

An open letter from a group of eminent citizens to member states of the United Nations Human Rights Council to ensure justice, truth, and peace for all in Sri Lanka.

September 14, 2015

An International Judicial Process for War Crimes and Crimes Against Humanity in Sri Lanka

Dear members of the Human Rights Council,

In 2009, the international community failed to prevent the terrible systematic massacres, war crimes, rapes, executions that marked the end of Sri Lanka's civil war. Tens of thousands of civilians died as a result – most killed by government forces, although the Tamil Tigers too killed civilians. By its failure to prevent these crimes, the international community failed to uphold fundamental principle of the UN: when a state manifestly fails to protect its own people against crimes such as these, the international community has a responsibility to protect the population.

Now a new challenge faces the international community – to ensure that a genuine process of truth recovery, justice, and reparations is initiated to achieve genuine reconciliation that serves the needs of all victims and all the communities of Sri Lanka.

In March 2014 the UN Human Rights Council (HRC) established an international investigation into allegations of crimes committed during and since the war – known as the Office of the High Commissioner's Investigation on Sri Lanka or OISL.

The HRC established the OISL because it had concluded that the Sri Lankan government was neither willing nor capable of carrying out its own domestic investigation into those crimes. The OISL's report was due to the HRC last March, but upon the election of President Maithripala Sirisena, the UN High Commissioner for Human Rights delayed the report until September 2015. At that time, HRC members made clear that they expected to see concrete steps from the government of Sri Lanka to support a credible justice mechanism, enhance human rights and facilitate reconciliation. More than six months later, it is clear that reconciliation has not progressed between the Tamils and Sinhalese.

The government has made commendable progress confronting corruption and instituting democratic reforms. The adoption of the 19th Amendment is especially laudable. These reforms, however, while welcome, should not be confused with justice for victims. In effect, democracy is being restored in Sri Lanka's South, while the largely Tamil lands of the North East remain under military occupation – and the Minister of Defense has pledged that the army will not be withdrawn. While tens of thousands of displaced persons await resettlement, the military has entrenched itself in the North East, engaging in property development and business ventures. There is no incentive for it to relinquish the lands it holds to its rightful owners. Militarization also increases the vulnerability of Tamil women to sexual violence. A March 2015 Report of the Secretary-General stated: "There are indications that abduction, arbitrary detention, torture, rape and other forms of sexual violence have increased in the post-war period. Allegations of sexual violence by the Sri Lankan security forces against members of the Tamil community in the closing months of the war and in the post-conflict period have been extensively documented, but rarely addressed." The failure to protect Tamils and address this widespread sexual violence has deepened tensions and bred a culture of fear in the North and East of the Island.

Sri Lanka still has the second highest number of disappeared in the world after Iraq. Victims desperately need to know the whereabouts of their missing relatives. Though thousands of Tamils should have been in Government custody having been captured or surrendered or arrested, the Government reported that there were only 273 political prisoners in custody. The government has failed to take the responsibility for locating or accounting for the disappeared. Despite talk of reconciliation, the administration has not acted on an essential confidence-building measure: releasing the names and details of prisoners it holds or who surrendered at the end of the war. Instead, the government has reinstated and promoted army commanders accused of direct command responsibility for war crimes. **The factors which led the HRC to conclude that an international inquiry was necessary have not changed.**

We list these events not as an attack on the new government, but instead to demonstrate that even with the best intentions in the world the Sri Lankan government is not capable of running a credible domestic inquiry into the alleged crimes of its own forces. It is certainly not capable of mounting a judicial process which would have that essential quality: the trust of victims.

The Tamil community's distrust of the government arises from a long history of the failure of the state to administer Justice. The Tamil experience has been one of massacres, extrajudicial killings, enforced disappearances, torture and rape, even before the bloody end of the war in 2009. Violence has been paired with laws that have systematically marginalized Tamils. These crimes have been met with near total impunity.

Other communities, too, have suffered from this culture of state impunity. In the seventies and the eighties thousands of Sinhala people were massacred and disappeared by state violence. An end to state impunity in Sri Lanka is in the interests of all the communities of the island.

We raise this history to illustrate the great challenges to justice. As noted above, very little has changed since the UN set up the inquiry over a year ago. The government has announced that a domestic mechanism will be in place by September 2015. Such a mechanism will almost certainly fail to meet a touchstone standard: consultation with affected parties and confidence of the victims. This failure will follow in the pattern of all such previous efforts. The UN's Special Rapporteur on Transitional Justice, Mr. Pablo de Greiff, recently observed that Sri Lanka has a long record of ineffectual "commissions of inquiry." He noted:

Failed, inadequate or uneven implementation of their recommendations has been a common feature. They have not contributed to closing the significant confidence gap between communities, to securing the rights of victims to truth, justice, reparation, and guarantees of non-recurrence, or to making State institutions more trustworthy in the eyes of citizens. On the contrary, the accumulated result of these efforts has increased mistrust in the Government's determination to genuinely redress those violations.

