

**MONITORING FACTORS AFFECTING THE
SRI LANKAN PEACE PROCESS**

SYNTHESIS REPORT

**THIRD QUARTERLY
AUGUST 2006 – OCTOBER 2006**

CENTRE FOR POLICY ALTERNATIVES

METHODOLOGY

The Centre for Policy Alternatives (CPA) has conducted the project “Monitoring the Factors Affecting the Peace Process” to assess the current status of the peace process. The output of this project is a series of Quarterly Reports. This is the third of such reports.

Having identified a number of key **factors** that impact the peace process, they have been monitored observing change or stasis through a range of **indicators**. These indicators suggest **trends** for each factor. The factors have been grouped into a series of **clusters** which reflect critical dimensions of the peace process. The trends will suggest the level of change in each cluster and in sum will indicate how the peace process and its environment have been strengthened or weakened.

This **Synthesis Report** will highlight the trends that emerge from the monitoring process and analyse them within the context of their respective clusters and between the clusters. This report is drawn from the more comprehensive **Cluster Report** which examines the various trends, factors and indicators in greater detail.

1. OBJECTIVE

The quarterly reports of 2005 and 2006 covered renewed efforts at reviving relations between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) and through these efforts the resumption of peace talks, albeit against the back drop of rising violence. Accordingly, the reports reflected the state of the peace process, within a ‘no war, no peace’ context, seeking to examine the strengths and weaknesses of this process. This third quarterly report for the second year under review is located within these terms of reference.

This Synthesis Report highlights the various trends identified in the respective Cluster Reports, (attached hereto), examining the relationship between them, and analyzing their impact on the peace process in Sri Lanka in the quarter under review, August 2006 – December 2006. **It should be noted that in the interest of overall coherence and relevance, the analysis also incorporates developments subsequent to this period.**

2. AN ANALYSIS OF TRENDS AND IMPACT ON PEACE PROCESS

Over the current quarter the crisis in the peace process continued to deteriorate, testing the very limits of the Ceasefire Agreement (CFA) and the ‘no war no peace’ situation. The intensification of violence has meant that the ‘proxy’ or ‘shadow war,’ as it has been popularly referred to, has transformed into an undeclared war. With the escalation of violence, the prospect of a renewed peace process has become bleaker as the parties have increasingly demonstrated an inability and/or unwillingness to move forward from rhetorical commitment to action on the ground to implementation and to establishing modalities for bringing about a negotiated settlement. The crisis of violence has in turn created a humanitarian and human rights crisis.

The focus of each round of talks in the recent past provides a good indication of the crisis the peace talks finds itself in. As noted in the previous quarterly report from 2002 to the last quarter “the focus of negotiations went full circle shifting from the CFA to immediate normalization issues to interim issues to disaster aid management back to the CFA.” That the parties planned to meet in Oslo to discuss the SLMM demonstrated the crisis of the peace process. Each round of talks following the suspension of peace talks in 2003 was further removed from reaching the settlement of the core issues and interim status. While there are a vast number of issues that the parties can focus on, coming into the present quarter it would seem that at one level the parties had exhausted the broad issue areas, apart from negotiating as to whether they should continue to

be a peace process or not. This may be one reason why the talks in Geneva on October 28 and 29 were more or less an open agenda with the Norwegian facilitators stating that talks would be about CFA and security issues, the immediate situation and a final settlement. That such a broad range was adopted highlighted the fact that the parties were unable or unwilling to come to agreement on where to start in addressing the current crisis. In previous peace processes the parties have tended to follow a general pattern with regard to the range of issues they are willing to discuss: the government has a preference for a gamut of issues that also includes the core issues, while the LTTE traditionally focuses on the immediate humanitarian issues. This reflects their divergent positions on how a peace process should proceed. The LTTE wants to focus on the immediate issues and to delay dealing with the core issues until the immediate issues are addressed while the most of the previous administrations have preferred to find a way of tying in the core issues. Faced with the current situation it seems that the parties returned to these fall back positions in Geneva II, resulting in failure.

