constituencies. The PR seats will preserve some degree of minority representation. There is, however, serious concern among minority parties that a mixed system will substantially reduce their current level of representation in parliament. In terms of devolution, conversations with senior party personnel suggest that the principal MOU parties have some interest in replicating India's decentralization model but are most interested in the lowest levels, not the intermediate ones. Such an approach would essentially mean continued heavy centralization of power, since low level under-resourced and under-staffed village or local governments could not act as a check on executive authority.

### **III. Specific Findings**

#### ***1. The last two years have seen an increase in human rights violations and a continuation of Sri Lanka's long-standing culture of impunity.***

There is no consolidated database concerning human rights violations, making it difficult to speak authoritatively about trends. Available statistics do, however, suggest an increase in violations. Many of those interviewed for this assessment concur that the number of political killings, abductions, and disappearances is rising. Displacements, injuries and deaths due to the renewal of violence have also increased.

The ICRC reports 750 disappearances for 2006 (as of mid-November) compared to 150 in 2005. In late October, UNICEF recorded 142 unresolved abductions of under-age children by the Karuna group; it believes the actual number is much higher because many affected families have been warned not to complain to the authorities. Tamils in the East have grown very fearful of abductions. Alan Rock, the UN Adviser on Children and Armed Conflict, found evidence that underage recruitment has increased in government-controlled territory in the East. It has proved difficult to recover abducted children.

Recent Human Rights Watch investigations in the East suggest evidence that the Sri Lankan military and police have been involved in some abductions and are knowledgeable about others.<sup>2</sup> In Mr. Rock's

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<sup>2</sup> Human Rights Watch, statement on website ([www.hrw.org](http://www.hrw.org)), November 16, 2006.

November 13 statement, he says that he found “evidence that certain elements of the government security forces are supporting and sometimes participating in the...forced recruitment of children by the Karuna faction.” In response to these charges, the president has ordered an investigation.

The U.N. Working Group on Enforced or Involuntary Disappearances has noted that Sri Lanka has the second largest number of unresolved disappearances in the world. As the U.S. State Department’s own Human Rights Report (2005) points out, the Sri Lankan Government has done little to pursue such cases. There has also been an increase in political killings that may involve the security forces. Well known examples include the murder of five high school boys on the beach near Trincomalee last January, the killings of six young men in Avissawella last April, and the murder of 17 Action Contre La Faim staff in Muttur last summer.

With the renewal of fighting this year, examples have emerged of civilians being used as a military asset. The LTTE has positioned weaponry and cadres next to civilian settlements, while the government has in some cases ignored the risk of civilian casualties in order to target these positions. In addition, as was seen in the fighting around Muttur, the LTTE acted to try to prevent the flight of frightened civilians and this led to a second exodus from Muttur.

Sri Lanka has a long-standing and largely unaddressed problem of police brutality. Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions concluded a year ago that there was “a nationwide pattern of custodial torture...,” exercised by “ordinary police carrying out established routines.”<sup>3</sup> National Human Rights Commission data show 635 complaints about police torture and 20 deaths due to torture in 2005. Not all deaths in police custody are, however, linked to torture. Philip Alston saw reports, still unchallenged by the government, indicating that from 11/04 to 10/05 the police shot 22 criminal suspects after taking them into custody, a number that does not include deaths due to torture. In all 22 cases, the shooting was fatal and the police involved were uninjured, suggesting that a defenseless prisoner was shot. There is no incentive for the police to end the physical abuse of prisoners as long as 1) there is little questioning of confessions obtained under extreme duress in court; and 2) there is also little attempt to prosecute or discipline police who torture or kill prisoners. In none of the above-mentioned deaths-in-custody cases was a police inquiry even opened.

Police detentions are another area of concern; 385 cases of wrongful arrest/detention were filed with the Human Rights Commission in 2005. The Chairman of the Human Rights Commission noted that police do not routinely comply with a rule requiring notification of the Commission about a detention within 24 hours. The recent presidential directive to the police to obey this rule is a good step.

The Human Rights Commission, an important institutional safeguard, has been weakened by the crisis over the Constitutional Council. It is seriously under-funded and under-staffed and lacks sufficient vehicles for field investigations. The Act establishing the Commission defines its jurisdiction so broadly that there is a backlog of over 10,000 cases, many of which involve complaints about public sector employment. According to the recently-deceased Chairman, it now takes the Commission as long as a year to begin investigating a complaint. Under his predecessors, however, priority was given to serious human rights violations, particularly when the safety of individuals was at risk. The current Commission will also only act on a complaint from an individual; previously, the Commission would investigate reports even in the absence of a formal complaint.

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<sup>3</sup> Alston, Philip, “Civil and Political Rights, including the Question of Disappearances and Summary Executions,” Report of the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, UN Commission on Human Rights, March 2006, p. 18.

Many observers believe that the judiciary has lost its independence from the executive branch. Several Supreme Court judgments have been controversial, including the P-TOMS verdict on shared government-LTTE management of Tsunami reconstruction resources in the north and east; the North East Province de-merger decision which argued that the merger of the two provinces, a key demand of the LTTE, was not fully legal; the ruling on the applicability of the Optional Protocol on Political Rights of the International Covenant on Civil and Political Rights, which concluded that absent specific Sri Lankan legislation, government ratification of the Protocol was meaningless; and the court's decision that it need not restrict its rulings to elements included in the petition before it.

## **2. Shrinking space for political dissent in general and pro-peace, non-nationalist discourse in particular**

The team concluded that voices opposed to government and LTTE policies are increasingly being shut out of the public arena. Factors include the government's emphasis on military security, efforts by the administration to solidify power, growing use of intimidation tactics by particular political parties, and escalating violence. Pressure on civil society and the media has increased noticeably in the last two years. The new emergency regulations may exacerbate this tendency. Press freedom indices and reports support this. Reporters Sans Frontières (RSF) ranked Sri Lanka 141<sup>st</sup> out of 168 countries in its Index of Press Freedom, a fall from 51<sup>st</sup> place in 2002, leading RSF to consider Sri Lanka one of the world's most dangerous countries for journalists. The Freedom House score for press freedom in Sri Lanka has fallen as well.

RSF and Freedom House report that attacks against the media have increased sharply, a conclusion confirmed recently by a mission of the International Press Institute (IPI) to Sri Lanka,<sup>4</sup> as well as by the team's interviews with credible observers and members of the media and civil society. At least five media workers were killed in 2005, and seven have died so far in 2006. Many more in the media and civil society have been threatened. The 2005 attacks included the murder of an English-language Daily Mirror editorialist and head of TamilNet; the bombing of the Tamil-language, pro-LTTE *Suder Oli* newspaper office in Colombo which killed a security guard; the arrest of a *Suder Oli* reporter gathering news; the murder of two news agents distributing *Eelanathan Batticaloa*, a newspaper that appears tied to the LTTE; the murder of a TV presenter who was critical of the LTTE; and an arson attack on the English-language *Sunday Leader* newspaper offices. Reputable civil society groups also report deliberate disruptions of their meetings and threats to their personnel (most recently, on 12/15, 4 staff of the National Peace Council were physically assaulted while attempting to hold a public meeting in Polonaruwa). Universities, meanwhile, have been politicized by activist student unions and political appointments, and now provide limited space for independent writing and debate.

Some incidents can be attributed to the LTTE. According to RSF, army officers in Jaffna have directed Tamil newspapers not to publish news from the LTTE, and let it be known that they were unhappy with reporting that was critical of humanitarian conditions in the Jaffna peninsula and the government's role in the situation. Para-military forces associated with Karuna also burned thousands of copies of one newspaper in late 2005; the same thing happened again in October 2006, though the culprit was not clear. In addition, the relatively new requirement to obtain permits to leave certain areas in the East can be used to limit the activities of media and civil society group personnel.

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<sup>4</sup> [www.freemedia.at](http://www.freemedia.at)

Formal measures by government play an important role in the limiting of public space. The government has posted regulations barring the publication and distribution of any print or broadcast material it judges may cause “public disorder” and has established a Media Center for National Security to screen publications. At this point, submission of material to the Center is still voluntary. A Parliamentary Select Committee (PSC) has been established to investigate NGOs and with assistance from the Auditor General’s Department will investigate the activities and finances of selected organizations. Some NGO leaders believe that the PSC approach has been neither transparent nor neutral and that peace and opposition groups will be the principal groups targeted.

These developments are occurring against a backdrop of the spread and legitimization in the South of nationalist rhetoric and an increase in support for a military solution to the conflict. The latest Peace Confidence Index shows 20% currently support a military solution, up from 7% in 2005.<sup>5</sup> Government and political leaders reinforce this trend by labeling anti-war/pro peace journalists as “supporting terrorists” on dubious grounds. Media personnel so labeled have included the editor of the *Sunday Leader* and the Sinhalese section of the BBC World Service.

Journalists are now fearful for their safety and appear to be leaving the profession, their original home areas, and even the country. Some academics who publish in the popular press also indicated that they have stopped writing articles or are too frightened now to say what they really think. These developments are having a marked chilling effect on the coverage of important and contentious matters in both government and private media, and on civil society’s capacity to promote public debate on key issues.

At the same time, as noted, important changes in the country's governance structure are under discussion. It is urgent that space for independent, broad-based discussion not be constrained.

**3. Governance is poor and remains heavily centralized. There are signs of increasing fragmentation of authority and public sector corruption.**

Many observers, including donors, believe that government effectiveness has deteriorated since 2004. The policy making process has long been criticized as opaque and exclusive. The business community, for example, would like to engage more in economic policy making. The World Bank’s *Government Effectiveness* index shows a sharp decline from a low base since 2002, while the index for *Regulatory Quality* has been dropping since 1998. The rapid expansion in the number of government Ministries, Ministers and Deputy Ministers has created overlapping mandates and some confusion about who is responsible for what. Some informants noted a concomitant decrease in rule-based decisions by the most senior government officials, with a parallel increase in patronage. The International Financial Institutions are concerned about the added cost of this expanded system of ministries, along with the creation of 40,000 new civil service jobs, to an already strapped Treasury.

Both the Transparency International *Corruption Perception* and the World Bank’s *Control of Corruption* indices show a decline in recent years. There is also anecdotal evidence from businesses that the percent of a public sector contract paid in bribes has nearly tripled. While several government entities do try to address corruption, there is a confusion of mandates. These institutions also frequently interpret their mandate narrowly, inhibiting their effectiveness. For example, the Bribery Commission will act only on a signed complaint; it does not accept anonymous complaints and in the absence of a whistle-blower protection law, few people are willing to make named complaints. This means that it is difficult to tackle grand corruption because the costs of complaining could be significant.

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<sup>5</sup> [www.cpalanka.org](http://www.cpalanka.org)

Parliament is weak and appears to conduct only limited oversight of executive branch performance. For example, two budget review committees operate in camera and since 2004 no longer include members of the political opposition. It is difficult to obtain information about government performance. There is no Freedom of Information Act, though one was approved by the Cabinet late in the former president's term, and there are many rules and Acts that unnecessarily prohibit the sharing of information.

The system of elected local governance is weak, limited, and inadequately staffed and funded. Local governments rely primarily on central government transfers and have few revenue raising opportunities. The 13<sup>th</sup> amendment to the Constitution has never been fully implemented. Even at the local level, the language issue has not been adequately addressed. Tamil-speaking populations still receive all correspondence from the government in Sinhalese. When asked about the work of their local and provincial governments, citizens around the country were scathing, even though many were interested in a more effective system of local government and one that was more open to citizen influence.

There is a system of civil service administration that runs parallel to elected local government and generally trumps it. The Provincial Councils have more powers (except in the North East where a Council has not existed since 1990) than local authorities, but these powers are either shared with the central government or subject to central government supervision. There are some signs that the central government has pulled back power from Provincial Councils in recent years. For example, last year the Finance Commission by-passed Provincial Councils and dictated sectoral allocations directly to the local authorities

Local authorities have few responsibilities and while some of these are significant (water supply and feeder roads), many are minor (libraries and playgrounds). They have almost no role in promoting local economic development. Perhaps the one good aspect of the recent increase in civil service rolls is that some of the new employees will be assigned to local government, addressing the staff deficit particularly in the north and east.

Reportedly, the government is preparing to reform the system of local government. There appears to be some focus on the Indian system on village panchayats. Obtaining substantial autonomy is of course a key demand of the Tamil population, so the type and amount of devolution decided upon will affect the prospects for peace. If the provincial and district levels are by-passed, decentralization will be illusory. If local and district councils cannot aggregate their interests in any meaningful fashion, they cannot make effective demands on the central government nor can they check any move by the executive branch.

#### **IV. Program Recommendations**

This assessment recommends programs to address the issues of human security, the narrowing of political space, and inadequate local governance. *The overall objective, therefore, is to help prevent a further deterioration in the political situation and to try to install more effective checks and balances on executive behavior. In prioritizing among these three components, the team would give most importance to the first strategy component, supporting human rights.* If forced to select a second order priority, the team would recommend the third program area regarding local governance, not because the practical accomplishments are likely to be so significant, but because maintaining a direct connection with very vulnerable populations is important. Even if the Mission decides (or is obligated by budget cuts) to eliminate the civil society/political space program area, the team recommends retention of those aspects that relate most closely to the protection of fundamental rights, such as protecting journalists. If budget cuts are severe, the team recommends selecting key elements of the human rights and local governance strategies, and an effort to make them mutually reinforcing, in a smaller number of districts/divisions.

**A. Strengthening respect for human rights (program area 1: rule of law and human rights and program element: human rights)**

The overall purpose of this component is to strengthen 1) international and local information and knowledge about human rights violations; and 2) domestic and international institutions and processes trying to hold the government to account. The team believes that development assistance in this arena can play an important role in providing solid information and first hand experience for diplomatic conversations that may have far more impact than some limited technical assistance and training might have.

Illustrative activities include:

1. Provide support to the upcoming Presidential Commission of Inquiry into 15 significant cases of human rights violations.
2. If an international human rights monitoring commission along the lines of the one established as in Nepal, USAID should provide expatriate and local technical assistance and support in the form of equipment and vehicles.
3. While the team has some reluctance to recommend working with the National Human Rights Commission, given that it is currently operating without Constitutional Council-appointed Commissioners, we believe that it can be an important check on abuses. The team recommends two sets of interventions:
  - a. Strengthen Commission regional offices by building up their investigation and reporting functions, particularly in Vavuniya, Ampara, Batticaloa, Jaffna, and Trincomalee.
  - b. Improve the Commission's database. The NHRC is the logical place for a vetted and authoritative database that can aggregate complaints across protection agencies and NGOs. This involves more than keeping records on the numbers and types of complaints brought directly to the NHRC; it would also involve gathering data from other protection agencies, cross-checking complaints to eliminate duplicative counts, and issuing periodic reports.
4. USAID should provide funding and institutional strengthening support to national and regional human rights and advocacy NGOs. Interventions might include funding and technical assistance/training for pursuing cases in court, researching and investigating allegations of violations, and monitoring the activities of the NHRC and the National Police Commission.
5. Support radio programming on human rights awareness and concerns.

**B. Increasing information, and expanding debate and participation on critical democracy and governance issues (program area: civil society and program element: civic participation)**

This component seeks to help keep political space open for alternative points of view on governance and democracy issues of national importance. It also reinforces the human rights program by seeking to provide greater protection for journalists and civil rights activists from harassment.

The issues for debate might include proposed electoral reforms (including constituency demarcation and its implications for minority rights, if boundaries are redrawn); devolution; the importance and functioning of the Constitutional Council and independent commissions; the role of the executive

presidency; and the need for a Freedom of Information Act. To the extent possible, the issues should be framed with regard to broader democratic principles, such as the need for checks and balances in a democratic polity, and for a democratic government to respond to and protect all citizens.