A judicial process set up by the victor cannot deliver justice for all. As international supporters of human rights and humanitarian law, and in solidarity with all the communities of Sri Lanka, we call on the international community to ensure that Sri Lanka is on a trajectory towards genuine justice and reconciliation.

Soon, the HRC will consider the OISL report into the crimes committed by all sides in the war. This report will follow the UN's 2011 Panel of Experts Report and the 2012 Petrie Report. These three reports demonstrate the facts and circumstances of the grave atrocities that occurred during and since the civil war's conclusion. **The release of the OISL report should not mark the end of the international community's responsibility to the people of Sri Lanka.**

With the facts in hand, the HRC must fulfill its duty by establishing an international independent judicial process under UN auspices. We do not intend to spell out the specifics of such a mechanism, including its possible location, however at a minimum it must entail:

- Application of international criminal law, including war crimes, crimes against humanity, and genocide;
- Consultation on the mechanism's design with all affected groups, especially victims;
- Independent operation and adequate funding;
- Guarantees of witness protection;
- Access to information from all sources, including government and military;
- Finally and most importantly it must entail the appointment of independent and competent personnel by the UN to constitute a significant majority in key positions – prosecutors, judges, and investigators –and jurisdiction to investigate and prosecute the alleged atrocities committed by both sides.

Sri Lanka must incorporate international crimes under its domestic law and also sign on to the Rome Statue to demonstrate its genuine commitment to non-recurrence.

The HRC must be clear that the only way those conditions can be guaranteed is by the establishment of an independent international judicial process. In 2009, the world failed to protect Sri Lankan civilians. In 2015, we urge you to rectify that failure by mounting a credible judicial process. The creation of such a process is essential to prevent future atrocities and promote long-term reconciliation.

Thank you for your kind consideration.

Sincerely,

1. **Miguel d'Escoto Brockmann**, President UN General Assembly (2008-2009). Foreign Minister of Nicaragua (1979-1990).
2. **Miloon Kothari**, former Special UN Rapporteur on the Right to Housing.
3. **Hon. John Dowd AO QC**, Former Attorney General of New South Wales. President, International Commission of Jurists, Australia. President of ActionAid Australia.
4. **Yudith Rolón**, Director General, Office de Verdad Justica y Reparacion (Truth and Justice Commission on the Arrested & Disappeared, 1954-1989), Paraguay.
5. **Norita Cortiñas**, Cofounder, Madres de Plaza de Mayo (Mothers of the Disappeared), Argentina.
6. **Javier Giraldo Moreno, S. J.**, Sacerdote Jesuita Coordinador del banco de datos Derechos y Violencia en Colombia. Tercer Vicepresidente del Tribunal Permanente de los Pueblos, Colombia.
7. **Jakob von Uexkull**, Founder, Right Livelihood Awards and the World Future Council, Sweden.
8. **Maria Stella Caceres**, Director of the Museo de la Memorias, Paraguay.
9. **David Deng**, Legislative Director, South Sudan Law Society.

