



Commonwealth Human Rights Initiative



2 July 2015

To: Ambassadors of UN Human Rights Council Member States

**Subject: Open Letter on Sri Lanka**

Dear Excellencies,

The dissolution of Sri Lanka's Parliament on Saturday and the announcement of fresh Parliamentary elections has renewed international attention on the country. We take this opportunity to note that the ongoing 29<sup>th</sup> session of the UN Human Rights Council marks a midway point in the time given to the Sri Lankan government to demonstrate its willingness to cooperate on human rights issues. In his 13 February 2015 letter to the President of the Council, the UN High Commissioner for Human Rights cited the government's indications of broad cooperation and the possibility of accessing new information as the reasons for deferring his report on Sri Lanka. We note with serious concern that there has been no visible progress in these areas till date. In the last few months, the government has expressed its categorical unwillingness to allow international investigations within Sri Lanka, and has thus far not publicly demonstrated real cooperation with the UN High Commissioner by providing access to information relevant for the report.

Following the Presidential elections in January, there have been some welcome changes on the ground to restore democratic institutions and improve ethnic reconciliation however, the government is yet to publicly demonstrate any concrete measures aimed at establishing a credible justice and accountability process in the country. As a sign of cooperation, the government has allowed UN experts such as the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (transitional justice) to visit and offer advice. The government has also agreed to the presence in Colombo of an OHCHR adviser on transitional justice issues. However, while the government has recently said that it will set up a domestic mechanism to investigate war-time abuses, there is neither any information about the mechanism in the public domain nor any clues as to how such a mechanism will operate. Nor does it appear that the government has conducted any systematic, meaningful or broad-based public consultations with civil society and those affected by abuses to date, as is essential towards ensuring the legitimacy of any such mechanism.

While we note the government's initiative to establish a task force on truth and reconciliation to provide recommendations to the government, the work of the task force remains opaque and removed from public discussion. As noted by the Special Rapporteur on transitional justice after his visit to the country in April 2015, the design and implementation of measures for truth, justice, reparation and guarantees of non-recurrence require consultative and participatory methods. To this end, he says, "Consultation with those affected by the violations is essential from a conceptual standpoint for rights cannot simply be foisted but need to be exercised."

Meanwhile, recent actions by the government raise serious concerns about its intentions towards genuine justice and accountability. Principal among them is the recent decision to promote a Major-General, whose division is alleged to have committed serious violations of international humanitarian law at the end of Sri Lanka's civil war, as the Army Chief of Staff. It is important to note that it is also the same government which, in one of its first symbolic political moves, returned full honours to General Fonseka, the man who led the army during the final stages of the war. Moreover, members of both the Rajapaksa and Sirisena Presidencies, as well as leading members of the major political parties currently contesting Parliamentary elections, were in positions of authority during significant periods of the armed conflict and may have personal vested interests in deflecting accountability concerns. All of this raises serious questions as to the level of the government's political will to establish a credible process looking at crimes committed by both sides.

Decades of successive failed domestic inquiries under various governments in Sri Lanka indicate an entrenched culture of impunity and dysfunctional accountability. In parallel, abusive wartime legal and institutional frameworks still remain un-touched. The continuing use of the Prevention of Terrorism Act (PTA) against human rights defenders and the failure to release political prisoners are prime examples. Despite the January Presidential elections and political change the government of Sri Lanka has so far been slow to redress these gaping deficits. The UN Special Rapporteur on transitional justice notes this when he says that “it is imperative for Sri Lanka to take some immediate action to demonstrate its commitment to redressing past violations”. He goes on to note measures that need to be taken at once, including, among others: clarifying the fate of the disappeared; addressing land issues; and the immediate ending of continuing forms of harassment, violence and unjustified surveillance of civil society and victims of rights abuses.

The government in Sri Lanka should meet three key tests before September 2015 in demonstrating genuine willingness towards establishing a credible and transparent justice and accountability process:

Firstly, it should ensure that any mechanism created to address wartime abuses is defined through genuine consultations with those affected by violations; one that has their confidence and not one imposed on them from the above. To this end the government should be guided by the advice of UN experts that victims be consulted and involved, and it should announce and implement a convincing framework for such a credible process, within a clear timeframe. Given the track record of past domestic inquiries, any mechanism needs to be international, or at a minimum one with a majority of international judges and prosecutors, in order to guarantee its independence and give greater security to those who participate in it.

Secondly, the government should take immediate steps towards resolving key outstanding issues to demonstrate its commitment. This includes: repealing the PTA; a substantial scaling down of military presence in the North and East and ending all undue military interference in the political, social, economic and cultural lives of the population of the region; resolving all conflict induced land issues; ending all forms of harassment of civil society, media and human rights defenders particularly in the North and East; and restoring fundamental freedoms fully and equally in all parts of the country. The government must also act to resolve all disappearances in the country, and to this end the President must make the report of the Presidential Commission on Disappearances public when it is finalised in August.

Thirdly, the government must keep its promise to the UN and fully cooperate with the Office of the High Commissioner for Human Rights and allow it full access to any new or additional information it may require. It was on the basis of the promise of such cooperation and additional information, that extra time was provided to the new government in Sri Lanka through a deferral of the OHCHR report.

Until these three tests are satisfactorily met, the international community and the UN Human Rights Council must maintain the fullest scrutiny of Sri Lanka on questions of justice and accountability. Although it is to be acknowledged that since January Sri Lanka’s government has induced some positive change in easing the abusive human rights climate of the previous Presidency, it must also be recognised that many challenges still remain unaddressed. In the hurry to acknowledge changes, member states of the UN Human Rights Council and the UN as a whole should not let go of the many fundamental challenges that remain. To do so would amount to losing sight of the forest for the trees.

Please accept the assurance of our highest consideration.

*Asian Forum for Human Rights and Development (FORUM-ASIA)*

*Cairo Institute for Human Rights Studies*

*Commonwealth Human Rights Initiative*

*Conectas Direitos Humanos*

*Human Rights Law Centre*

*International Commission of Jurists*

*International Movement Against All Forms of Discrimination and Racism*

*International Service for Human Rights*

*Sri Lanka Campaign for Peace and Justice*