That the talks took place at all was a mini-miracle given the scale of the violence and the parties seeming disregard for the understandings reached in previous rounds of talks as demonstrated by their actions on the ground. Between August and October there were renewed calls for the parties to attend talks and repeated statements by the parties expressing an interest in engaging in negotiations. The very act of negotiations creates a positive momentum and strengthens the 'no war no peace' scenario. That peace talks take place at all is seen as a success as the expectation is that the very act of the parties meeting for negotiations would prevent the 'no war no peace' situation completely unravelling. Thus, the agreement by both parties to go to talks in Geneva in October was greeted as a success. As evidenced by the efforts at peace talks since the signing of the CFA, the two parties have adopted differing positions on attending peace talks, with the government being, most often, the more willing while the LTTE voicing hesitation in attending talks, demanding implementation. If the parties were to reach an agreement on anything, an immediate humanitarian issue or even on a future date for talks, that would be enough to add more energy to the momentum. Obviously, many actors that are advocating peace talks also hope that somehow the parties would be able to address the crisis situation on the ground and that an agreed measure would serve as trust- and confidence-building measure. But the failure in either securing an agreement or the inability to implement one further complicates peace making as it undermines the limited trust and confidence between the parties and limits existing options.

The Geneva talks collapsed over the LTTE's insistence that the government should agree to open the A9 before they could negotiate any other issue. That the talks collapsed over this issue showed the state of relations between the two parties, and their inability to adopt a problem solving approach. Before Geneva II commenced, both parties stated that they had no conditions for negotiations. At the negotiations, however the LTTE was unwilling to move beyond the A9. The importance of opening up the A9 cannot be over emphasized as it marks a critical achievement of the CFA and the peace process. Its closure is a violation of the CFA and has resulted in a massive humanitarian crisis in the Wanni and in Jaffna. The North has become the site of multiple military offensives hence it was clear that the government would not unilaterally announce an A9 opening. The humanitarian crisis required and still requires urgent action with the onus being on the government to address the needs of its citizens. Yet, if the LTTE was determined to alleviate the humanitarian crisis it could have agreed to the ICRC proposal to send ships under the ICRC flag as a limited and temporary measure. Hence, the LTTE sticking to one issue could be seen either as a test of good faith or as attempt at spoiling talks. Comparing this round of talks with the previous round in Oslo may shed some light on the dynamics within the peace talks and the possible factors behind the collapse of talks. The LTTE's decision to pull out of talks in Oslo on the day they were supposed to commence stating that the composition of the government delegation was not of equal status to the LTTE undermined the process of trust-building that talks involve and the role of Norway as a facilitator. The LTTE had prior knowledge of the composition of the delegation and ample opportunity to pull out of talks, even before flying to Oslo but instead chose to execute a coup de grace on the day. An innocuous reading of the LTTE's move would suggest that it was a response of party to a peace process that has struggled to gain parity of status and feeling highly insecure of its treatment by the Government in putting forward a delegation which did not have cabinet representation. A more cynical reading would be that the LTTE was unwilling to engage in negotiations but was determined to get more exposure and access to the international community and the diaspora, especially in the context of the EU ban and the restrictions by the state on their movements outside Sri Lanka. Given this experience it would seem that the LTTE was not interested in compromise but determined to demonstrate that it would not be cowed down in talks, even at the risk of furthering the crisis in the CFA.

That peace talks had to take place against the backdrop of massive violence is indicative of the state of relations between the parties and also serves as an indicator of the parties' commitment to the peace talks. This is not to say that breakthroughs in reaching political settlement cannot result from severe crises of violence, but examples of such instances are few and far between, especially

in the immediate aftermath of the collapse or virtual collapse of a peace process. There continued to be rumours of alternate channels of communication between the Rajapakse administration and the LTTE but there were no reports of any substantive negotiation process. The parties continued to express a commitment to a negotiated settlement while simultaneously engaging in acts, both military and political, which undermined these commitments. This attitude of wilful disregard is evident when comparing the lead up to Geneva I as opposed to Geneva II. The interval between the parties committing to talks and their commencement and the duration of talks was characterized by a dramatic decline in violence in Geneva I, while in the period of Geneva II the parties argued over a commitment to stop violence and threats that they would withdraw if the other engaged in violence, and continued to carry out violent acts and military operations. The violence is symptomatic of the state of relations between the two parties which can be characterized as one of mutual distrust and hostility.