10. **Martin Almada**, Alternative Nobel Prize Laureate, 2002. Member, Lawyers' Association of the Americas. Paraguay.
11. **Maude Barlow**, Chair, Council of Canadians. Alternative Nobel Prize 2009, Canada.
12. **Medha Patkar**, Founder, National Alliance of People Movements, India.
13. **Professor Jake Lynch**, Director of the Centre for Peace and Conflict Studies, University of Sydney, Australia. Former Secretary General of International Peace Research Association.
14. **Hubert Sauper**, Academy Award nominated Director, *Darwin's Nightmare; We Come As Friends*.
15. **Alejandro Cerezo Contreras**, winner of the Aachen Prize for Peace, Germany 2012, Comité Cerezo México, Organization for Human Rights and for the Freedom of Political Prisoners, Mexico.
16. **John Cavanagh**, Director, The Institute for Policy Studies, USA.
17. **Elsadig Elsheikh**, Director, Global Justice Program, Haas Institute for a Fair and Inclusive Society, University of California, Berkeley.
18. **Dr. Dan Plesch**, Director, Centre for International Studies and Diplomacy, SOAS, University of London.
19. **Dr. Ibrahim Seaga Shaw**, Secretary General of the International Peace Research Association. Senior Lecturer in Media and Politics at Northumbria University, UK.
20. **Maria Herrero & Juan Carlos Trujillo**, Familiares en Búsqueda and Enlaces Nacionales, (Organizations of Relatives of Forced Disappeared people), Mexico.
21. **Dr. Robert Dubler SC**, Chairperson, Sri Lanka Evidence Project, International Commission of Jurists, Australia.
22. **Medea Benjamin**, Cofounder, CODEPINK, USA.
23. **Martinez de la Hidalga**, Former Medical Coordinator of refugee camps in Croatia and Kurdistan.
24. **Bruce Haigh**, Retired Australian Diplomat.
25. **Candy Canezo Diez**, Human Rights Activist, Philippines.
26. **Richard Obedi**, Executive Director, The Populace Foundation International- Uganda Programme.
27. **Christoph Wiedmer**, Director, Society for Threatened Peoples, Switzerland.
28. **Professor Wiliam Schabas**, International Human Rights Lawyer.
29. **Christine Ahn**, Executive Director, Women Cross DMZ.
30. **Julian Burnside AO QC**, Barrister, Australia.
31. **Sara Larrain**, Director, Sustainable Chile Programme, Chile.
32. **Dr. David Rampton**, LSE Fellow, Global Politics Dept., Government & International Relations, London School of Economics and Political Science.
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34. **Lewis Gordon**, International Human Rights Lawyer, USA.
35. **Frances Harrison** Author, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War*.
36. **Alnoor Ladha**, co-founder of /The Rules, USA.
37. **Nimmi Gowrinathan**, Director, Politics of Sexual Violence Initiative. Visiting Professor, Colin Powell School for Civic and Global Leadership, City College New York.
38. **Dr. Vidya Jain**, Director, Centre for Gandhian Studies, University of Rajasthan, Jaipur, India. Ex Co Secretary General of Asia Pacific Peace Research Association.
39. **Jerry Mander**, Founder, International Forum on Globalization, USA.
40. **Tony Clarke**, Founder, Polaris Institute, Canada.
41. **Jerald Joseph**, Director, Pusat KOMAS, Malaysia.
42. **Guillo Bullrich**, Edmund Rice International, Rights of the Child, Argentina.

43. **Dr. Jack Santa Barbara**, Director, The Sustainable Scale Project, USA.
44. **Dr. Pradeep Dhakal**, Co-Secretary General, Asia Pacific Peace Research Association. Director, Chetanalaya Institute for Humanity, Peace and Spirituality, Nepal.
45. **Stefanie Grant**, Senior Visiting Research Fellow at LSE's Centre for the Study of Human Rights.
46. **Elifuraha Laltaika**, Executive Director, Association for Law & Advocacy for Pastoralists, Tanzania.
47. **Anna Blackshaw**, Board Member, Just Foreign Policy, USA.
48. **Nicole D'Souza**, Vice Chair, New South Wales Young Lawyers Human Rights Committee. Project Convener, Sri Lanka Evidence Project, International Commission of Jurists, Australia.
49. **Tathiana Flores**, Human Rights Advocate, Costa Rica.
50. **Florencia Santucho**, Director International Human Rights Film Festival, International Environmental Film Festival (FINCA), Buenos Aires, Argentina.
51. **Prof. P. Ramasamy**, Deputy Chief Minister of Penang, Malaysia.
52. **Elizabeth Carrasco Gardeazabal**, Head of the Documentation Center of the Bolivian Film Archive.
53. **Lena Hendry** Program Manager, Pusat KOMAS (Human Rights NGO), Manager Freedom FilmFest, Malaysia.
54. **Mela Márquez Saleg**, Executive Director, Foundation Bolivian Cinematheque, Bolivia.
55. **Dr. Stuart Rees AM**, Professor Emeritus, University of Sydney.
56. **Julio Santucho**, President of the Instituto Multimedia DerhumALC (IMD), Argentina.
57. **Miguel Álvarez Ganda**, President, Serapaz, Service and Assessment for Peace, Mexico.
58. **Neamin Zeleke**, Executive Director, Ethiopian Satellite Television(ESAT), USA.
59. **Adilson da Costa & Maxi Tahu**, Coordinators, Timor-Leste Institute for Development Monitoring and Analysis, East Timor.
60. **John Miller**, Coordinating Director, East Timor Action Network.
61. **Callum Macrae**, Film Director: *No Fire Zone: The Killing Fields of Sri Lanka*.
62. **Anuradha Mittal**, Executive Director, The Oakland Institute, USA.