Illustrative activities include:

1. Assist the **Ministry of Constitutional Affairs** in facilitating a broad-based public dialogue on the many constitutional reforms that are under review. Similarly, the **Elections Commission** and civil society groups should receive support for forums on district demarcation, if that issue arises in the course of electoral reform. As electoral reform is most likely to occur, and most quickly, of the reforms this report mentions, the Commission and relevant civil society groups might also be supported in conducting public information campaigns on the new system.
2. Sri Lanka's major independent **national level think tanks and advocacy groups**, such as the Centre for Policy Alternatives, continue to receive funds from donors, but USAID should nevertheless consider supporting research, information dissemination, advocacy and public interest law, and the monitoring of implementation on *key, current* DG issues. The emphasis here should be on timely action by civil society groups, and *broadly* accessible information (i.e., in vernacular languages, simply expressed).
3. The **People's Forums** supported by USAID have received praise for their ability to bring citizens together at the local level around concrete activities, and some participants report that local level officials are interested in interacting with them. They should receive continued support, particularly for discussions of governance issues, with special attention to the constitutional reforms currently on the table.
4. **Local radio stations** need content, are willing to air discussions on potentially controversial policy matters, and charge very little for air time. The report therefore recommends that USAID support non-governmental organizations to develop and produce radio programs on local implications of proposed and needed constitutional changes, and on human rights, peace and other governance issues.
5. We also recommend that USAID support **programs explicitly designed to protect journalists** nationwide. A consortium of journalists associations exists that is probably prepared to set up a formal system for monitoring, documenting and acting on reports of harassment of journalists.
6. **Transparency International** is already performing unique work in the area of government monitoring and anti-corruption. USAID should expand its support to this organization to monitor public-sector corruption, and advocate for stronger institutional controls.

**C. Improve local governance in selected conflict-prone areas (program area 2: good governance and program element: local governance)**

USAID should maintain a presence in some of the country's most conflicted areas. It is important to have first hand information and experience for diplomatic discussions with other donors and the government. It is critical to help ensure human security. The primary purpose of activities here is to strengthen local governance and citizen input in selected geographic areas.

The local government program should be integrated with the Mission's human rights, conflict resolution and economic growth (EG) programs, and should build on existing OTI-directed peace building and local governance efforts. There seems to be little reason at this juncture to continue with free-standing OTI-type interventions; these should be integrated into the Mission's overall DG, EG and conflict resolution strategies and programs.

Funding limitations and the kind of sustained engagement needed to make a difference in communities suggest that the Mission should target selected division secretariats within selected districts for this program. The team recommends consideration of North Central province and the eastern part of North East province. Within these two provinces, the Mission may have the resources to focus on 2-3 of the following districts: Anuradhapura, Polonaruwa, Batticaloa, Trincomalee, and Ampara.

Illustrative activities include:

1. Work with the North Central Provincial Council in Anuradhapura and the local government authorities and/or civil administration in selected districts on planning, budgeting, soliciting input, and getting information out to citizens in both languages.
2. Use local currency reserves to provide some funds for local development efforts conditioned on community input and oversight, but use these resources in a way that tries to link citizens to local government. Develop community capacity to organize and provide input to and oversight of local government. Do more intensive work with People's Forums in target areas and link these forums together at district/provincial level.
3. Support local print and radio journalists to cover local governance issues and to help with peace building.
4. Support peace committees and relationship building between ethnic groups. Annex C includes a set of issues to be considered to supporting relationship building efforts in the Sri Lankan context.

# SECTION I INTRODUCTION

The USAID/Colombo Mission contracted with MSI for a follow up Democracy and Governance (DG) assessment in the autumn of 2006 due to concern about the deteriorating political environment in Sri Lanka. Prior to finalizing its program areas and elements for the new operating plan, the Mission wanted a new analysis of DG conditions to ensure that its activities focused on the most critical quality of democracy issues. This assessment uses the previous 2001 DG/conflict assessment, prepared by Gwendolyn Bevis and David Timberman of MSI, as a baseline and examines *changes and trends* since 2001. It does not purport to conduct an assessment *de novo*. The report, therefore, does not strictly follow the DG assessment framework, though the framework was used as a guide in collecting and analyzing data. This report is organized by the key changes and challenges that the political system now faces.

This assessment is not a broad conflict assessment, though it does consider conflict dynamics since the Cease-Fire Agreement (CFA) was signed between the government and the Liberation Tigers of Tamil Eelam (LTTE) in 2002. The CFA and the talks that followed its signature provided an important opportunity to negotiate a peaceful settlement to the decades-old conflict. Unfortunately negotiations fell apart in 2003. The CFA held until 2006, when sporadic fighting broke out. Attempts are being made to get a peace process back on track, but the situation is both tense and fragile. Democracy and Governance (DG) weaknesses have made the conflict more difficult to resolve and are to some extent also the product of conflict dynamics, creating a vicious cycle that has proven difficult to break.

The LTTE has committed numerous and grave human rights violations over the years, along with systematically limiting political and civil rights in the areas under their control. It has been responsible for the vast majority of the violations of the CFA. Its abuses continue, as international observers have documented. While this report does not ignore these abuses, it does not make a detailed examination of them. This is because the assessment team was tasked with examining those institutions and arenas that USAID's DG programs might directly affect.. The report therefore primarily addresses problems with the Government of Sri Lanka and DG weaknesses in government-controlled areas. USAID cannot in its programs directly mitigate LTTE flaws, abuses and authoritarian tendencies. The relative lack of discussion of the LTTE in the report should not therefore be construed as a judgment on that organization relative to the Government of Sri Lanka.

Respect for human rights has deteriorated sharply in the last two years. The U.S. government can contribute to halting the slide and strengthening the protection of fundamental rights, not only through support to key human rights institutions but through the statement that such assistance makes about US concern for the rights situation.

There is considerable material on Sri Lankan politics and the conflict available on the web. The team did extensive report and document reviews in October-December 2006 (see the selected bibliography in Annex B for the most useful sources). It interviewed more than 85 key informants and 175 ordinary citizens in November 2006. Interviews were conducted in Colombo and in the North Central province, the East and the South over the course of a three week period. Key informants spanned the political spectrum and included senior Ministry officials, political party members (national and local), local government personnel, academics, journalists, civil society workers, donors, Mission implementers, US Embassy personnel, international and domestic human rights activists, international protection agency staff, judges and independent Commission members. The team also collaborated with the Mission's economic growth assessment team, visiting Sri Lanka in November. Finally, the team would like to acknowledge the tremendous assistance of the Mission's DG Officer, Mark Silva. He generously shared

his very fine understanding of Sri Lankan politics and his good connections opened many doors to the team. He is not responsible for any demerits in this assessment but he did contribute much of what is of value.

## SECTION 2 BASELINE AND SUMMARY OF THE 2001 DG ASSESSMENT

This section recaps the major findings of the previous DG assessment which the team used as a baseline against which to assess change.

The failure to reach *consensus* around who is fully *included* in the nation lies at heart of Sri Lanka's DG problems. The concept of a single Sri Lankan nation-state – a shared sense of *Sri Lankan* identity tied to a single institutional apparatus that governs and protects all – has always been fragile. Many Sinhalese, including many of the country's politically influential Buddhist monks, see the nation as a reflection of the Sinhalese Buddhist majority and its culture. By extension, full citizenship can only be accorded to those who are Sinhalese Buddhists. Not all Sinhalese share this view, but it is an idea that has been developing and influencing attitudes since at least the late 1800s, and it has provided powerful legitimacy for exclusionary governance structures. The Sinhalese have been called a majority with a minority's fears, because they focus their concerns not only on Sri Lankan Tamils but also on the overwhelming number of Tamils in southern India.

If the state exists to serve the Sinhalese nation, then government resources should be primarily used to benefit the Sinhalese people, according to this logic. Citing differential benefits and privileges accorded to Tamils under colonial British rule, Sinhalese see the need for redress in their favor as fair and just. The redress process began in the 1950s, but went too far and became exclusionary. As a result, Tamils have increasingly lost access to state structures. Accordingly, *competition* over state resources (and most specifically over jobs and education) has long been a key element in the conflict. Citizens look first to the state for employment and for addressing virtually all their needs, making the state a central prize in the conflict. The degree of dependence on the state that citizens still feel is remarkable.

Tamil nationalism has also become increasingly exclusionary and limits the rights of non-Tamils. The extremist LTTE has expelled and even “ethnically cleansed” Tamil-speaking Muslims and Sinhalese in areas they control, and has demanded a separate Tamil state comprising the North East Province. Muslim-Tamil relations in the east have become increasingly fraught. The LTTE has also “cleansed” most moderate Tamil political opinion, to clear the field for their own group to act as the only organized expression of Tamil political interests.

Every group in Sri Lanka – Sinhalese, Buddhists, Tamil Hindus, Muslims, and Christians – thus feels vulnerable, and few feel fully satisfied that the state will act to protect their rights and security.

Elite political competition has fueled ethnically-based majoritarianism. Given that the Sinhalese comprise about 75% of the electorate, the two major political parties, the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), have frequently pandered to Sinhalese-Buddhist interests and insecurities in order to win elections. Politically motivated manipulation of the constitution and key government institutions has in turn embedded ethnically-based preferences into laws and institutions, further hardening grievances and the importance of ethnic identities.

The previous assessment noted that Sri Lanka's first-past-the-post electoral system, in place from independence in 1948 to 1978, rewarded simple majorities and thus tempted politicians to mobilize along ethnic lines. This system also allowed the Sinhalese-dominated ruling parties to take decisions unilaterally, including making changes to the constitution, in ways that adversely affected Tamil interests.

Some harmful decisions have been reversed, such as the Sinhala Only Act and restrictions on Tamil educational opportunities, but the process of dismantling and reforming the state apparatus to effect these changes remains incomplete. Other measures that led to the conflict, such as the settlement of Sinhalese farmers in the north-east beginning in the 1930s, which fundamentally changed the area's demographics, cannot now be undone.

The first-past-the-post system was replaced in the 1978 constitution with proportional representation (PR). The PR system gave minorities increased representation as well as increased influence because it made them critical to the formation of coalition governments. The trade-off was that PR made it very difficult for a single party to win a clear majority; this led to unstable coalition governments that had trouble articulating clear policies. PR also made it extremely difficult for the ruling party to obtain the necessary 2/3 vote in a fragmented parliament to amend the constitution, making it difficult to deliver on any commitments that might be made in the process of negotiating peace with the LTTE.

Because of the absence of consensus on the nature of the nation state and the high stakes, zero-sum quality of competition between the UNP and SLFP, every government since the 1980s has foundered on matters related to the resolution of the conflict and associated constitutional changes. The historical cycle begins with ruling party negotiations with Tamil leaders, paired with proposals for changes in the Constitution and other policies, such as devolution. These initiatives are typically opposed or diluted by the party out of power and Sinhalese/Buddhist extremists, leading to the collapse of negotiations, political reform efforts, and often, the government itself.

Sinhalese nationalist parties, although small, have played a key role in reinforcing ethnically-based political competition. Nationalist parties and politicians have, since the SLFP's formation, been included in the SLFP's coalitions and governments to bolster its parliamentary support. S. W. R. D. Bandaranaike, former Prime Minister and head of the SLFP, used the politically influential Buddhist clergy to mobilize voters – successfully for the SLFP – in 1956.

The Janatha Vimukthi Peramuna (JVP, or People's Liberation Front) has been one of the most powerful nationalist forces, although it began as a secular Marxist party. During the 1970s and 1980s, before it became legal, the party led two vicious armed uprisings in the south, drawing on discontented and alienated Sinhalese youth. The JVP has since moderated its militancy to attract voters. It has remained vociferously nationalist, however, in its political policies and rhetoric, and statist and leftist on economic policies.

There are several Tamil parties, other than the LTTE, that compete in mainstream politics. These include the Tamil Eelam Liberation Organization (TELO), the All Ceylon Tamil Congress (ACTC), the Tamil United Liberation Front (TULF), and the Eelam People's Revolutionary Liberation Front (EPRLF). The major anti-LTTE Tamil party is the Eelam People's Democratic Party (EPDP) headed by Douglas Devananda, who has often been targeted by the LTTE. The Ceylon Workers Congress (CWC) has been the main party representing up-country or so-called "Indian" Tamils (who work predominantly in the tea industry), although it now faces competition from the recently formed Up-Country People's Front, headed by a former CWC deputy leader.

The previous assessment found that a culture of violence had been institutionalized, resulting in an erosion of respect for human rights, and entrenched militarization in some areas. Diminished respect for the rule of law was the product of political interests and/or security considerations, against a backdrop of

a gradual decline in quality of the overall judicial system. Yet the team was nevertheless able to conclude that Sri Lankans still held a fairly strong attachment to the ideals of the rule of law and respect for human rights, even though these ideals had been compromised in practice. The judiciary retained some public confidence, and the Human Rights Commission was generally well respected, within the limits of its influence.

Ethnic and political divisions have carried over into civil society and the media. Despite Sri Lanka's democratic tradition and the high quality of its human resources, there is not a strong tradition of independent civil society or of peaceful political action other than by voting. Most of civil society is divided along ethnic, linguistic, caste and often partisan lines, and between groups based in Colombo and those at the grassroots. The development of civil society has been further constrained by the relatively greater power of the state and political parties, and by the partisan nature of the media. Civil society has therefore not been able to provide an effectual check on the state, or a mechanism for consensus- and peace-building. Sri Lanka has had, however, a fairly wide variety of groups since the 1990s, many of which are staffed by people of extraordinary abilities and commitment.

The media, print and electronic, private and government-owned, have generally been of low quality and have often actively contributed to Sri Lanka's governance problems and the conflict. Media are highly segmented along ethnic/language lines, and within ethnic groups highly partisan. People have become cynical about the truth of the news they hear, see and read, but at the same time, have no access to more valid reporting. The team found government censorship in place in 2001, and suspected self-censorship was even more powerful. The team also found no media outlets based outside of Colombo, with the exception of Kandy and Jaffna.

The previous assessment concluded that the conflict and the state of democracy were directly and powerfully linked. The ethnic conflict has become a well-entrenched institution, affecting the structure of the state and the economy in ways that are antithetical to democracy, through – among other links – its violence, the separation of people and associated erosion of understanding, the costs to state services, the economy and general welfare, and the rise of groups with interests in perpetuating war. The decline in democratic politics and governance in turn fuels the conflict.

## **SECTION 3 SUMMARY OF POLITICAL EVENTS SINCE THE 2001 DG ASSESSMENT**

This section summarizes major political events since the previous DG assessment, conducted in April 2001; many of the events mentioned here are analyzed further in Section 4.

When the last DG assessment was conducted, the coalition government of the People's Alliance (PA), headed by the Sri Lanka Freedom Party (SLFP), held both the prime ministership and presidency. In late 2001, following a general election, the United National Party (UNP) took control of parliament under Prime Minister Ranil Wickremasinghe, while Chandrika Bandaranaike Kumaratunga, long-time leader of the SLFP, continued as president. The PA was voted into office in 1994 with considerable popular support for its avowed aim of ending the war. It subsequently entered into several rounds of talks with the Liberation Tamil Tigers of Eelam (LTTE). It also developed a set of constitutional revisions, including greater devolution and stronger rights guarantees that it believed could satisfy both sides.

Negotiations with the LTTE collapsed, however, and the government continued to pursue a military solution to the war. The PA was also unable to muster sufficient support for its constitutional proposals before a no-confidence vote forced elections in 2001.

The new UNP Prime Minister Wickremasinghe reopened peace negotiations, and the government signed a ceasefire agreement (CFA) with the LTTE in February 2002. The CFA ushered in a period, albeit brief, of some hope for longer-lasting peace. Violence declined noticeably, and the government and LTTE entered into another series of talks. The UNP appeared to be relatively technocratic and un-ideological in its approaches and was committed to economic reform.<sup>6</sup> The government's preparation for the negotiating process does not seem to have been very rigorous, with poor internal coordination and limited preparation for negotiations. As a consequence, the meetings between the two delegations lacked concrete ideas and rarely moved beyond posturing. In 2003, the LTTE withdrew from the talks, but later proposed to establish an Interim Self-Governing Authority (ISGA) in the North and East as a peace measure. While the ISGA proposal was probably extreme in the ideas it put forward, there was no other detailed proposal on the table. The ISGA proposal caused great fury in the south and among nationalists. The government did not formally reply to this proposal, and the president dissolved parliament in 2004.

The April 2004 parliamentary elections brought the SLFP back to power, now leading the United People's Freedom Alliance (UPFA) under Prime Minister Mahinda Rajapakse. The UPFA coalition initially included the JVP. In August 2005, despite President Kumaratunga's argument that her term ran until 2006,<sup>7</sup> the Supreme Court ruled her term in office would end in December 2005. In November 2005, Rajapakse won the presidency in a close contest with Wickremasinghe (by a margin of approximately 180,000 votes or less than 2%). Both the LTTE and an LTTE- breakaway group in the East, the Karuna faction, discouraged citizens from voting, helping ensure the election of the conservative Rajapakse.<sup>8</sup> Election violence, which had been highlighted in the 2001 assessment, remained a concern in some parts of the country but did decrease noticeably in 2004 and 2005.