In previous quarters it was noted that “The behaviour of the parties suggested that they felt trapped by the peace process but were also unable to re-fashion or re-create the process and/or unwilling to seek an exit strategy.” **In the current context it seems that the parties engage in efforts to resume talks and attend negotiations because both prefer the strategic ambiguity rather than committing to either war or peace. The current situation of ‘no official war, no peace’ allows both parties to go through the motions of peace talks while exploring their military options. They are able to use the current context to align short-term goals with long-term strategic objectives. Thus at present, it can be argued that the peace talks are not being primarily used to set the parameters of a final settlement or to establish modalities and confidence building measures to address the immediate crisis. Instead the most important purpose the peace talks serve is to maintain the dynamic of the ‘no war no peace’ scenario through sustaining a rhetorical commitment to the CFA and to negotiations, and a continuing international involvement and interest, especially through the Norwegian facilitators, the SLMM monitors and the Co-Chairs.**

The strategic ambiguity of the ‘no official war no peace’ allows both parties to engage in violence without having to deal with some of the potential consequences of war. One particular risk is the international fall out. The LTTE in particular is apprehensive of waging a war in the international context of a ‘War against Terror’ and where measures have already been taken by a number of international actors including the European Union, Canada, the US, Australia which are also home to large diaspora populations. The government also does not want to isolate key countries

through waging an outright war as the present situation is advantageous militarily, economically and in terms of international status. The German Government's announcement that it would cease all new aid to Sri Lanka set off warning bells, but despite the Sri Lankan government's efforts it was unable to reverse that decision. While on one hand the government has been able to continue building ties with key states in spite of the violence, it is apprehensive of alienating powerful states, especially India and the US. These two countries have voiced their concern regarding the impact of the violence but have not resorted to taking any drastic steps vis-à-vis the Sri Lankan government.

India's support in particular is critical and hence the President has attempted to keep India informed of developments in Sri Lanka, sending his brother Basil Rajapakse to explain the rationale behind the Sampur Operation and visiting India in an effort to maintain and develop an understanding with the Indian administration which has expressed concern about the humanitarian situation. The Indian Government continues to be ambivalent towards the Rajapakse administration despite the latter's sustained efforts at creating an understanding like that reached by the Wickremasinghe and Kumaratunga administrations. India has tried to press the administration on paying due regard to humanitarian and human rights concerns and on finding a political settlement to the conflict. The rumblings from Tamil Nadu have also forced the Central Government to take up the humanitarian issues. While there have been significant efforts to re-engage India which are still ongoing they have not been successful in reversing India's position since the Indo-Lanka Peace Agreement phase and the assassination of Rajiv Gandhi which continue to complicate its role in the conflict and the peace process, particularly with regards to the LTTE. Its regional and military concerns have only grown this quarter with Pakistan continuing to play a key role to militarily assist the Sri Lankan Government. Over the next quarter it could be expected that India's role will increase on two fronts – on voicing its concerns with regards to the impact of violence on the civilian population and the need for a political settlement while reaching certain understanding with the Sri Lankan government on the military front.

Both sides continue to insist on the international community's involvement, recognizing the critical role it plays in maintaining the status quo. It can be argued that this is the main reason why neither side wants to withdraw from the CFA and wage an all out war, as they want to make sure that they do not get blamed for starting the war. The international community that played a key role in getting the parties to cease the violence at the end of January 2006 and to commit to

negotiations, attempted to put pressure on both sides to commit to talks and to cease violence in this quarter. While the diplomatic initiatives did succeed in pushing the parties to attend talks they were unable to encourage a moratorium on the ground. The Co-Chair statement in September seemingly injected a positive dynamic into the process as it seemed to signal a more proactive phase in their involvement particularly in its proposal to monitor the implementation of the process and to send a delegation to report on the human rights situation. This move created controversy with the government which felt slighted as the Co-Chairs had apparently announced the venue for talks and an approximate period for when talks should take place. This in turn raised the issue of how involved the international community should be as on one hand the two parties and many local actors rely on the international community to encourage and put pressure on one or the other party, yet at the same time the parties and local actors are highly critical of international interventions, be it a breach of sovereignty or 'over internationalisation.' The Co-Chairs proactive role was limited as with the failure of Geneva II and the government's announcement of a national commission to investigate human rights abuses the Co-Chairs' efforts have not gone forward. The latest statement of the Co-Chairs in November condemned the violence and various acts of the two parties, calling for immediate action to alleviate the humanitarian, human rights and the overall situation. There were reports that the statement had been watered down as a result of difference between the constituent members of the groups, particularly over criticism of the government of Sri Lanka, indicating that the international community's response to the war/ peace balance is more complicated than meets the eye.