The new government has been seen as more nationalist and more militaristic than its predecessor, although it is also accused of lacking direction and real policy content. As will be discussed below, the alliance and rivalry between the SLFP and JVP is one reason. The behavior of the Rajapakse administration has also highlighted potential DG problems associated with the vast powers allocated to the executive presidency under the 1978 constitution. The issue was apparent under Kumaratunga when she took over the ministerial portfolios for finance and defense and later dissolved parliament, all as the constitution allowed. The new president appears equally prepared to use constitutionally vested powers to cement his authority, but the implications seem to have become more salient to observers. Rajapakse has, for example, also retained the portfolios for finance and defense. As interviewees pointed out during this assessment, the president is immune, according to the constitution, from parliamentary questioning, so he need not defend his finance and defense policies before that body. He has reinforced his control over defense by appointing his brother as Secretary to the defense ministry (another brother serves as a presidential advisor).

The president's handling of the Constitutional Council and various independent commissions is perhaps the greatest area of concern among observers with regard to an extension of presidential power. During President Kumaratunga's term, she rejected some of the Constitutional Council's nominees for the

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<sup>6</sup> Some researchers complain that UNP economic reforms damaged the prospects for a "southern" or Sinhalese consensus on concessions to the LTTE because people felt that they saw no real peace dividend.

<sup>7</sup> She gained the presidency in an election that was held one year early. She argued that the regular term expired in 2006 and that this mattered more than the actual number of years in office.

<sup>8</sup> The motives of the two groups probably differed. The LTTE may have hoped that a more nationalist president would let it off the negotiation hook as far as the international community was concerned.

positions of commissioner and these posts were not filled. The new president by comparison has extra-constitutionally appointed commissioners. The president made these appointments because of the inability of the government to resolve a quarrel over whether the JVP or the Tamil National Alliance (TNA) is the third largest party in parliament and thus has the right to nominate the tenth and final councilor for the Constitutional Council. Many think that this crisis could be resolved because the Council can operate as long as six of the ten councilors are meeting; they believe however that this deadlock serves the ruling party well, because it removes a substantial check on its power.

Party stances and alliances remain crucial to understanding political dynamics in Sri Lanka. As noted above, the JVP campaigned under the UPFA in 2004 (although it later left the coalition). The JVP derives some of its influence from its penetration of state and other institutions, such as student associations, labor unions and the media. It was able to extract a promise of 40,000 government jobs from the president during the campaign, and is working on obtaining approval for another 10,000 public sector jobs. The JVP continues to have a strong base in the deep south, and is making a concerted effort to build support among Sinhalese in the north-east. It is recruiting particularly aggressively among Sinhalese farmers (whose families came with the irrigation schemes begun in the 1930s) and military families in the corridor from Kantale to Trincomalee, using both material and cultural appeals. The JVP's "Manel Mal movement," for example, extends social services to families of military members. Some of these appeals extend to inflammatory and democratically questionable tactics. The JVP opposes any significant devolution of authority to provincial government and has pushed the government to separate the northern and eastern provinces, citing a recent Supreme Court ruling. The party left the coalition when the government formally agreed to share the management of tsunami resources in the east. It is often able to "outbid" the SLFP in responding to Sinhalese fears, and thus push the government to take a harder line.

The clergy have now formally (re-)entered politics through the Jatikha Hela Urumaya (JHU, or National Heritage Party). The nationalist JHU was formed by monks and leaders of the lay-based secular Sinhala nationalist group Sihala Urumaya in February 2004. It ran a slate that consistently entirely of Buddhist monks and won nine seats. It has not been part of the UPFA coalition, but the party did endorse Rajapakse during the 2005 presidential election. The JHU believes that "extremist ethnic minority parties have conspired to violate the rights of the Sinhalese" according to one JHU leader we interviewed. The two major parties' inattention to this "injustice," along with a purported wave of unethical conversions to Christianity, prompted the formation of the JHU "to protect Sinhalese rights." Both nationalist parties are accused of intimidating and harassing political opponents.

In the 2004 parliamentary elections, parties supportive of the LTTE formed the Tamil National Alliance (TNA), which won 22 out of 225 seats in parliament. The constituent parties had run independently of each until the 2001 election, but then saw an opportunity to interact with the LTTE to strengthen the negotiation process, according to TNA Parliamentary group leader R. Sampathan. All Alliance members first contested on a Tamil United Liberation Front (TULF) ticket in 2001, allocating seats across the four parties. They won 15 seats, which is fewer than they had won in the prior election when they ran separately. Internal disputes led the parties to contest under the Federal Party banner in 2004. At this point the alliance gave seats to people close to LTTE, especially from Jaffna, and it began working with the LTTE on the peace process. The TNA has come under violent attack. A TNA politician was killed last year, and a TNA MP from Jaffna, Naradarah Raviraj, was assassinated in Colombo during the team's visit to Sri Lanka in November 2006.

With regard to the conflict, the CFA has broken down. Violations of the CFA were frequent before 2006 (with the majority, as noted, committed by the LTTE), but outright military action by the government and LTTE resumed this year. Displacements, injuries, deaths and disappearances due to the renewal of violence have increased sharply, not least among civilian populations (3,500 have been killed this year,

making a total of approximately 68,000 killed since 1983).<sup>9</sup> Large numbers of civilians have been displaced in the East because of the fighting, creating a new population of roughly 150,000 IDPs on top of the existing one of at least 350,000.<sup>10</sup> Some of these civilians have been forced to move back to their areas by government armed forces, the LTTE or the Karuna group, and some communities have been used as human shields to protect military assets. Contested areas are heavily militarized, while armed checkpoints have reappeared on the streets of Colombo and in other areas under government control. Jaffna and the North have reportedly been suffering from a humanitarian crisis due to the erratic supply of food and other necessities given the lack of agreement between the government and LTTE over the opening of the main A9 highway to the peninsula.

The situation in the East is particularly problematic and volatile. Government-controlled areas are increasingly militarized. Many interviewees cited the formation of the “Karuna Group” as the single most important recent development in the east. Vinayagamoorthi Muralitharan (alias Colonel Karuna Amman) was formerly the LTTE’s top commander in the East. He broke away in 2004 and now leads a powerful paramilitary group fighting against the LTTE, reportedly with at least the tacit support of the government. Karuna is responsible for, among other human right violations, a sharp rise in the recruitment of child soldiers. Karuna has recently founded a political wing, the Tamil Makkal Viduthalai Pulikal (TMVP), which has offices throughout the east.

Muslims are politically and spatially fragmented, and their security in the East is tenuous at best. Politically, they are split or undecided on the matter of the future configuration of the north and east provinces. If the provinces are merged, Muslims will constitute a minority within a minority province. If they are demerged, Muslims in the east may be better protected, but the Muslims expelled from Jaffna years ago (most of these are still in IDP camps around Puttalam) will be cut off from their brethren. Moreover, a referendum on the subject of merger (as has been recently discussed) will place Muslims in an invidious position: if they vote for merger, they will alienate Sinhalese; if they vote against, they will alienate the Tamils. So even if they could come to some kind of Muslim consensus on this issue, being clear about their position would be highly risky politically and perhaps even physically.

The two parties most prominently seen as representing Muslims are the Sri Lanka Muslim Congress (SLMC) and the Muslim National Unity Alliance (NUA). The latter was formed by Mohammed Ashraff, founder and leader of the SLMC, as an attempt to establish a political movement that represented all ethnic groups. Shortly after his death, a dispute between his widow Mrs. Ferial Ashraff and Mr. Rauf Hakeem, deputy leader in the SLMC, resulted in Mrs. Ashraff assuming the leadership of the NUA with Mr. Hakeem becoming leader of the SLMC.

The Peace Secretariat for Muslims (PSM) was formed in December 2004 when these two parties, the SLMC and the NUA, signed a Memorandum of Understanding. Since its formation other Muslim groups and political parties have been invited to join. The Secretariat has formed help centers on the tsunami-affected eastern and southern coasts, and it now has five district offices in Trincomalee, Galle, Batticaloa, Ampara and Puttalam that aim to engage constituents in the peace process. Unfortunately, conflict between SLMC and the NUA led to the resignation of the head of the PSM. A new director has now been named.

Despite the existence of the PSM, Muslims still feel marginalized with regard to the larger peace process. They felt they were left out of the Indo-Lanka accord that produced 13<sup>th</sup> amendment, and are aware now that there is no specific Muslim representation in either the Presidential Experts’ Group currently

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<sup>9</sup> Associated Press, Dec. 9, 2006.

<sup>10</sup> This figure refers only to individuals displaced by the conflict; it does not include those affected by tsunami who number around 500,000 according to Freedom House.

examining constitutional reforms or the government's Peace Secretariat. More generally, Muslim youth in the East are highly isolated from the rest of the country, by language and lack of skills, and a concomitant lack of exposure. There is apparently no armed movement among Muslims at this time, but there may be rising Muslim radicalism, centered in South Eastern University.

Country-wide, Christians have also come under pressure recently. An anti-conversion bill was tabled in parliament in 2003 but did not make any headway (probably because of international pressure). There were also attacks that year on churches. The situation has improved some since then but Christians feel they meet with discrimination. Most minorities feel increasingly anxious about their security.

Peace talks were held between government and LTTE representatives in Geneva in November 2006, but the two parties were unable to agree on another meeting. An all party conference (APC) of party leaders on the peace process has been formed, chaired by President Rajapakse. It is supported by a working level committee with representatives from participating political parties, along with an Experts Group appointed by the president to look at on peace and constitutional reform matters. The APC agreed unanimously in January 2006 on the need for renewed talks.<sup>11</sup> In addition, the government's Peace Secretariat is now much better funded than previously, and also engaging expert support.

The government is considering reforms of the electoral and local government systems as well as implementing a bill of human rights. In terms of electoral reform, the government is reported to be considering a mixed system of proportional representation and first-past-the-post. In terms of devolution, conversations with senior party personnel in the SLFP and the UNP suggest there is interest in replicating India's decentralization model, particularly the village level panchayat system. The newly released (December 2006) majority report, representing the views of 11 of the 17 members of the Experts' Group, recommends provincial-level elected government and substantial powers for provincial governments. The remaining six members of the Group have submitted two dissenting reports, and the government very quickly distanced itself from the majority report when it came under considerable fire from nationalists.

It is important to note that the government has explicitly not connected – substantively or in terms of sequencing – the discussions of electoral reform and devolution to the peace process. It clearly wishes to proceed with these reforms prior to and separate from any negotiations with the LTTE.

Sri Lanka's economy has grown at reasonable rates in recent years, despite the conflict. However, the recent USAID economic growth assessment indicates that macroeconomic stability is at risk. The inflation rate is in the double digits, money supply growth is excessive, and the budget deficit is unsustainably high. The conflict has clearly inflicted major opportunity costs on the economy over time, and its renewal will dampen the recent growth spurt through its effects on investment, productivity and other sources of revenue. For example, many package tours, an important source of tourism revenues, have been cancelled for the winter due to recent bombings. The government's latest budget, released very recently, will add to the budget deficit through continued expansion of government jobs and, most seriously, a significantly increased allocation of over 40% to military expenditures.<sup>12</sup>

In October 2006 the SLFP and UNP signed a memorandum of understanding ("the MOU") citing resolution of the conflict, electoral reform, good governance and social development as the four areas in which they would collaborate. Few details are provided in the text so it is unclear what is intended in these categories. The MOU may facilitate cooperation on the peace process and some fundamental reforms, not least because it may help the government to act without the support of nationalist parties. It may even help marginalize the nationalist parties. It also, however, dilutes any real opposition in parliament. Wickremasinghe appears to have viewed the agreement as necessary to the party's and his

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<sup>11</sup> The TNA was not invited to participate in the APRC according to Mr. Sampathan.

<sup>12</sup> Many military expenditures are off-budget so what appears in the budget is only a portion of total expenditure.

own political survival, as the UPFA had begun to lure UNP MPs to its side with ministerial portfolios. Wickremasinghe was facing growing internal opposition, and the MOU may stem the tide of defections at least temporarily.

## SECTION 4 DG PROBLEMS AND DYNAMICS

### 4.1 SUMMARY

The assessment team found a substantial consensus of opinion that the democracy and governance environment has deteriorated since 2005, and that the speed of the decline has increased in recent months. Several Sri Lankan sources saw the political situation as so dire that they doubted that Sri Lankan institutions and actors could reverse the trend line. Many informants voiced a need for external checks because they believe that internal ones are not working. These opinions are consistent with several major political indices, included throughout the report, which show deterioration in Sri Lanka's scores in recent years.<sup>13</sup> While the Freedom House political rights and civil liberties index scores have been stable at "partly free" since 2003, a downward tendency is noted for this year.

*Popular and political consensus around inclusion* remains at the heart of the country's governance and conflict problems. Which groups are full members of the nation and are therefore entitled to full access to the state machinery and government resources is a question that has not been resolved. The consensus/inclusion problem is fundamentally unchanged. There has been an increase in nationalist rhetoric in recent years; the two previous governments, led by the UNP and the PA, sounded substantially more inclusionary in their stated policies and public pronouncements than the current government. Another new aspect is that Muslims have become increasingly vocal about their exclusion from the peace process. They resent being squeezed between the government and Tamil groups, and are mindful of the danger that any position they take is likely to be disliked by one side or the other. They feel vulnerable to both. Some Muslim political factions are demanding a non-contiguous Muslim region with some powers of self-governance, along the lines of a Union Territory in India. USAID's support for the Muslim Peace Secretariat is an important intervention aimed at helping Muslims develop a unified set of demands and more expertise in negotiation so that they can more effectively represent the views of their co-religionists.

*Political competition*, particularly between the two main parties, the SLFP and the UNP, has long prevented a negotiated settlement of the conflict. The party in opposition has typically acted as a spoiler of any peace proposals, confidence building measures and concessions put forward by the party in power. The new Memorandum of Understanding between the two parties offers an important opportunity to obtain a mainstream political consensus on key reforms, some of which could strengthen democracy and improve the prospects for peace.

As noted, electoral violence decreased in the 2004 and 2005 elections, though there were still incidents of violence and allegations of fraud. The decrease is largely due to the efforts of election monitoring NGOs

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<sup>13</sup> World Bank governance indices, Freedom House *Freedom in the World* indices, Reporters without Borders and Freedom House press freedom indices, and Transparency International's index of corruption perception surveys all show declines. See [www.worldbank.org/wbi/governance/govdata](http://www.worldbank.org/wbi/governance/govdata); [www.freedomhouse.org](http://www.freedomhouse.org); [www.rsf.org](http://www.rsf.org); and [www.tisirilanka.org](http://www.tisirilanka.org).

and the National Electoral Commission, perhaps the only independent commission that is functioning effectively, although it has not been fully constituted. Despite this progress, it remained the case that the 2006 local government elections could not be held in some contested areas in the north and east.

***The most significant trend is the continued erosion of already limited checks and balances on executive authority.*** To an important extent, the presidency is able to take advantage of long-standing structural weaknesses that give the Executive extraordinary power relative to the other branches of government. The best example of this, as described above, is the extra-constitutional appointment by the president of commissioners to the several independent agencies established to prevent the politicization of public sector institutions and check the abuse of power. Other checks are also not working particularly well. The judiciary’s independence has been weakened, its effectiveness is less than optimal, and its fairness has been called into question. Parliament is weak and, when it is controlled by the president’s party, acts as a rubber stamp. It can be dissolved by the president. Significant power sharing with local and provincial government has never been fully implemented, and the limited framework for devolution fails to address an issue at the heart of the long-standing ethnic conflict.

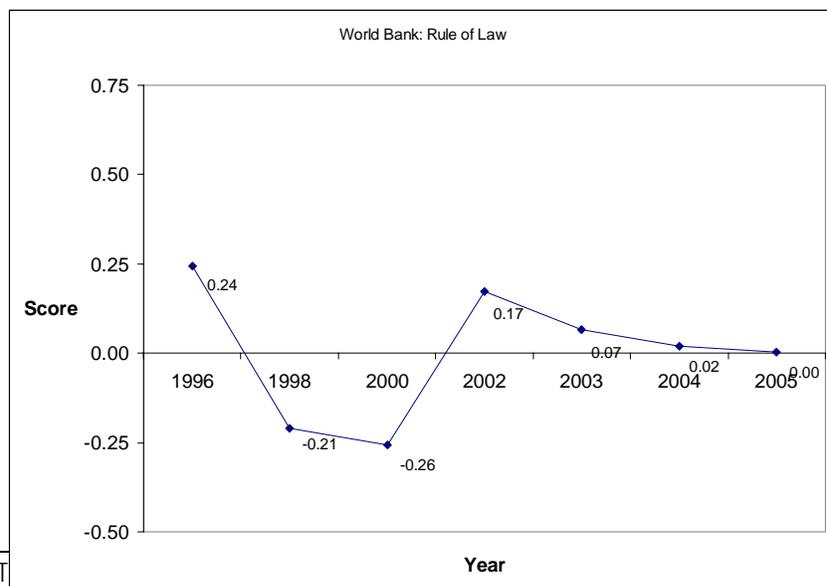
The steady erosion of checks and balances has led to three key DG trends: an increase in human rights violations, a decrease in political space, and a decrease in the quality of governance. These three problems are discussed below.

## 4.2 THE INCREASE IN HUMAN RIGHTS VIOLATIONS

***The last two years have seen a decrease in the respect for the rule of law, an increase in human rights violations, and a continuation and perhaps exacerbation of Sri Lanka’s long-standing culture of impunity.***

The rule of law is less strong than one would hope in a 50+ year old democracy, and there is a long-standing problem with impunity. The World Bank’s rule of law index shows a substantial improvement from 2000 to 2002 and a steady decline thereafter. Little is done to investigate, prosecute, convict and punish rights offenders. The government is unable to pursue LTTE perpetrators and has little incentive to pursue abuses linked to its own security and police forces. Victims and their families are frequently threatened, intimidated or suborned by the perpetrators of abuses; if they do have the courage to report an abuse, they are likely to face serious repercussions. The team heard from human rights groups that many of the complainants who seek their help in recovering an abducted family member refuse to file an official complaint with either the National Human Rights Commission or the police due to fear of what will happen to the abducted person or to them.

There is no consolidated database concerning human rights violations, making it difficult to speak authoritatively about trends. International protection agencies, NGOs, and the government’s own institutions record only those complaints that are directly made to them. Since individuals may complain to more than one organization but not necessarily to all organizations, these separate



records cannot simply be aggregated in order to obtain a full count, nor do the records of any one organization suffice to demonstrate the magnitude of the problem. In addition, it is widely believed that all formal counts of violations are under-estimates.

Many of those interviewed for this assessment concur that the number of political killings, abductions, and disappearances is rising and that an increasing number of these cases are not reported to the authorities. While many of the violations can be linked to the LTTE, an increasing number appear tied to the Karuna faction. Others may be linked to government security forces. Displacements, injuries and deaths due to renewed fighting have also increased. Finally, some informants believe that ordinary crime has grown. Given an atmosphere of impunity and an ineffective police and judicial system, there is little to discourage individuals from pursuing crime as a means of financial or personal gain.

The renewal in fighting and LTTE bombings had, by early December 2006, led the president to announce his government's intent to re-impose the Prevention of Terrorism Act (PTA), which was in place from the late 1990s until 2002. In its first incarnation, it led to many human rights abuses, including large scale and arbitrary arrests of Tamil citizens. The JVP has supported re-enactment of the PTA and has also called on the government to annul the CFA and ban the LTTE. The PTA makes it illegal (with very few exceptions) to have dealings with an offender such as the LTTE. By mid December 2006, the government had imposed a new set of emergency regulations called the Prevention and Prohibition of Terrorism and Specified Terrorist Activities Regulations or PPTSTAR. These regulations are very broadly and imprecisely written and the media, peace groups and other think tanks have expressed concern that they will be used to stop legitimate humanitarian assistance, information dissemination, organization and dissent. These regulations appear to grant yet more leeway to security forces and the police. While there is an appeals process, it is essentially controlled by the president. The government already had Emergency Regulations in force and these seemed more than adequate. In a statement made on 8 December, U.S. Ambassador Robert O. Blake said that the US Government thought the re-imposition of the PTA was inadvisable, noting that civil liberties were already under some strain in the country.<sup>14</sup>

There is considerable concern among Sri Lankans, humanitarian agencies and the donor community about the human rights situation in Sri Lanka currently. The majority report of the Presidential Experts' Group examining constitution reforms called for inclusion of a comprehensive Bill of Rights in the constitution and for some provision of group as well as individual rights.

#### **4.2.1 ABDUCTIONS, DISAPPEARANCES AND POLITICAL KILLINGS**

The ICRC reports 750 disappearances for 2006 (as of mid-November) compared to 150 in 2005. The National Human Rights Commission (NHRC) reports 400 disappearances in Jaffna alone in 2006. Young Tamil males are abducted by both the LTTE and the Karuna faction to make up for the declining number of volunteer fighters. By late October, UNICEF had recorded 142 unresolved abductions of under-age children by the Karuna group; it believes the actual number is much higher. Alan Rock, the UN Special Adviser on Children and Armed Conflict, also found evidence that underage recruitment has increased in government-controlled territory in the East. Tamils in the East have grown very fearful of "white van" abductions which are linked to Karuna's cadres.<sup>15</sup> It has proved very difficult to recover abducted children from either the LTTE or Karuna, despite increasing pressure from UN agencies and ICRC.<sup>16</sup>

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<sup>14</sup> "United States Opposition to Sri Lanka's Prevention of Terrorism Act," Asian Tribune, 8 December 2006, <http://www.asiantribune.com>.

<sup>15</sup> The team heard stories of teenagers failing their "O" level high school exams because it was not safe to leave the house to attend private coaching sessions.

<sup>16</sup> There is some limited success with younger children who are 13 or 14 and almost none with teens 16 and up.

Anecdotal evidence suggests that the police may be declining to open cases when parents complain that a child has been abducted by the Karuna group. Abductions are also being undertaken to raise funds; in such cases, the target is more likely to be a businessman whose family can afford to pay ransom.

There is an emerging consensus of opinion that government security forces have forged a working relationship with the Karuna group, although the government continues to deny this. Recent Human Rights Watch (HRW) investigations in the East found substantial evidence that the Sri Lankan military and police have been directly involved in some abductions, and are likely to be knowledgeable about others.<sup>17</sup> The agency investigated more than 20 child abduction cases, interviewing witnesses and the parents of abducted children in government-controlled areas. Karuna forces came later that day and abducted eight of the boys and young men. In Mr. Rock's November 13 statement, he too says that he found "evidence that certain elements of the government security forces are supporting and sometimes participating in the...forced recruitment of children by the Karuna faction." In response to these charges, the president recently ordered an investigation. Even more recently, in early December, Colonel Karuna, who has repeatedly denied the charges, agreed to open his camps to UNICEF inspection, release any children found, and emphasize to his commanders that child recruitment is unacceptable.<sup>18</sup>

The U.N. Working Group on Enforced or Involuntary Disappearances has noted that Sri Lanka has the second largest number of unresolved disappearances in the world. Disappearances differ from abductions in that the victim cannot be traced and is usually presumed to be dead, so many disappearances are actually political killings. The LTTE is responsible for many disappearances/killings, but the Karuna faction and the Sri Lankan security forces are attracting increasing blame. For example, in May 2006, eight young male Tamils disappeared from a Hindu temple in the north. Many eyewitnesses had seen army personnel and vehicles in the vicinity of the temple.<sup>19</sup> None of the men has been recovered. Other examples of disappearances can be found on various human rights websites, including Amnesty International, Human Rights Watch and the Asian Human Rights Commission.

The National Human Rights Commission reported that the security forces appear to have been involved in at least 25 politically-motivated disappearances in 2005. As the U.S. State Department's own Human Rights Report (2005) points out, the Sri Lankan Government has done little to pursue such cases. It is difficult to address enforced disappearances officially as proof of death is needed, otherwise, the case is prosecuted as an abduction, which is a less serious charge. The Asian Human Rights Commission, based in Hong Kong, would like protection from forced disappearances to be included as a fundamental right in the Constitution so that evidence of death is not required and cases can be taken directly to the Supreme Court.

There has also been an increase in outright political killings. Well known examples include the murder of five high school boys on the beach near Trincomalee last January,<sup>20</sup> the killings of six young men in Avissawella last April,<sup>21</sup> and the murder of 17 Action Contre La Faim staff in Muttur (Trincomalee district) last summer (this latter case is discussed below). Singhalese nationalist groups may also be involved in intimidation and violence, particularly of Tamils and non-nationalist/pro-peace groups and

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<sup>17</sup> Human Rights Watch, statement on website ([www.hrw.org](http://www.hrw.org)), November 16, 2006 and November 28. Reaching the main Karuna camps, where abducted children are suspected of being held, requires passing through multiple government check points, leading HRW to suspect collusion since the white vans with child passengers were not stopped at checkpoints.

<sup>18</sup> "Sri Lanka: Karuna denies allegation of recruitment and use of children and volunteers to work with the UN." Asian Tribune, 8 December 2006, [www.asiantribune.com](http://www.asiantribune.com).

<sup>19</sup> Urgent Action appeal, 9 June 2006, Amnesty International website, <http://www.amnesty.org>.

<sup>20</sup> One family which has insisted in pursuing this case has been forced to flee to India due to threats.

<sup>21</sup> The government claims that the murders were gang-related. However, some have noted that the means of killing was identical to murders believed to be committed by the Special Task Force in the 1990s.

activists. Speculation is rife about the identity of the assassins who killed a senior Tamil National Alliance (TNA) Member of Parliament in October, less than a year after another TNA MP was assassinated.

Police attacks against demonstrators have increased in the last couple of years. Those protests that have been targeted have addressed a spectrum of issues and political bias, so the attacks may represent poor crowd control more than political bias. The police tend to claim self-defense in these cases.<sup>22</sup>

#### **4.2.2 IDPS AND CIVILIAN CASUALTIES**

While all numbers seem to be estimates, one protection agency estimates the number of new IDPs created this year as around 150,000. The number given is often significantly higher than this (ranging as high as 209,000) but there is some double-counting and some new Tamil IDPs have already immigrated to India. Humanitarian agencies have complained that restrictions have been placed on their access to vulnerable populations in the north and east, and a humanitarian crisis has been brewing in Jaffna for some months now. Neither the government nor the LTTE makes it easier for international protection organizations to work in the north and east. Local staff, and especially Tamils, have been harassed and threatened and have felt increasingly at risk. Sadly, their fears are warranted, as the August murder of 17 local employees of Action Contre La Faim (ACF) shows.

With the renewal of fighting this year, examples have emerged of civilians being used as a military asset. The LTTE has positioned weaponry and cadres next to civilian settlements, while the government has in some cases ignored the risk of civilian casualties in order to target these positions. There have been examples of attempts (by the LTTE principally) to prevent people from fleeing areas of fighting and of pressure (by the government) to force displaced families to return to unstable areas. Residents of Muttur in Trincomalee district experienced both patterns this summer and autumn.<sup>23</sup>

#### **4.2.3 POLICE BRUTALITY**

Sri Lanka has a long-standing and largely unaddressed problem of police brutality. Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions concluded a year ago that there was “a nationwide pattern of custodial torture...,” exercised by “ordinary police carrying out established routines.”<sup>24</sup> National Human Rights Commission data show 635 complaints about police torture and 20 deaths due to torture in 2005. The Asia Human Rights Commission reports that it has received very credible reports of 46 persons tortured or murdered by police at 29 different police stations between 1/03 and 2/04.<sup>25</sup>

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<sup>22</sup> Countries at the Crossroads, 2006. Freedom House. <http://www.freedomhouse.org>.

<sup>23</sup> Refugees International complained about the forced return of IDPs to Muttur and made the following statement on September 11, 2006: “In the context of the expressed reluctance of the displaced themselves to return ... the decision by the government of Sri Lanka to empty the shelters and return the displaced to Muttur violates the principle of voluntary return and the government’s obligation to protect displaced people embodied in the Guiding Principles on Internal Displacement...” Note that Kantale, where the displaced families were staying is a Sinhalese-majority town, and the authorities had some reason to fear rising tensions if the Muslim IDPs overstayed their welcome. <http://www.refugeesinternational.org>.

<sup>24</sup> Alston, Philip, “Civil and Political Rights, including the Question of Disappearances and Summary Executions,” Report of the Special Rapporteur on ExtraJudicial, Summary or Arbitrary Executions, UN Commission on Human Rights, March 2006, p. 18.

<sup>25</sup> This count does not include complaints where the testimony included any factual inconsistencies. <http://www.aNHRC.org>.

Torture has become too common. Police lack strong investigative skills and are poorly equipped to solve crimes. Unresolved crimes make them look bad so there appears to be some tendency to identify a culprit (often an individual who is relatively powerless) and then abuse that person until a confession is forthcoming.<sup>26</sup>

Some but not all deaths in police custody are, however, linked to torture. Philip Alston saw reports, as yet unchallenged by the government, indicating that from November 2004 to October 2005 the police shot 22 criminal suspects after taking them into custody, a number that does *not* include deaths due to torture. In all 22 cases, the shooting was fatal, and the police claimed that either the prisoner tried to escape or the prisoner attacked.

There is no incentive for the police to end the physical abuse of prisoners as long as 1) there is little questioning of confessions obtained under extreme duress in court; and 2) there is little attempt to prosecute or discipline police who torture or kill prisoners. In the case of one death from a police beating in 2005, the two indicted police officers remained on duty nine months after the death. In another case, the responsible officers remained on duty eight months later. In none of the 22 deaths-in-custody cases discussed in the previous paragraph was a police inquiry even opened. In another example, Philip Alston complained that the Inspector General Police (IGP) was less than fully responsive to a request from the National Police Commission to suspend 106 police officers due to indictment for torture in 2005; only some of the 106 were actually suspended by the IGP.<sup>27</sup> In one significant case, not a single police officer involved in guarding 27 Tamils killed by a mob in Bindunuwewa in 2000 has been convicted. The police stood by while the mob attacked. The Human Rights Commission found that the mob violence was consistent with a planned attack raising the question of possible collusion with the police and that the police had been guilty of a “grave dereliction of duty.” While some of the involved policemen were prosecuted and the Colombo High Court found five policemen guilty in 2003, the Supreme Court subsequently acquitted all five. Reportedly, the courts are reluctant to convict police in these cases due to a mandatory seven year sentence for torture.

As with abductions and disappearances, it is assumed that many instances of physical abuse never come to light since the victim (if living) and his family are too terrified to file a case and are skeptical that the low likelihood of obtaining justice justifies the added risk. There are no witness protection protocols or programs in Sri Lanka; even if there were, no victim complaining about police torture would be likely to entrust his safety to the police. In one famous case, police torture victim Gerald Mervyn Perera was murdered in late 2004, just a few days before he was due to testify in court. The court had previously awarded him compensation for police-inflicted torture in 2002; he was severely injured and apparently spent several days on life-support systems in the hospital before recovering. He and his wife had testified that he was arrested as a possible suspect in a murder case (about which he turned out to know nothing) by ten officers of the Wattala station, none of whom were in uniform at the time. The police failed to pay him the compensation, so he returned to court to seek payment.<sup>28</sup> The policemen interdicted before the High Court for torture were still at work when the murder took place.

In addition, in some conflicted parts of the country, the police have essentially become a counter-insurgency force. They are less engaged in ordinary policing than they are in security operations. As noted earlier, the Emergency Regulations give the police extraordinary power. They permit the police to detain individuals for three months without a charge, dispose of the bodies of those killed in custody

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<sup>26</sup> A study by the Asian Legal Resources Centre in Singapore in 2002 on custodial deaths and torture suggested such a pattern. <https://www.alrc.net>.

<sup>27</sup> *Ibid.*, page 21.

<sup>28</sup> *Countries at the Crossroads*, 2006. <http://www.freedomhouse.org>. The court case was still underway as of late 2006. More can be learned about this case at <http://www.ahrchk.net>.

without a formal inquest, and also permit the armed forces to arrest individuals as long as they turn them over to the police in 24 hours.

Police detentions are another area of concern; 385 cases of wrongful arrest/detention were filed with the Human Rights Commission in 2005. This is linked partly to the low skill level of the police; arresting any plausible culprit becomes a substitute for arresting someone against whom the evidence is strong. The police are supposed to notify both the family and the NHRC about a detention within 24 hours, but the recently deceased chairman of the NHRC complained that police do not routinely notify the Commission in the prescribed time.<sup>29</sup> The NHRC then notifies the family; until that happens, the family may not know where their loved one is. A recent presidential directive to the police to obey the procedure rule is a good step but oversight of compliance is needed. In addition, families are supposed to be able to visit detainees but are commonly denied access. The NHRC does try to visit detainees to check on their welfare, but it does not have the staff and vehicles to do this very consistently or often.

The Sri Lankan Armed Forces may also arrest or seize suspect individuals. They insist that they turn all detainees over to the police. Unfortunately, there have been cases of individuals arrested by the military but for whom the police have no record of receipt.