The Mahaveera Speech was, like in most years awaited with bated breath, with significant apprehensions and expectations of what the LTTE leader, V. Pirabakaran would say. It seems to have only confirmed fears that there would be no breakthrough in terms of the violence and is similar in tone to the 2004 speech. Listing the LTTE's efforts at negotiating and the Tamil people's attempts at arriving at a peaceful settlement, it also documents the broken promises multiple government thereby making a case for Tamil Eelam and calling for international support for the struggle. Thus, it is an open call for support for the international community and the Tamil diaspora to support the armed struggle. The speech also highlighted the present context in which the Tamil people find themselves. The message was essentially 'the struggle continues.' That there was no qualitative shift in the message from this year to last is notable, further indicating the LTTE's unwillingness to break out of the 'no official war, no peace' scenario. It is interesting that the speech did not explain why the LTTE did not give the President the time period promised 'until the next year' as the LTTE began its military campaign of claymore mines barely a

fortnight after the speech in November 2005. The violence over the past year has arguably strengthened the LTTE's position at one level as Tamil civilians have had to face targeted and retaliatory violence thereby increasing polarization between the Tamil Community and the state and giving them less choice in supporting the LTTE. At another level the LTTE has also suffered serious losses in the East, challenged both by the armed forces and the Karuna Group. A war would not necessarily reverse these losses while the CFA to some extent makes it less likely that the lines of control between the LTTE-controlled and Government-controlled areas will be challenged. Over this quarter however, the lines have been repeatedly challenged clearly increasing pressure on the LTTE to opt out.

The government celebrated its one year anniversary which the government could see as a success, especially given the context it found itself in by December 2005. Over the year it has been able to strengthen its position and get itself out of the vulnerable position that it found itself in December 2005 and January 2006 facing a military campaign characterized by claymore mines, ambushes and other forms of violence directed against the armed forces. Over the following months it adopted two military strategies – stepping up retaliatory violence against perceived LTTE members and supporters and intensifying its use of violence through measures such as artillery bombardment etc. As noted in the last synthesis report there was a qualitative shift in the government military strategy “The use of aerial bombing also showed that the Government's determination to demonstrate that it would not be cowered by the LTTE. The choice of targets indicated a military strategy intent on hitting particular features of the LTTE fighting machine... Faced by an increasingly violent and obdurate negotiating partner the GoSL found the ‘no war no peace’ situation convenient to alter the military balance before a war began, also demonstrating its military readiness and determination not to get caught off guard as in 1990 and 1995.” The LTTE's own strategy strengthened the government's efforts at intensification. For instance the attempted assassination of the Army Commander Sarath Fonseka led to aerial bombardments. Similarly the suicide bomb attack on the President's brother and Defence Secretary Gothabaya Rajapakse has led to a re-introduction of the Prevention of Terrorism Act through other means. These responses by the state are advantageous for the LTTE as it means the LTTE can guarantee that more Tamil civilians will be persecuted so are more likely to support the LTTE for lack of choice. While both sides have found the upsurge useful for pushing their war efforts further the present situation also affords respite when the offensives and counter-offensives result in stalemates or where one party finds itself in a vulnerable position.