#### **4.2.4 INSTITUTIONAL SAFEGUARDS**

Institutional safeguards are not working well to prevent or punish abuses. The main institutions are discussed below.

##### **4.2.4.1 The National Human Rights Commission (NHRC)**

The Human Rights Commission was established via separate legislation in 2000. The Commissioners are supposed to be appointed by the Constitutional Council, but due to its non-functioning, they have currently been named by the president. The NHRC is or can be an important institutional safeguard, but it has been substantially weakened by this crisis over the Constitutional Council. There is a strong sense that the Commission chairman had become more bureaucratic, less pro-active and more subservient to the government. The Commission is now without a chairman due chairman's recent death. The Commission also suffers from certain structural weaknesses. The Act establishing the Commission defines its jurisdiction so broadly that there is a backlog of over 10,000 cases, many of which involve complaints about public sector employment. One example, a particular focus of the chairman of the Commission when the team met with him, was a complaint made by a woman who had retired from a public sector bank and was having difficulty obtaining her pension. By U.S. standards, this is a labor dispute and not a human rights violation that should be consuming the scarce time of NHRC staff.

According to the recently-deceased Chairman, it now takes the Commission as long as a year to begin investigating a complaint. Under his predecessors, however, priority was given to serious human rights violations, particularly when the safety of individuals was at risk. The current Commission will also only act on a complaint from an individual; previously, the Commission would investigate reports even in the absence of a formal complaint. For example, if a staff person saw a serious allegation in the newspaper, the Commission would find a way to investigate it and would do so in a timely manner.

The NHRC is seriously under-funded and under-staffed (both in number and in professional qualifications and training) and lacks sufficient vehicles for field investigations. Like the other "control" Commissions, it is dependent on the Ministry of Finance for its annual budget and so at least theoretically can be brought to heel by limiting its budget.

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<sup>29</sup> Team interview with the late Chairman of the NHRC, November 2006.

On the plus side, several sources reported that some of the NHRC field offices do good work, often under very difficult conditions. There are field offices in the main conflicted or contested areas, such as Jaffna, Trincomalee, Batticaloa and Ampara. There has been periodic harassment and intimidation of these offices - one office was ransacked in 2005 and, in another incident, a field officer was assaulted by the police and subsequently immigrated to Canada in late 2004. A majority of members of the Presidential Experts' Group on constitutional reforms called for the NHRC to be recognized in the constitution and suggested that the provinces might set up their own human rights commissions.

#### **4.2.4.2 The National Police Commission (NPC)**

This body was created at end of 2002 to oversee the work of the police. Constitutionally the NPC is obligated to conduct investigations into allegations of misconduct itself. Initially, however, it delegated citizen complaints against police of the rank of inspector or below directly to the Inspector General Police (IGP) for investigation, only to find that often no action would be taken by the IGP. The NPC also lacks any written complaints procedure, leaving much to the discretion of its staff and Commissioners. The NPC now no longer refers complaints to the IGP but it is unclear how much investigating it actually does itself given its small staff and budget. There is also the issue of political will. The IGP and other high level members of the ruling coalition have been critical of any independence shown by the NPC. The current NPC chairman has been appointed by the president, after a hiatus of some months during which the NPC did not really function, so it cannot be expected to demonstrate much independence at present.<sup>30</sup>

#### **4.2.4.3 Ministry of Disaster Management and Human Rights**

This Ministry, which rather unexpectedly combines two very different program areas, is new. With respect to its human rights responsibilities, the Ministry has taken over functions that used to be filled by the Ministry of Foreign Affairs. The Ministry has very limited staffing and a small budget for its human rights unit and is heavily supported by UNDP. It is also receiving support from UNHCR for a recently initiated campaign to build public support for ethnic tolerance and harmony. Currently, the Ministry is trying to help the NHRC increase its budget by working with the Finance Ministry. It wants to train public servants on human rights and has begun some training for the military. It was also involved in developing the terms of reference for the Presidential Commission of Inquiry into 15 outstanding cases of human rights violations.

The minister is even newer than the Ministry and is not from the majority party, the SLFP. This may limit his influence. He has a good reputation and is reported by several credible sources to be seriously interested in human rights.

#### **4.2.4.4 The Sri Lankan Monitoring Mission (SLMM)**

The SLMM is an international entity that monitors compliance with the 2002 Cease Fire Agreement (CFA). It is staffed by European and mainly Scandinavian monitors and is chaired by a Norwegian. Human rights violations do count as cease-fire violations. The SLMM accepts complaints about violations and then forwards the complaints to the appropriate parties. It does not investigate but rather presses the police to investigate these complaints. U.N. Special Rapporteur Philip Alston criticized the SLMM in 2005 for taking an unnecessarily narrow view of its role and for not making more information about violations public. He did not believe that the terms of the CFA precluded a broader investigative

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<sup>30</sup> "Prevalence of Torture in Sri Lanka: Persisting Problems and Outstanding Issues," alternative report to the Committee against Torture by the Asia Human Rights Commission and the Law and Society Trust, sections 6.1-6.22, October 2005. <http://www.ahrchk.net>.

role for the SLMM.<sup>31</sup> His points may now be moot as the SLMM has been greatly weakened by the loss of several monitors due to the EU ban on the LTTE. A final problem is that Colonel Karuna was not a party to the CFA since he was still attached to the LTTE at the time, so the SLMM has no authority to monitor the behavior of his paramilitary cadres.

#### **4.2.4.5 Human Rights NGOs**

Human rights NGOs play an essential role in protecting fundamental rights because, while the NHRC investigates, it does not pursue cases in the courts. NGOs do take these cases and try to obtain justice for the victims and ensure that the judiciary obliges government institutions to respect the rule of law. They also try to protect victims and complainants, placing those at risk in safe houses, putting cases in the public eye, and lobbying government. There are not many such groups; they are weak institutionally and under pressure by all sides in the conflict. In addition, in the aftermath of the CFA, most donor funds were devoted to peace processes and peace groups; funding for human rights groups declined. These groups were side-lined during the negotiations because human rights were seen as a potential “spoiler” issue.

#### **4.2.4.6 Supreme Court and Appeals Court**

The Chief Justice and Appeals Court judges are appointed by the president; there is no confirmation process. This gives the president considerable influence over the senior judiciary, if s/he wishes to use it. Opinion on the current Chief Justice, appointed in 1999, is divided, but many seem disappointed in his handling of the Supreme Court and believe that the judiciary has lost its independence from the executive branch. Two senior judges on the Judicial Services Commission have resigned and one Supreme Court judge decided to retire, purportedly due to concern over politicization of the judiciary. There is some suspicion that other activist senior judges have been sidelined and are not assigned to cases of significant political import. The Bar is reported to be split on the Chief Justice, and has not said anything publicly. Little discontent has been expressed by the justices themselves. The Chief Justice heads the Judicial Services Commission so he has great control over lower judiciary; he has improved salaries and benefits for judges and none wants to lose a promotion or be transferred to a less hospitable part of the country.

A number of controversial decisions are named by those who are concerned about the willingness of the judiciary to check executive power and ambitions:

1. In 2004 the Supreme Court ruled the P-TOMS agreement between the government and the LTTE was only partly legal. To be fair to the government, it did not raise the issue in the court; the JVP, which left the ruling coalition over P-TOMS, filed the case after it exited the ruling coalition. The President also opposed the implementation of P-TOMS in his election campaign. This agreement would have permitted co-management of tsunami assistance funds, giving the LTTE some say over assistance for some areas in the north and east. Efforts to collaborate in reconstruction collapsed due to the failure to implement P-TOMS, and less aid ended up flowing into the north and east, adversely affecting communities hit hard by the tsunami. The court ruling also contributed to a loss in confidence by the LTTE in the peace process.
2. In 2006 the Supreme Court ruled that the temporary merger of the former North and East provinces into one province, which took place in 1989, was not fully legal. Once again, the case was brought by the JVP. Since substantial autonomy for a combined north and east province has long been a threshold demand by the LTTE, this is a court decision that has major ramifications for the peace process. The Court recommended that the government hold a referendum on

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<sup>31</sup> Alston, Philip, “Civil and Political Rights, including the Question of Disappearances and Summary Executions,” Report of the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, UN Commission on Human Rights, March 2006, p. 14.

merger in the concerned districts. The National Elections Commission is unlikely to allow a referendum to proceed in the whole of the area, due to the inability to ensure voting under free and fair conditions. The majority of the panel of experts charged by the president with examining needed constitutional reforms released a report in December 2006 that called for a temporary ten-year merger of the two provinces, to be followed by a referendum.

3. Sri Lanka acceded to the First Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) in 1997. As a result, Sri Lankan citizens harmed by violations of their rights could complain to the U.N. Human Rights Committee within the framework of the Optional Protocol. A number of Sri Lankans had done so and some have been successful. The Human Rights Committee had found that some decisions of the Sri Lankan Supreme Court had violated provisions of the ICCPR. In 2006 a Supreme Court bench ruled that, despite government ratification, the Optional Protocol of the ICCPR had no legal validity in the absence of specific Sri Lankan legislation confirming treaty provisions. This means that decisions of the U.N. Human Rights Committee (now Council) regarding cases of Sri Lankans are no longer binding in Sri Lanka.<sup>32</sup>
4. This year the Chief Justice determined in two separate cases, including the North East Province demerger case, that the Supreme Court was not limited to ruling on elements included in the petition before it; it could also rule on matters the Court decides are related to the issues raised in the petition. This appears to constitute a legal innovation and it is one that permits a great deal of court activism.

There has been only one Court of Appeals, which is based in Colombo. Its backlog has climbed from 7,000 cases in 1998 to 14,000 in 2006. Cases are often appealed by the loser in a lower court if the additional time to be gained from a very slow process works to his/her advantage. Frivolous appeals clog the Appeals Court. The Ministry of Justice is interested in creating additional courts of appeal in other provinces, but this appears to require a constitutional amendment. There is also consideration of expanding the number of judges on the current Court of Appeals from 11 to 21 so more cases can be heard. The justice system did institute four new high courts in the last year and plans to add another six. There are, however, limitations on the ability of the high courts to hear criminal appeals, so such cases go directly to the Court of Appeals. Reportedly, the justices are looking for a way around this problem. The Presidential Experts' Group examining constitutional reforms has called for provincial courts of appeal which would have fundamental rights jurisdiction for their areas.

Even at the Supreme Court level, judges have no support. There is no system of law clerks. Judges must do their own research and write their own judgments. Reportedly there is not much comfort with writing judgments, and the justices tend to put off the chore. It can therefore take months between a decision being made and the judgment being written; meanwhile no action can be taken. This adds to the general slowness of the system.

#### **4.2.4.7 Ordinary Courts**

The ordinary court system is very inefficient. Case processing is inordinately slow; it is not unusual for a case to take 5-10 years and civil cases may run longer. The backlog of cases is very large. There do not appear to be strong performance standards for judges. The recently released Presidential Experts Group majority report on constitutional reform seemed to express dissatisfaction with the judiciary when it said that "there ought to be a degree of accountability of judges in respect of the work done by them." To be fair to the judiciary, there are not enough judges given population growth. Caseload per lower court

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<sup>32</sup> The Asian Human Rights Commission website has a number of statements on this issue on its website. <http://www.ahrchk.net>.

judge is alleged to be around 500, a very high number. One senior judge said that lower court judges were forced to try to hear 50 or more cases a day, an unlikely number unless adjournments are the rule rather than the exception. Commercial case loads are said to be rising.

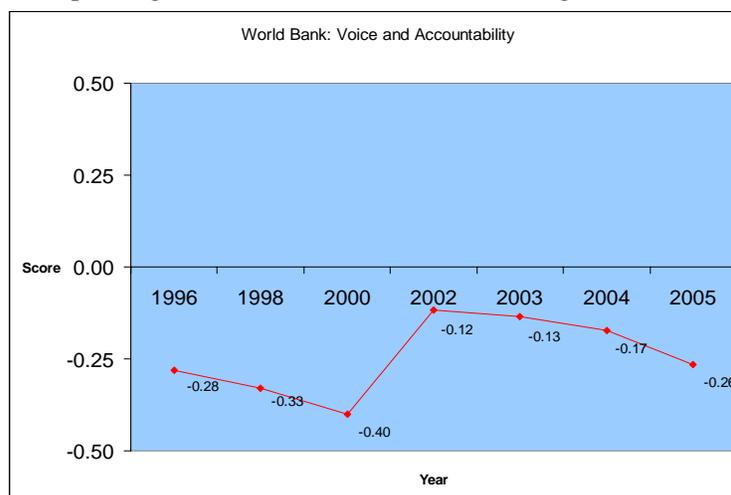
Unlike judges, there are too many lawyers. Lawyers have incentives to seek adjournments and, since there are few if any performance standards for judges, adjournments are readily granted. This increases court costs for citizens with legal problems and denies them speedy redress. It discourages access by all but the most well-to-do citizens. Delays also ensure that there is sufficient time to intimidate or suborn witnesses, or that witnesses simply forget the details of a case and no longer want to be bothered to testify.

There seems to be only modest momentum in the system for reforms that would reduce case processing times. The Bar is not interested in procedural reforms that would limit adjournments, and the judges themselves have blocked attempts to institute additional “fast track” courts (using retired judges),<sup>33</sup> which have been very successful in reducing case backlog in India. There is little computerization which could help improve efficiency even in the absence of process reengineering and procedural reforms, both of which are also needed. The Ministry is concerned about backlog and has a committee examining the problem; the obstacles to genuine reform are, however, substantial.

Fairness is also an issue. Tamils and Tamil-speaking Muslims continue to face challenges due to the operation of lower courts in Sinhalese. The court system lacks an adequate number of interpreters. Corruption at all levels is also a concern and there is said to be political interference in court decisions.

### 4.3 SHRINKING POLITICAL SPACE

*The team found that there is shrinking space for political dissent in general and pro-peace, non-nationalist discourse in particular.*

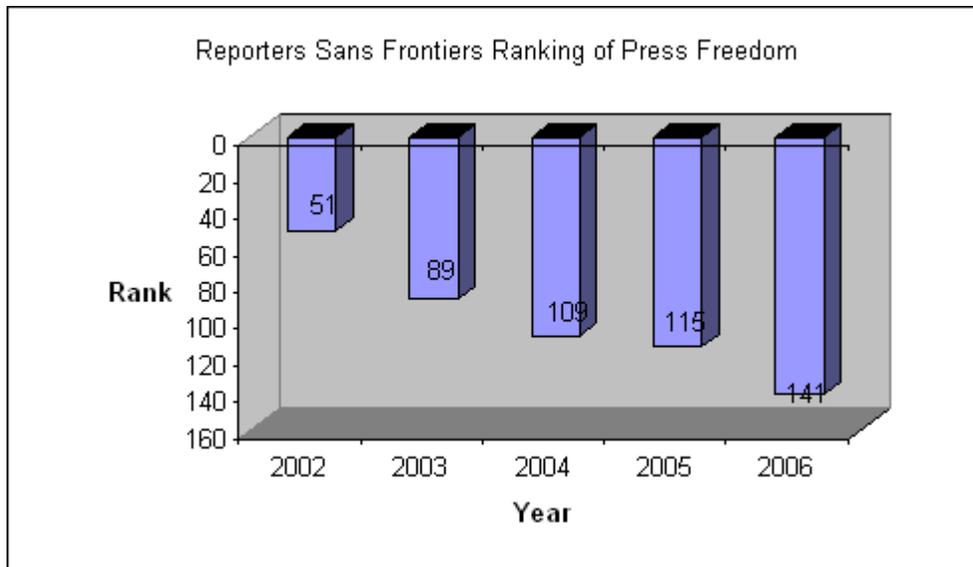


Voices opposed to government and LTTE policies are increasingly being shut out of the public arena. Factors include the government’s emphasis on military security, efforts by the administration to solidify power, and escalating violence. Pressure on civil society and the media has increased noticeably in the last two years. Press freedom indices and reports support this. Reporters Sans Frontières (RSF) ranked Sri Lanka 141<sup>st</sup> out of 168 countries in its Index of Press Freedom, a fall from 51<sup>st</sup> place in 2002, leading RSF to consider Sri Lanka one of the world’s most dangerous countries for journalists.<sup>34</sup> The Freedom House score for press freedom and the World Bank’s Voice and Accountability index for Sri Lanka have fallen as well.<sup>35</sup>

<sup>33</sup> Secretary Gamlath of the Ministry of Justice notes that there is very little interest among the judiciary in fast track courts. Interview, November 2006.

<sup>34</sup> [www.rsf.org](http://www.rsf.org)

<sup>35</sup> [www.freedomhouse.org](http://www.freedomhouse.org); [www.worldbank.org/wbi/governance/govmatters5](http://www.worldbank.org/wbi/governance/govmatters5)



#### 4.3.1 HARASSMENT OF AND ATTACKS ON THE MEDIA AND CIVIL SOCIETY

RSF and Freedom House report that attacks against the media have increased sharply, a conclusion confirmed recently by a mission of the International Press Institute (IPI) to Sri Lanka,<sup>36</sup> as well as by the team's interviews with credible observers and members of the media and civil society. At least five media workers were killed in 2005, and seven have died so far in 2006. Many more in the media and civil society have been threatened. The 2005 attacks included the murder of an English-language *Daily Mirror* editorialist and head of TamilNet; the bombing of the Tamil-language, pro-LTTE *Suder Oli* newspaper office in Colombo which killed a security guard; the arrest of a *Suder Oli* reporter gathering news; the murder of two news agents distributing *Eelanathan Batticaloa*, a newspaper that appears tied to the LTTE; the murder of TV presenter Relangi Sevaraja who was critical of the LTTE; and an arson attack on the English-language *Sunday Leader* newspaper offices. Similar incidents have occurred in 2006. Reputable civil society groups also report deliberate disruptions of their meetings and threats to their personnel. Universities, meanwhile, have been politicized by activist student unions and political appointments, and now provide limited space for independent writing and debate.

##### 4.3.1.1. Sources of harassment

###### 4.3.1.1.1 Armed organizations/groups

Some incidents can be attributed to the LTTE or its supporters. According to RSF, army officers in Jaffna have directed Tamil newspapers not to publish news from the LTTE, and complained that reporting on humanitarian conditions in the Jaffna peninsula implicated the government. Para-military forces associated with Karuna also burned thousands of copies of one newspaper in late 2005. In addition, the relatively new requirement to obtain permits to leave certain areas in the East can be used to limit the activities of media and civil society group personnel.

###### 4.3.1.1.2 Laws and policy

<sup>36</sup> [www.freemedia.at](http://www.freemedia.at)

Formal measures by government play an important role in limiting of public space. The government has posted regulations barring the publication and distribution of any print or broadcast material it judges may cause “public disorder” and has established a Media Center for National Security to screen publications. At this point, submission of material to the Center is still voluntary.

Unfortunately, the imposition of new emergency regulations, which the government announced in early December 2006, along with statements by the president indicating that the fight against terrorism may require limiting democratic rights, is likely to bring further and more explicit limits on freedom of speech and assembly. It appears already to be encouraging self-censorship. The 6<sup>th</sup> amendment to the 1978 constitution can already be interpreted broadly to deprive dissenters of civil and political rights, and Sri Lanka has some of the strongest anti-slander and libel laws in the world. Freedom House finds that “any journalist or public figure must be very careful to avoid language that could result in prosecution and a large fine.” Finally, the government has failed to enact a Freedom of Information Act that was approved by the former president and her cabinet in 2004.

With regard to civil society in particular, a Parliamentary Select Committee (PSC) has been established to investigate NGOs and, with assistance from the Auditor General’s Department, intends to investigate the activities of selected organizations. NGO leaders agree that NGOs need to adhere to high standards of rectitude; however, they do not perceive the PSC approach as transparent or neutral (it is controlled by JVP MPs). The government has also imposed an additional tax on NGOs, requiring that they remit around 2% of grant receipts to the state.

#### 4.3.1.1.3 Nationalist political discourse

These developments are occurring against a backdrop of the spread and legitimization in the South of nationalist rhetoric and an increase in support for a military solution to the conflict. The latest Peace Confidence Index shows 20% currently support a military solution, up from 7% in 2005.<sup>37</sup> Government and political leaders reinforce this trend by labeling anti-war/pro peace journalists and civil society activists as “supporting terrorists” on dubious grounds. Media personnel so labeled have included the editor of the *Sunday Leader* and the Sinhalese section of the BBC World Service.

The JVP and JHU appear to be major actors in this process, as the earlier discussion of their tactics and positions indicates. They have both been accused of breaking up peace rallies. Other, local civil society groups also reported disruptions of their meetings. Most recently, the National Peace Council (NPC) reported that on December 15 staff members conducting a workshop on peace and a political solution to the conflict in Polonaruwa district were “physically attacked by some elements in a large crowd who claimed that [the] staff members were anti war and working for the LTTE and for separation.” According to the NPC, local politicians and supporters from a nationalist alliance were present on the scene.<sup>38</sup>

Journalists are now fearful for their safety and appear to be leaving the profession, their original home areas, and even the country. Tamil media are especially affected. These developments are having a marked chilling effect on the coverage of important and contentious matters in both government and private media, and on civil society’s capacity to promote public debate on key issues.

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<sup>37</sup> [www.cpalanka.org](http://www.cpalanka.org)

<sup>38</sup> [www.peace-srilanka.org](http://www.peace-srilanka.org)

### **4.3.2 ISSUES ON WHICH THERE IS AN URGENT NEED FOR PUBLIC INFORMATION AND DEBATE**

At the same time, important changes in the country's governance structure are under consideration. The government is contemplating reforms of the electoral and local government systems as well as a bill of human rights.

In terms of electoral reform, the government is reported to be considering a mixed system of proportional representation and first-past-the-post. This kind of system should provide more stable majorities in parliament and could improve the accountability of MPs to their constituents by creating smaller, single-member constituencies. At the same time, the election to some seats through a PR system should facilitate some minority representation. There is, however, serious concern among minority groups and parties that a mixed system will substantially reduce their representation in parliament. This is in fact likely to happen, though how constituency boundaries are drawn for the first-past-the-post seats will also have an impact on minority representation. Proposed local government reforms are discussed in more detail below. It is worth noting here, though, that the unit of devolution will have important implications for the degree of power retained by the center and, in turn, the extent to which local governments can act as a check on executive authority. Of course, the unit chosen will also interact with questions of the representation and protection of rights of minorities.

Most recently the Experts' Group convened by the president to consider ways to resolve the conflict released a majority report, as described in earlier in this report. Eleven of the 17 members signed the majority report, and there are two dissenting reports. All three reports should be widely shared and thoroughly debated.

The parlous state of government finances is another topic that is urgent and important, but has received little or no attention from elite analysts, much less the general public.

### **4.3.3 EXISTING VENUES FOR DISCUSSION**

Discussions of possible institutional changes have been concentrated in parliament, with little input from citizens beyond "the usual suspects" in the policy think tank community.

The Ministry of Constitutional Affairs reports that it has already conducted meetings around the country to get citizens' input on a proposed Bill of Human Rights and on the 17<sup>th</sup> Amendment (relating to the Constitutional Council and independent commissions), and has solicited written proposals on "the national question" (i.e. primarily devolution), with meetings upcoming. The Ministry worked with the "experts group" on the peace process and political reforms in soliciting and reviewing the 800 proposals. The experts group reports to the president, although it also links to APC.

An advisory group on the peace process, drawn from civil society, also exists. The National Advisory Council for Peace and Reconciliation was appointed by President Kumaratunga, the current president's predecessor. It was supposed to have had three subcommittees – for religious, political and civil society communities. The civil society subcommittee included 15-20 "heavy weights", according to Godfrey Gunatilleke, head of the Marga Institute, who was appointed and is still a member. Of the three subcommittees, only the civil society one is still operating, although it seems not to meet regularly or with all its members. It reports to the government's Peace Secretariat. According to Gunatilleke, the group presented a paper on how to strengthen the CFA in preparation for the November Geneva talks, and more recently prepared a paper on constitutional reforms for the Presidential Experts' Group. The advisory group also meets with a larger group from civil society convened by the Berghof Foundation and called the Ad Hoc Working Group.

Some reputable think tanks and advocacy groups were reportedly planning a series of seminars in Colombo to discuss the various proposed reforms, but it was unclear how many would attend, and whether and how information generated there would be disseminated. Other groups have supposedly conducted meetings at the grassroots level, outside of Colombo, but the team could not confirm the extent of these.

The inclusiveness of these efforts is questionable. While the government claims to have received and reviewed 800 “communications” on the “national question,” this means of soliciting input is biased in favor of the best educated and informed. With regard to the Ministry’s meetings, it is unclear how many people attended, how many participated actively, and how representative participants were. Nor is there evidence that the government has made an effort to date to inform the public about what is actually being proposed for legislation (though at this point the government itself lacks clarity on what it wants to put forward), and it is unclear which – if any – agency has a mandate to provide such information. For example, according to informed government officials, the government is considering redrawing some ward boundaries in the process of changing the electoral system, yet there is no evidence that the public or even elites are aware that some constituency boundaries may be redrawn with potentially significant implications for representation. The discussion of devolution has so far been limited to policy experts and politicians.

The more inclusive People’s Forums (see below) can and have discussed national policy issues, but their ability to provide opinion to the national level appears limited so far. Media, as has been discussed, have limited capacity and will to address these issues. There are, however, a number of concerned media associations and a growing body of trained, professional journalists. The team also understands that media outside of Colombo is developing, through regional newspaper supplements and local radio, among other means. There is therefore a need for independent, non-partisan and on-going discussion of and support for fundamental reforms that protect all Sri Lankans.

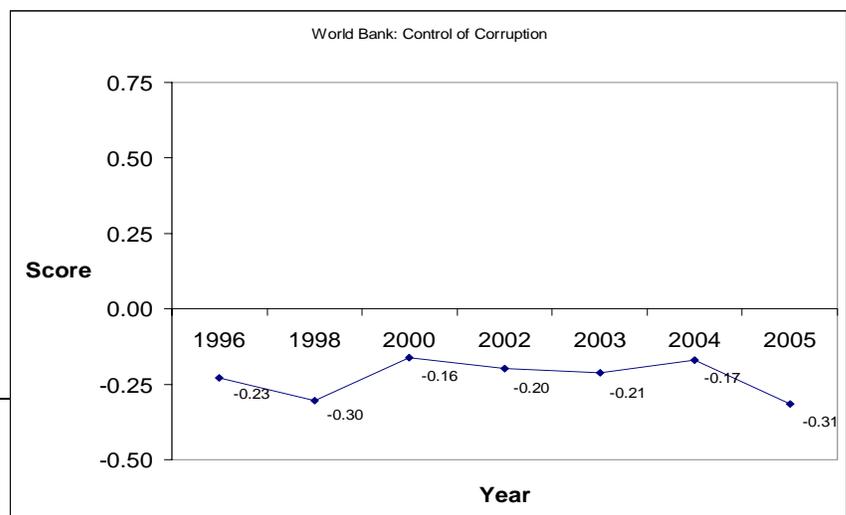
## 4.4 POOR GOVERNANCE

*The team concluded that governance is poor and remains heavily centralized. There are signs of increasing fragmentation of authority and public sector corruption.*

Many observers, including donors, believe that government effectiveness has deteriorated since 2004. The policy making process has long been criticized as opaque and exclusive. The business community, for example, would like to engage more in economic policy making. The World Bank’s Government Effectiveness index shows a sharp decline from a low base since 2002, while the index for regulatory quality has been dropping since 1998. The rapid expansion in the number of government Ministries, Ministers and Deputy Ministers has created overlapping mandates and some confusion about who is responsible for what. Some informants noted a concomitant decrease in rule-based decisions by the most senior government officials, with a parallel increase in patronage. The International Financial Institutions are concerned about the added cost of this expanded system of ministries, along with the addition of 40,000 new civil service jobs, to an already strapped Treasury.

### 4.4.1 CORRUPTION & OVERSIGHT MECHANISMS

Both the Transparency International (TI) Corruption Perception and the World Bank’s Control of Corruption



indices show a decline in recent years. There is also anecdotal evidence from businesses that the percent of a public sector contract paid in bribes has nearly tripled. Approximately eight government entities are tasked with controlling corruption, and there is a confusion of mandates. These institutions also frequently interpret their mandate narrowly, inhibiting their effectiveness.

#### 4.4.1.1 Commission to Investigate Allegations of Bribery or Corruption

The Bribery Commission for example, can only act on a written complaint and, in the absence of a whistle-blower protection law, few people are willing to make named complaints. This means that it is difficult to tackle grand corruption (e.g., kickbacks on large scale government procurement) because the costs of complaining could be significant. The Bribery Commission must also rely for investigative staff on police who are seconded to the Commission temporarily. Not only do these staff lack an understanding of many aspects of corruption (such as those concerning financial transactions and electronic transfers), but they are unlikely to pursue cases involving the police. The Commission has 20 legal staff that are hired by the Commission directly and are permanent, but any disciplinary matters regarding them must go to the Public Services Commission, making it difficult for the Commission to punish poor performance.

The Commission is not perceived as particularly pro-active. For example, it received over 4600 complaints in 2004 (a 28% increase over the previous year); it referred roughly 20% of these for action (787 complaints). The results were one conviction and 11 acquittals. This is not a record of strong accomplishment.

#### 4.4.1.2 Other

The Auditor General’s office (AG), under the previous incumbent, was moving to a “value for money” approach, and had drafted a new audit act that would have enabled the agency to be more proactive. Unfortunately the previous Auditor General, an individual of high integrity according to according TI’s local branch, recently retired. The new AG may be capable, but the President has appointed him outside of the Constitutional Council process.

The National Procurement Authority (NPA) deals with procurement policy, with some authority for oversight. The NPA was originally supposed to have relatively broad audit and watchdog functions and powers, but it now focuses on development projects and responds only to complaints.



#### 4.4.1.3 Parliament

Parliament is weak and appears to conduct only limited oversight of executive branch performance. As mentioned above, the president cannot be questioned in parliament, and he holds the portfolios of defense and finance (his brother is Secretary of Defense). There has been no permanent committee to evaluate the budget *before* it is voted on since 1972. The two parliamentary committees tasked with oversight of the

budget *after* it is passed, the Committee on Public Enterprises (COPE) and the Public Accounts Committee, operate in camera. Moreover, these committees tend to focus on issues related to the previous government that had been referred to them by the Auditor General, according TI. COPE, however, recently found that of the 50 state owned enterprises it had investigated (out of around 210 total), “90 percent of them are corrupt.”

#### **4.4.1.4 Government Information**

It is difficult to obtain information about government performance. Military procurement, not surprisingly, is largely immune from audit and other outside scrutiny. There is no Freedom of Information Act, though one was approved by the Cabinet in 2004, and there are many rules and Acts that unnecessarily prohibit the sharing of information. These limit the check that the media, civil society, opposition political parties and voters can exercise on government behavior.

#### **4.4.2 LOCAL GOVERNANCE**

The system of elected local governance is weak, limited, and inadequately staffed and funded. Local governments rely primarily on central government transfers and have few revenue raising opportunities. When asked about their local and provincial governments, citizens around the country were scathing, even though many were interested in a more effective system of local government and one that was more open to citizen influence.

The 1978 Constitution created a system of municipal and urban councils, but provided for little meaningful political power and few resources at lower levels. In 1987, following the Indo-Lanka Accord, the 13<sup>th</sup> amendment created a system of provincial councils. Elected officials are thus present only at the level of provincial councils (except in the north and east), municipal or urban councils (depending on the size of the urban area or town), and large clusters of villages in rural areas called “pradeshiya sabhas.” There is a system of civil service administration that runs parallel to elected local government and generally trumps it.

The Provincial Councils have more powers (except in the North East where a Council has not existed since 1990) than local authorities, but these powers are either shared with the central government or subject to central government supervision. There are some signs that the central government has pulled back power from Provincial Councils in recent years. For example, last year the Finance Commission bypassed Provincial Councils and dictated sectoral allocations directly to the local authorities.

Local authorities (Municipal Councils, Urban Councils and Pradeshiya Sabhas) have limited responsibilities and while some of these are significant (water supply and feeder roads), many are minor (libraries and playgrounds). They have almost no role in promoting local economic development. While local elective bodies have some authority to raise taxes, most resources are transfers from the center. The direct allocations by the Finance Commission to local authorities do not necessarily give them more authority, as the Commission has earmarked the funds for particular activity areas (like health and education), according to a senior official connected to local government.

One knowledgeable respondent suggested that the tsunami and associated focus by government and donors on local governance had encouraged a number of local authorities in the east to develop their capacity, responsiveness and dynamism in the face of the tsunami’s effects, but the deteriorating security situation and increasing militarization of the east has reversed this progress.