In looking at the violence it is clear that there has been a dramatic shift in its scale and nature. It was noted in the tail end of the last quarter that military operations had moved from merely weakening military targets of the opposing sides to the seizure and occupation of territory. In this quarter there were dramatic shifts in the lines of control in Eastern Trincomalee and in Jaffna. These shifts were an obvious violation of the CFA and demonstrated that the parties were willing to use strategies more characteristic of conventional and asymmetric warfare rather than peace time spoiler violence. With each offensive the military balance swung favourably to one side or the other. In the first two months the Government had the upper hand securing significant victories in regaining Sampur and with it strategic control over Trincomalee, and in resisting the LTTE's putsch against Jaffna where it was able gain control of the LTTE's first Forward Defence Line (FDL). Thus despite the slow progress of the Mavil Aru Operation and the temporary loss of Mutur the security forces secured a strategic advantage and a morale boost. In the East in particular the government forces are well positioned to take on the LTTE. The assistance of the Karuna Group could prove decisive in restricting the LTTE's ability to maintain military control in the three Eastern Districts. In October the security balance dramatically shifted with the security forces' failed offensive in Pallai, the suicide attack on navy personnel in Habaranna and the Sea Tiger Attack in Galle where the LTTE was able to demonstrate its ability to hit back hard using its standard tools tactically. The momentum favoring the security forces was dramatically set back, especially given the loss of personnel, making clear that any war will prove to be long and bloody. Despite this the military forces still continue to have a strategic advantage over the LTTE. The violations of the CFA continued to mount with newer violations further testing its limits, especially the shifts in the lines of control and the closure of the A9, as the future of and the ability of the SLMM to continue functioning remains an open question. Despite the significant change within the SLMM with personnel from EU member states having to leave the mission, the SLMM as yet shows little sign of re-evaluating its role with the possibility of withdrawing altogether. It is interesting that the Norwegian facilitators have also not indicated that they are considering their future, including the prospect of taking a break from the peace process. Instead the visit of the Norwegian facilitator in December suggested that efforts at facilitation would continue.

The upsurge in violence over this quarter had a dramatic impact on the human rights and humanitarian situation. In addition to the impact of daily violence the large-scale violence intensified the scale of the disaster. There were waves of displacement particularly in Trincomalee and Jaffna with figures for recently displaced hitting the 230,000 mark and refugees

numbering over 15,000. In addition, the deterioration in security conditions affected entire populations making livelihoods and day-to-day existence increasingly difficult. The closure of A9 created a shortage of basic supplies in both the Jaffna Peninsula and the Wannai where essential goods had already increased in price. The situation in the North and East posed presented a huge humanitarian challenge for local, national and international actors. The deterioration in security conditions, including the attacks on humanitarian agencies, especially the killing of 17 workers from Action Contre Le Faim, and the new requirements on international organisations demanded by the government created a serious crisis in the ability of humanitarian agencies to function. It became apparent that significant humanitarian assistance was required to address the needs of the displaced and affected populations.

This quarter saw a steady deterioration in human rights. More than 1,500 people have been killed in 2006, at least half of whom are civilians. The sheer scale of the violence coupled with the figures that are comparable to that of full blown war makes clear that the situation is that of an undeclared and dirty war. As noted in the last quarter, both parties seemed to be paying no regard to the distinction between combatants and civilians. Instead there is a clear pattern of targeting of non-combatants. The parties continued to flagrantly violate the basic norms governing armed conflict with attacks on civilians, religious places and ambulances. Through massacres, brutal killings, aerial bombardment, mortar and MBR attacks, abductions and other forms of violence the armed actors have intensified human suffering forcing civilian populations to flee from their homes and communities and to curtail activities that sustain their day-to-day existence. The wave of abductions of Tamils in the capital city with the abductors demanding ransom in some cases made clear that the human rights crisis is also intensifying outside of the North and East. The assassination of TNA MP N. Raviraj in Colombo who was also a member of the Civil Monitoring Committee that was seeking to highlight abductions in and around Colombo made clear the dangers that Tamils in particular face. His assassination was claimed by a front group that is seen to be associated with the Karuna Group. This front also claimed responsibility for the assassination of TNA parliamentarian Josphe Pararajasingham. The assassination of the Deputy Secretary General of SCOPP Kethesh Loganathan, reportedly by the LTTE also demonstrated the dangers of opposing the LTTE and the continuing fratricide within the Tamil community. In addition to the Security Forces and the LTTE who are accused of committing a number of human rights violations, other armed groups including the Karuna Group and the EPDP are also charged with carrying out rights violations under the patronage of the state. The support of the armed forces to the Karuna Group was highlighted by the visit of Special Advisor to the UN Special

Representative on Children and Armed Conflict, Alan Rock who stated that he had credible evidence to support his allegation. He also stated that both the Karuna Group and the LTTE were continuing to abduct and recruit children.