As indicated, there are no elected authorities in the north and parts of the east because elections have not been held, so all local administration in these areas is done through the bureaucracy. In areas under government control, the military has significant influence over civilian governance. In areas under LTTE control, the LTTE operates a shadow, authoritarian state. Perhaps the one good aspect of the recent

increase in civil service rolls is that some of the new employees will be assigned to local government, addressing the staff deficit particularly in the north and east.

Finally, a number of interviewees pointed out that the 13<sup>th</sup> amendment to the Constitution has never been fully implemented. Even at the local level, the language issue has not been adequately addressed. Although most standard government forms are in all three languages, Tamil-speaking populations still receive all correspondence from the central government in Sinhalese and, with the exception of some provincial and local government offices in the north and east, generally they must complete forms for licenses and permits in Sinhalese.

Reportedly, the government is preparing to reform the system of local government. There appears to be some focus on the Indian system of village (or division level) panchayats but it is not at this juncture clear which models are under serious review. Obtaining substantial autonomy is of course a key demand of the Tamil population, so the type and amount of devolution decided upon will affect the prospects for peace. If the provincial and district levels are by-passed, decentralization will be illusory. If local and district councils cannot aggregate their interests in any meaningful fashion, they cannot make effective demands on the central government, nor can they check any move by the executive branch.

## **SECTION 5 PROGRAM RECOMMENDATIONS**

### **5.1 STRATEGY PARAMETERS, CONSTRAINTS, AND U.S. COMPARATIVE ADVANTAGE**

#### **5.1.1 OTHER DEVELOPMENT ASSISTANCE DONOR PROGRAMS**

Only a brief summary of the main elements of some donor DG assistance programs is provided here. While there will be some area of potential collaboration (e.g., with UNDP on human rights programming), there is still a clear need for investment in the areas specified.

*UNDP* has provided support to the two major government and LTTE Peace Secretariats on communications strategies. It works to strengthen the National Human Rights Commission and has supported formal and informal dispute resolution for disadvantaged populations. It is also working on legislative strengthening (in parliament) and local government.

*The World Bank* has been supporting a legal sector reform program but reportedly there is some disappointment with its progress.

*Germany* recently cancelled its development assistance out of concern for the deteriorating situation and fear that its assistance to the government might free up funds for war. *GTZ* is working on local government.

*DfID* put in place a new strategy last April. It has also stopped funding ordinary development assistance activities and is focusing more narrowly on issues and institutions involved in the conflict. It is trying to provide support for a negotiated settlement by increasing the capacity of stakeholders on key issues, such as human security. Most importantly, the British government is beginning a significant new security sector reform program, working with the Sri Lankan armed forces and with civil society on military affairs. *DfID* has been heavily involved in security sector reform in some other post conflict countries

and has some comparative advantage based on this experience. It also hopes to increase effective demand for strong local government.

*Swedish SIDA* is working with the police, setting up forensic labs and providing training in forensics, investigations, human rights and community policing. This is also an important intervention. It appears at this juncture to be one of the few donors still providing some funding to human rights NGOs.

*Norway* has supported the SLMM and acted as chief facilitator of the peace process. NORAD has provided support for ethnic and national integration to the Ministries of Justice and Constitutional Affairs.

## 5.2 PROGRAMMING PRINCIPLES

Prior to converting the analysis into recommendations for program strategy, the team laid out a set of programming principles. Most of these principles emerged from the analysis, with the exception of items 5. and 6. Which were suggested directly by the Mission. The Mission's strategy should address key DG problems and should:

1. **Engage with and where populations are most at risk**; this means that the Mission should maintain a clear and obvious presence in high risk regions through a mechanism of implementer-staffed regional offices. These offices will be critical to managing local complexities, help ensure sound information for diplomatic action and development assistance decision-making, and facilitate greater impact.
2. **Achieve a balance (and be perceived to have such a balance) among the three ethnic groups.**
3. **Work at the center and the periphery.** Many of the most critical DG problems are emanating from the political center. A Mission DG program that did not include national level, Colombo-based initiatives would have only marginal impact. At the same time, the country is so fragmented politically that activities in the provinces are important as well.
4. **Avoid activities that might serve to legitimize government bodies with compromised constitutional status** and/or questionable adherence to democratic principles. For example, while this strategy recommends working with the National Human Rights Commission, USAID needs to be careful that its support does not serve the public relations purposes of a body whose Commissioners were not selected in a constitutional manner.
5. **Integrate program elements** for maximizing impact, where this is appropriate.
6. **Consolidate implementation of different DG program elements/areas** for management efficiency and to ensure synergy.
7. Be prepared to **monitor key conflict and DG variables** as well as government reform intentions and make adjustments to the strategy periodically. The situation is in flux and there are very high levels of unpredictability.

## 5.3 PROGRAM COMPONENTS

This assessment recommends programs to address the three key issues of human security, the narrowing of political space, and inadequate local governance. There is not much political will in these areas so it would be foolhardy to project great accomplishments from a modest investment. *The overall objective, therefore, is to help prevent a further deterioration in the political situation and to try to install more*

*effective checks and balances on executive behavior.* This requires a broad strategy which may be less remarkable in its accomplishments than a strategy that is very narrow and deep.

The one significant caveat to the recommended interventions is that, should the government demonstrate a serious commitment to some of the reforms laid out in the new Presidential Experts' Group majority report, the Mission should consider support for implementing reforms in the areas of devolution, human rights, and strengthening the mandates of the independent Commissions. In addition, the Mission could help facilitate public debate on these reforms, as strategy component 2 below lays out, including on electoral reforms. As of mid-December, however, it appears that the government is not only *not* interested in the reforms proposed in the majority group report but is seriously embarrassed by them.

Although the team recommends three strategy components, it has some reservations about the Mission's ability to handle such a diverse strategy with limited resources and staffing, particularly given the substantial complexities in the environment. *In prioritizing among these three components, the team would give most importance to the first strategy component, supporting human rights.* If forced to select a second order priority, the team would recommend the third program area regarding local governance, not because it thinks that the practical accomplishments will be so significant, but from a belief that maintaining a direct connection with very vulnerable populations is important. Even if the Mission decides (or is obliged by budget cuts) to eliminate the civil society program area, the team recommends retention of those aspects that relate most closely to the protection of fundamental rights, such as protecting journalists. If budget cuts are severe, the team recommends selecting key elements of the human rights and local governance strategies, and an effort to make them mutually reinforcing, in a smaller number of districts/divisions.

### **5.3.1 STRENGTHENING RESPECT FOR HUMAN RIGHTS (PROGRAM AREA I: RULE OF LAW AND HUMAN RIGHTS AND PROGRAM ELEMENT: HUMAN RIGHTS)**

The overall purpose of this component is to strengthen 1) international and local information and knowledge about human rights violations; and 2) domestic and international institutions and processes trying to hold the government to account. The team believes that development assistance in this arena can play an important role in providing solid information for diplomatic conversations that may have far more short term impact than limited technical assistance and training might have. The Sri Lankan government takes US official opinion very seriously, far more seriously than EU and UN concerns, so there is a strong possibility that the US government can have an impact on respect for human rights.

Illustrative activities:

1. Provide support to the upcoming **Presidential Commission of Inquiry** into 15 significant cases of human rights violations. The assessment team would give this intervention priority over the other suggested human rights interventions. This is because of its visibility (the government will not be able to ignore its investigations or findings), its charge to look into the most significant and appalling abuses, and the possibility that it can undertake the investigation of new cases as these cases arise. The Commission is an important potential check on continuing abuses since it can decide to investigate new cases.
2. There has been some lobbying for the creation of an **international human rights monitoring commission** along the lines of the one established in Nepal. The government is not currently in favor of this idea. Unfortunately, international mechanisms for protecting rights could be more influential and important than domestic ones in the current environment. If the idea of a commission is eventually accepted by the government, which is possible, then USAID should

support it substantially, even if it means deleting or minimizing support for activities which fall below it on this list. Support could be provided in the form of expatriate TA, local staff, equipment and supplies, and regional offices.

3. While the team has some reluctance to recommend working with **the National Human Rights Commission**, we believe that it had been an important check on abuses in the past and can serve the country well in the future, once the Constitutional Council crisis is resolved. We recommend two sets of interventions:
  - a. Strengthen **Commission’s regional offices** by building up their investigation and reporting functions, particularly in Vavuniya, Ampara, Batticaloa, Jaffna, and Trincomalee. Prior to making a decision about whether to support all or some offices, the Mission should conduct a more detailed assessment of the work being done by each of the regional offices. Some of these offices may be more worth investing in than others. The Mission should also consider funding both international and local UN Volunteers to enhance the capacity and safety of regional office staff. International volunteers would be most useful in those offices where staff feel most under pressure. Volunteers are suggested because of their low cost and because they will be less controversial.
  - b. Improve **the Commission’s database**. The NHRC is the logical place for a vetted and authoritative database that can aggregate complaints across protection agencies and NGOs. This involves more than keeping records on the numbers and types of complaints brought directly to the NHRC; it would also involve gathering data from other protection agencies, cross-checking complaints to eliminate duplicative counts, and issuing reports more frequently than in an annual report that appears late. There will be some issues here with obtaining data from other organizations. The reputation of the NHRC is not high at the moment, and other organizations will be reluctant to share case records if it puts the privacy and security of their clients at risk. A way would have to be found around this problem. USAID should support TA, training, software and equipment costs for such a database. It would be preferable not to support staff costs for managing the information system but realistically the NHRC is seriously understaffed and unless additional budget support is forthcoming from the Treasury, the NHRC will not be able to handle data collection and verification costs. While it is not sustainable, there is a strong argument for having very reliable information about alleged human rights violations and this might justify a two-three year program of support for the staff costs. Alternately, USAID could look at helping the Ministry of Disaster Management and Human Rights develop such a database, on the ground that the current Minister is both serious about human rights and credible. However, the Ministry is part of the executive branch and lacks any kind of legally mandated independence.
4. USAID should provide funding and institutional strengthening support to national and regional **human rights and advocacy NGOs**. Interventions might include funding and technical assistance/training for:
  - pursuing cases in the court.
  - conducting research and investigation of human rights abuses.
  - monitoring of court processes and decisions in human rights cases.<sup>39</sup>
  - researching and investigating allegations of violations.

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<sup>39</sup> This may not be possible given concerns about criticism of the judiciary and courts attracting contempt of court charges which can carry very harsh penalties.

- conducting public outreach and education.
  - upgrading skills in strategic human rights lawyering.
  - monitoring and reporting on the activities of the NHRC and the NPC and lobbying the government for broader mandates and increased budgets for these institutions.
5. Because of the new Minister’s commitment, it could be useful for USAID to provide some support to the **Ministry of Disaster Management and Human Rights**. The Ministry cannot take over for the NHRC and should not begin to assume its mandate, so USAID must be very careful in choosing what it might support. One area of need where the Ministry can play a role is public education on human rights, Sri Lankan laws and international agreements, the responsibilities and roles of government officials and agencies, and where and how to register complaints.
  6. USAID might also consider some support to the **Junior and Provincial Bar Associations**. These associations generally feel disadvantaged and isolated. They include younger lawyers who are unlikely to be fluent in English. Their members would like skill training. One idea would be to provide training on human rights and link the better trainees to human rights NGOs through small fellowships or stipends. The majority of association members may of course have no interest in getting involved in sensitive matters, but some may develop an interest.
  7. Support **radio programming** on human rights awareness and concerns.

### **5.3.2: INCREASING INFORMATION, AND EXPANDING DEBATE AND PARTICIPATION ON CRITICAL DG ISSUES (PROGRAM AREA: CIVIL SOCIETY AND PROGRAM ELEMENT: CIVIC PARTICIPATION)**

This component seeks to help keep political space open for alternative points of view on governance and democracy issues of national importance. It also reinforces the recommended human rights program by seeking to provide greater protection for journalists and civil rights activists from harassment.

The issues for debate might include proposed electoral reforms (including constituency demarcation and its implications for minority rights, if boundaries are redrawn); devolution; other reforms proposed in the majority and minority reports of the Presidential Experts Group; the importance and functioning of the Constitutional Council and independent Commissions; the role of the executive presidency; the need for a Freedom of Information Act; and how government funds are allocated. To the extent possible, the issues should be framed with regard to broader democratic principles, such as the need for checks and balances in a democratic polity, and for a democratic government to respond to and protect all citizens. Tactically, it may be helpful to use the government’s recently drafted (but not yet official) “Citizen’s Charter” as one starting point for public discussions.

The following clusters of illustrative activities are listed in order of priority for available funding:

1. Support for **journalist associations to gather and disseminate information on key issues and to protect media workers**.
  - a. A promising recent development has been the formation of a provincial journalists association. This group could serve as a potential recipient of USAID support for support for **reporting on local level implications of needed national reforms**. Support might entail training for journalists in such reporting and on the substantive matters at issue. But it is essential that any training be accompanied by support for the publication of the reports. National newspapers are apparently now publishing provincial supplements in vernacular languages, so this is one possible venue. The

team also strongly recommends the establishment of prizes for sound coverage by local level journalists (and perhaps also national level journalists if there are sufficient funds). In addition to encouraging better analysis and dissemination of information on major DG reforms, the prizes may provide some protection to the winners, particularly if the U.S. Embassy and senior USAID personnel participate in the awards ceremonies and if these themselves are widely published. The Free Media Movement has already developed such a program and should be considered for support.

- b. **Local radio stations** apparently need content, are willing to air discussions on potentially controversial DG matters, and charge very little for air time. The report therefore recommends that USAID support non-governmental organizations to develop and produce radio programs on local implications of proposed and needed constitutional changes, and on human rights, peace and other governance issues. These should be in a call-in format to encourage participation, and the producing groups should receive help in making the presentation of information interesting and understandable to local listeners (something that in the team's experience has not always occurred in the past in similar programs).
  - c. We also recommend that USAID support **programs explicitly designed to protect journalists** nationwide. A consortium of journalists associations exists that is probably prepared to set up a formal system for monitoring, documenting and acting on reports of harassment of journalists (this seems to be going on informally already). The consortium can also be supported to improve national level reporting on key reforms
2. Support by civil society groups for **government efforts to disseminate information and gather citizens' views** on key DG reforms.
    - a. The **Ministry of Constitutional Affairs** reports that it has already conducted meetings to get citizens' input on several of the constitutional changes being considered by the government, as noted above, and it has expressed a commitment to do the same for other important reforms. The Secretary of the Ministry said that it did not have mandate to "publicize the government's ideas" but did indicate that drafts of legislation could be discussed in these public meetings. These activities are a positive development that should be supported and expanded to promote a comprehensive and inclusive debate. Support might include technical assistance to help design truly participatory meetings, material assistance to enable the Ministry to reach people from a diversity of socio-economic and ethnic groups and simply to reach more people around the country. The Ministry should also be encouraged to work with a range of NGOs and community-based/ grassroots groups.
    - b. Similarly, the **Elections Commission** and civil society groups should receive support for forums on district demarcation, if that issue arises in the course of electoral reform. As electoral reform is most likely to occur, and most quickly, of the reforms this report mentions, the Commission and relevant civil society groups
    - c. Monitoring of corruption and government budget processes: Support an organization that is interested in and prepared to develop ways to monitor, analyze and disseminate information on the government's budget process, and we strongly encourage support for this aspect of its work in particular.

3. **Other** possible activities.
  - a. The **People’s Forums** supported by USAID have received praise for their ability to bring citizens together at the local level around concrete activities, and some participants report that local level officials are interested in interacting with them (see also component 3 for local governance). They should receive continued support, particularly for discussions of governance issues, with special attention to the constitutional reforms currently on the table. They should be supported to link to the national level, including through national level civil society groups experienced in implementing local level discussions with sound information and analysis. In turn, the local discussions can be linked to national policy development and advocacy efforts. The emphasis in working with national level groups should be on timely action by civil society groups, and *broadly* accessible information (i.e., in vernacular languages, simply expressed). Some of these groups’ leaders are concerned for their own safety, so USAID should be sensitive to their views on how to address hot-button issues, particularly in the light of the government’s desire to re-impose strict anti-terrorism laws, but by the same token its support may be able to add a layer of protection by legitimating their expertise and commitment to free speech.
  - b. Surveys can be a powerful instrument for the expression of political opinions and interests. The Mission should consider funding another round of **the Knowledge Attitudes and Perception (KAP) Survey** to understand the nature and dynamics of attitudes to the peace process under the previous government. This survey has in its first two iterations provided invaluable, unique – and counter-intuitive – information on the demographics of those who did or did not support the peace process and why. It could in the future be used to identify sources of support for and opposition to particular constitutional reforms. Surveys may also help the mission and others to understand the rapidly changing political landscape if they can be conducted in relatively quickly. This is a lower level priority.
  - c. **Political parties** might also receive support for discussions at local as well as national levels on proposed reforms, human rights, and other governance issues such as the budget process. The team is not recommending standard “party strengthening” assistance, but support that targets key DG issues, and the parties’ roles in understanding, debating and representing constituent views on them. It was reported to the team that members of one party had been harassed by members of another. USAID should seek to ensure that members of parties who have shown disrespect for freedom of speech do not impede free and open discussions, at least within its own program arenas.

### **5.3.3 IMPROVE LOCAL GOVERNANCE IN SELECTED CONFLICT-PRONE AREAS (PROGRAM AREA 2: GOOD GOVERNANCE AND PROGRAM ELEMENT: LOCAL GOVERNANCE)**

This component gives the Mission a grassroots presence and puts it into direct contact with people adversely affected by the conflict. The primary purpose of activities here is to strengthen local governance and citizen input in selected geographic areas. A secondary purpose is to try to develop a larger constituency for stronger local government, particularly in Sinhalese communities which tend to support a strongly centralized state.

The local government program should be integrated with the Mission’s human rights, conflict resolution and EG programs, and should build on existing OTI-directed peace building and local governance efforts. There seems to be little reason at this juncture to continue with free-standing OTI-type interventions; these should be integrated into the Mission’s overall DG, EG and conflict resolution strategies and

programs. This is largely a cost and an efficiency issue, but it also makes good programming sense from the standpoint of achieving full complementarity of program elements.

Peace-building efforts between communities are fraught with difficulty given the role that security forces, the LTTE and the Karuna faction play, but they probably need to continue. At least in Trincomalee, peace committees, relationship building efforts and the People's Forum programs are facing huge obstacles because of the renewal of fighting. Peace Committees have dissolved as people have fled or members have come under pressure; there may be less interest in getting together over small community development projects because the threat level has risen; and individuals attending a People's Forum expressed substantial dissatisfaction with their inability to make any practical headway with their action plans.

Funding limitations and the kind of sustained engagement needed to make a difference in communities suggest that the Mission should target selected division secretariats within selected districts for this program (see section D. below for more details on regional targeting).

Illustrative activities:

1. Work with the North Central Provincial Council in Anuradhapura and the **local government authorities and/or civil administration** in the Eastern and North Central districts on planning, budgeting, soliciting input, and getting information out to citizens in both languages;
2. Use local currency reserves to provide some funds for **local development efforts** conditioned on community input and oversight, and use these resources in a way that tries to link citizens to local government;
3. Support **local print and radio journalists** to cover local governance issues and help with peace building. Activities might include training, small prizes, and the payment of production and air time costs for radio broadcasts. Rumors and the inability to obtain reliable information create much additional anxiety in the East, so it is important to try to make more information available in conflict areas.
4. Develop **community capacity** to organize and provide input to and oversight of local government;
5. Do more intensive work with **People's Forums** in target areas and link these forums together at district/provincial level to enable them to increase their impact and support each other as critical issues arise;
6. Support **peace committees** and relationship building between ethnic groups. The success rates here may not be very high now, but it is worthwhile to continue. The Mission-funded 2004 KAP survey found that 46% of those respondents who indicated the highest interaction with other ethnic groups are active supporters of achieving peace and are less likely than those with the least interaction to be active opponents. Annex C includes a set of issues to be considered to supporting relationship building efforts in the Sri Lankan context.
7. Link this strategy to Governing Justly program areas 1 and 2 for human rights awareness and monitoring and citizen dialogue. In addition, integrate this strategy with the economic growth strategy.

## 5.4 REGIONAL TARGETING

*In addition to working nationally, specifically in the civil society strategy, the assessment team recommends that the Mission target two provinces: North Central province and the eastern part of North East province. Within these two provinces, the Mission should focus specifically on 2-3 of the following districts:*

- Anuradhapura, NC province
- Polonaruwa, NC province
- Batticaloa, NE province
- Trincomalee, NE province
- Ampara, NE province

Elements of all three program area strategies will be carried out in these districts, and the local government strategy will be almost entirely focused on these areas. Within each district, the Mission will need to select specific divisions within each district for long term engagement. A geographically scattered program will have far less impact than a more narrowly targeted one.

The rationale for these districts is that they permit the USG to:

- Maintain a presence in districts where conflict and human rights violations are high;
- Obtain first hand information about what is happening;
- Maintain a balance between ethnic groups;
- Build on USAID work done to date; and
- Find an effective way to link conflict resolution work with DG work.

The eastern part of North East Province is inhabited by a mixed population but is predominantly Tamil and Muslim. North Central Province is not a major conflict zone but includes boundary areas that are contested, particularly in Polonaruwa. It is important because it is a Sinhalese majority province. A 2004 KAP survey showed that opposition to the peace process was higher in this province than any other. It includes major military bases and camps, and support for harder line Sinhalese nationalist parties appears to be growing. If the Mission selects Trincomalee and Batticaloa as target districts in the east, it is then efficient to work next door in North Central province.

The assessment team recommends that the Mission establish two or three regional offices, to be funded by Economic Growth (EG) and DG program implementers. These might be placed as follows:

- If three offices are supported: Trincomalee, Anuradhapura and Ampara or Batticaloa
- If two offices are supported: Habarana (covering NC province and Trincomalee) and Batticaloa or Ampara (covering those two districts).

In the case of three offices, DG funds might support two offices and EG one. In the case of two offices, DG and EG funds can each support one. An office funded by one implementer should provide space to the implementers of the other program.

See the geographic area and activity matrix below.

## SUMMARY OF RECOMMENDED PROGRAM INTERVENTIONS BY TARGET DISTRICT

Note: The assessment team recommends working in North Central and North East provinces in 2-3 of the following five Districts. Within each district, specific divisions should be targeted.

	<b>National</b>	<b>Anuradhapura</b>	<b>Polonaruwa</b>	<b>Batticaloa</b>	<b>Trincomalee</b>	<b>Ampara</b>
<b>Human rights program area</b>	HR database; public education & media; Commission of Inquiry, HR NGOs		Assess further for HR issues and activities	Support HRC office; HR NGOs; Media coverage; peace committees; Junior Bar Assoc.	Support HRC office; HR NGOs; Media coverage; peace committees; junior Bar Assoc.	Support HRC office; HR NGOs; media coverage; peace committees; junior Bar Association
<b>Civil society program area</b>	Min of Constitutional Affairs, natl NGOs, journalist umbrella groups, media, people's fora, TI	People's fora, provincial media	People's fora, media	People's fora, media, provincial journalists' assoc.	People's fora, media, provincial journalists' assoc.	People's fora, media, provincial journalists' assoc.
				For the local governance program, select 1-2 of the districts in the East.		
<b>Local governance program area</b>	National dialogue on devolution – link to civil society program	Provincial Council strengthening; local chamber of commerce; provincial NGOs, people's fora	Select 2-3 divisions; work w/ elected councils and civil administration ; CBOs, people's fora; private sector dev., youth skills training, peace committees & relationship building	Select 2-3 divisions; work w/ elected councils and civil administration; CBOs, people's fora; private sector dev., youth skills training, chamber of commerce, peace committees & relationship building	Select 2-3 divisions; work w/ elected councils and civil administration; CBOs, people's fora; private sector dev., youth skills training, chamber of commerce, peace committees & relationship building	Select 2-3 divisions; work w/ elected councils and civil administration; CBOs, people's fora; private sector dev., youth skills training, chamber of commerce, peace committees & relationship building

## **5.5 INTEGRATING THE DG PROGRAM WITH THE ECONOMIC GROWTH (EG) AND CONFLICT RESOLUTION PROGRAMS**

*Conflict resolution:* The team recommends that USAID expand and deepen the efforts of American University's Public International Law and Policy Group (PILPG). PILPG conducts research for the Peace Secretariat and the Ministry of Constitutional Affairs on power-sharing formulas and negotiation processes in other ethnically divided societies. These efforts appear essential in helping the government develop ideas for political reforms that might help resolve the conflict and conduct peace negotiations in a more effective manner. USAID should also continue to support the Muslim Peace Secretariat, which is trying to develop a Muslim consensus on power sharing and rights protection. Activities supporting local peace committees and ethnic relationship building should be linked to the local governance program discussed above.

*Economic growth:* The new economic growth strategy is expected to focus on three areas of some relevance to the DG strategy. The three areas are reforms that facilitate the growth of the private sector, private sector development, and youth workforce development. Much of the emphasis will be on mitigating conflict. Some integration between the DG and EG programs, particularly vis-à-vis the civil society and local governance components, is useful and desirable. The team recommends Mission consideration of the following:

### **5.5.1 PRIVATE SECTOR “CLUSTERS”**

The Mission should integrate the private sector development strategy with the local government strategy in selected districts and divisions. It should select private sector development “clusters” that are appropriate for the local economy and ecosystem in the targeted divisions (e.g., new crops, products or services; post harvest loss reduction, market information and marketing networks, transport linkages, etc). The EG strategy could also support and work with and through local chambers of commerce and could work on provincial/district policy issues or roadblocks to business development and commerce. This sort of integration requires that the geographic areas be chosen first; the “clusters” are then derived from the opportunities and possibilities available in the target geographic areas.

### **5.5.2 YOUTH WORKFORCE DEVELOPMENT**

The DG assessment team believes that youth workforce development should be a significant priority. We think that the Mission should expand its focus from IT and English training for A level graduates to include those youth who have failed or obtained O levels. Those who fail their O level exams have few training options to fall back on. They do not qualify for additional vocational training, so their only recourse is to take up unskilled labor or return to the family farm (assuming there is one). Failed O level students often come from families that have built up significant expectations of a high return on their long investment in education. The failure to meet these expectations may make this segment of youth among the most disgruntled and alienated, and it may make it easy to mobilize them for radical political purposes.

Vocational and skills training programs should bring together youth of different ethnic groups and should include life skills, peace building and mediation skills, human rights and civic education. Youth from those divisions/districts targeted in the local government and private sector programs should be a primary focus of the program.

The Mission should also consider paying particular attention to Muslim youth who appear to be among the most isolated. One idea that was raised was to establish a skills training program at South Eastern

University, a Muslim stronghold in Batticaloa. There is a serious shortage of Tamil-Sinhalese interpreters and a real need for university programs to produce qualified individuals.

### **5.5.3 POLICY REFORM**

Businessmen would like to be more engaged by government in decision making about economic policies. Those businesses dependent on foreign investment and foreign customers and clients have a strong interest in resolving the conflict and securing political stability as do those trying to function in insecure areas. Sri Lanka First and the Business for Peace Alliance are examples of this. Business leaders/owners are potential partners in a public debate about needed political reforms and they could be engaged through EG/DG coordination in DG component 2, which seeks to protect and expand political space. One warning, however, is appropriate: the business community is not unified and interests differ; the JHU, for example, has strong support among urban Sinhalese small businessmen and traders. There are, though, some businesses and chambers that will come into any kind of broad public discussion with progressive views. There will also be areas where they will be reluctant to engage (human rights), and others where they will be open to taking a position.

# ANNEX A: NOTES ON PROGRAMMING COMMUNITY LEVEL PEACE BUILDING ACTIVITIES

Community-level programs that try to bring together people of different ethnic groups in order to reduce tensions and improve relations face particular challenges in Sri Lanka, given that people increasingly live in ethnic enclaves and are physically separated from each other. Particularly in the conflict zones, they may have few real reasons to interact and may be less and less secure about interacting. The language barrier creates a major difficulty in overcoming divisions. While Muslims may speak some Sinhalese (though not necessarily with any fluency), Sinhalese and Tamils in many parts of the country do not speak each other's language.

The issues below are drawn from the literature on ethnic conflict as well as from personal experience of the team members in other countries:

1. Facilitators need extensive training and experience and must be fluent in both languages, yet there is a serious shortage of people fully functional in both Tamil and Sinhalese;
2. Contact between the two communities needs to be intensive (frequent) and extensive (many need to be involved, not just a few elites);
3. Contact between the communities needs to be sustained over time;
4. Participants themselves need to develop good conflict resolution and communications skills;
5. Implementers must monitor progress carefully and frequently; this is very labor intensive work;
6. Unequal status between ethnic groups can pose real challenges for this work; the group with the upper hand could subtly subvert activities to support their own interests or could be perceived as doing so by group with less power;
7. Experienced interpretation must be available when needed (How do the communities communicate when a facilitator/interpreter is not available? What are the risks of communicating on sensitive issues with poor language skills?), and over time a better solution to the language problem must be put in place;
8. Much is out of the hands of the two or three communities due to the vagaries of war, military or paramilitary action, and the combatants wanting specific populations in one place or another, so even successful efforts may suddenly fall apart when the military situation changes;
9. Local leaders need to support relationship building and establish a good atmosphere for it;
10. Such programs tend to operate as though political parties are absent from the community power equation. Is this actually the case? What role are they playing? Do they need to be included?
11. Donor-enforced collegiality between groups that are mutually suspicious is a concern. Are the groups willing to be together or do they resent the imposition and the artificiality of the joint

activity? The need to work together may not be perceived by the concerned communities but rather is being imposed as a condition for benefits. Does this work in very high tension areas?

12. Are community peace building efforts completely avoiding the fundamental political questions over which it may be impossible to achieve a consensus? If it is, what is the impact on the prospects for a stable longer term relationship? Different groups may not have identical or even similar interests, making relationship building a serious challenge.
13. Donor-funded peace building efforts are often disconnected from structural changes in the state; conflict exists not simply because people don't like each other but because of unjust institutions and structures. Without fixing the institutions and structures, it is not clear how much progress can be made in working with communities alone.

# ANNEX B: SELECTED BIBLIOGRAPHY

## *Website Materials:*

Amnesty International website, various reports, including Annual Reports for 2005 and 2004.  
<http://web.amnestyinternational.org>

Asian Human Rights Commission website, urgent appeals. <http://www.aNHRChk.net>

Asian Legal Resources Centre website, various reports. <https://www.alrc.net>

Freedom House, **Freedom in the World Annual Reports**, 2000-2006 and **Countries at the Crossroads 2006**. <http://www.freedomhouse.org>

Human Rights Watch, “Improving Civil Protection in Sri Lanka,” September 2006 and other reports.  
<http://hrw.org>

International Press Institute website, various public statements and reports. <https://www.freemedia.at>

Refugees International, various public statements. <http://www.refugeesinternational.org>.

Reporters without Borders website, various reports. <http://www.rsf.org>

The Asia Foundation, **The Sri Lanka Conflict Assessment** (five parts), 2005. <http://www.taf.org>

US Department of State, Country Report on Human Rights Practices, 2005 and 2004.  
<http://www.state.gov/g/drl/rls/hrrpt>

World Bank, Governances Indices. [www.worldbank.org/wbi/governance/govmatters5](http://www.worldbank.org/wbi/governance/govmatters5)

## *Documents/Papers:*

Alston, Philip, “Civil and Political Rights, including the Question of Disappearances and Summary Executions,” Report of the Special Rapporteur on ExtraJudicial, Summary or Arbitrary Executions, UN Commission on Human Rights, March 2006.

Bastion, Sunil, “The Failure of State Formation, Identity Conflict and civil Society responses – the Case of Sri Lanka,” Centre for Conflict Resolution, University of Bradford, September 1999.

Fydenland, Iselin, “The Sangha and its Relation to the Peace Process in Sri Lanka,” PRIO Report 2/2005, January 2005.

“Local Government Analysis,” Performance Improvement Project for Development Actors in the North-East Province, Sri Lankan-German Development Cooperation, August 2005.

“Prevalence of Torture in Sri Lanka: Persisting Problems and Outstanding Issues,” alternative report to the Committee against Torture by the Asia Human Rights Commission and the Law and Society Trust, 7 October 2005).

Statement from the Special Advisor on Children and Armed Conflict, UN Press Release 131106, 13 November 2006.

UNHCR Protection Reports, August through October 2006.

Witharana, Dileepa. “Community Peacework in Sri Lanka: A Critical Appraisal,” October 2002.

*Books:*

Envisioning New Trajectories for Peace, Centre for Just Peace and Democracy. Luzerne, 2006.

Richardson, John. Paradise Poisoned. International Centre for Ethnic Studies, Kandy, 2005.

Winslow, Deborah and Michael Woost, ed. Economy, Culture and Civil War in Sri Lanka. Bloomington, 2004.