Given that Sri Lanka is facing a human rights and humanitarian crisis it was not surprising that the disaster was treated by the international community as the third major international disaster, after Darfur and the Middle East. The international community became increasingly vocal over the situation in Sri Lanka with statements made by key individuals within the United Nations system including Under Secretary General for Humanitarian Affairs, Jan Egeland; Special Representative on Children and Armed Conflict, Radhika Coomaraswamy; and High Commissioner for Human Rights, Ann Arbor. That the EU proposed to put forward a resolution on Sri Lanka in Geneva during the Second Session of the UN Human Rights Council in September made clear that the issue was being taken up at an international level. It is ironic that in the early 1990s President Rajapakse, then a M.P. lobbied in Geneva for international attention to the human rights crisis in Sri Lanka, and sixteen years later he would have to confront a lobby from the same location. That the Co-Chairs proposed to send a mission to Sri Lanka to examine the situation also sent warning signals to the Government. The government facing a series of human rights violations in the country some of which were blamed on the armed forces and its military allies introduced a series of measures to address the situation and to limit international censure. A critical measure was the announcement by President Mahinda Rajapakse that an international commission would be created to investigate human rights abuses. This was subsequently re-presented as a national commission with international observers clearly indicating that the announcement had created tensions within the state and among the governing coalition and its political allies. In addition the government announced the creation of a Presidential Commission to look into abductions, special investigations and compensation for the victims of particular incidents. The special measures are an acknowledgement of the crisis within the law and order and justice systems in Sri Lanka as the culture of impunity continues to grow and dominate. The judgement of the Supreme Court in the UNHRC/Sinharasa case which questioned the applicability of international law in Sri Lanka only raises further concerns as to whether Sri Lanka will follow international standards on human rights.

Commemorating his one year as president, Mahinda Rajapakse has consolidated his political position. Through his military campaign and his close ties to his electoral allies, President Rajapakse has been able to thwart the JVP's efforts at threatening his Presidency. The President

in fact has been able to take the wind out of the sails of the JVP and JHU through successful militarism. At the same time he was able to court the minority parties and secured an alliance with the two main up-country Tamil political parties the CWC and UPF. His major political success was his agreement with the UNP to create a national government that created a historical precedent. The significance of this event cannot be over-emphasized as the history of efforts at resolving the ethnic conflict from the late 1950s onwards are full of attempts at subverting understandings and agreements between the government and the Tamil political parties by the opposing national party. Even though the national government was not the initial aim of the President who attempted to gain a mass cross over by UNP M.P.s into the government, he was able to use the situation to his advantage. Beyond the broad principles stated in the UNP-SLFP MOU it is yet unclear the exact modalities of how this national government will function. It is possible that like the President's agreements with the JVP and JHU this union will be a pragmatic and flexible (for the President) alliance that is politically convenient and strategic, rather than forging a new political direction. In this climate none of the political groups are willing or ready to take on the President as they risk being identified as anti-patriotic. Thus, over the next quarter the President may increase his powers and attempt to forge ahead with a military solution. The new anti-terrorism legislation – the Prevention and Prohibition of Terrorism and Specified Terrorist Activities Regulations (PPTSTAR) which strengthened the powers of the state and set a very broad definition of what could constitute terrorist acts. This new legislation is indicative of a trend of a government that is attempting to assert its control through all available means, having direct and ripple effects across Sri Lankan society. The tone of the President's speech announcing the legislation made this clear: "I ask this of all political parties, all media, and all people's organizations. You decide whether you should be with a handful of terrorists or with the common man who is in the majority. You must clearly choose between these two sides." Against the backdrop of the de-merger of the North East, the response to the leak of the Experts Committee A (majority) report of the All Party Representative Committee with the government seemingly more interested in identifying how the report was leaked rather than stating its position to the report. This would suggest that the overall climate has become all the more hostile to the ideas of federalism and substantive power sharing, and that the government is not keen on forging ahead at arriving at a political settlement, focussing more on the exercise rather than the outcome of consensus building.

In the next quarter it would seem that the parties would try to maintain the strategic ambivalence of the 'no official war, no peace' as they continue to carry out military operations, surprise

tactical attacks and daily violence. The question remains - what will it take for the parties to declare war, with peace seeming to have become a distinct dream.