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Sri Lanka: Human Rights Council Support for an International Investigation is Necessary to Address Impunity for Violations and Abuses of International Human Rights and Humanitarian Law

The armed conflict in Sri Lanka had been over for less than ten days when on 27 May 2009 the UN Human Rights Council adopted a Resolution praising Sri Lankan Government efforts “to ensure the safety and security of all Sri Lankans and to bring permanent peace to the country,” while ignoring credible allegations that war crimes had been committed by both sides. It also ignored calls by the UN High Commissioner for Human Rights and non-governmental organizations for an international investigation into such allegations. The resolution has done profound damage to efforts to end impunity and secure reconciliation in Sri Lanka and to the credibility of the UN in Sri Lanka.

In the face of mounting evidence that war crimes may have been committed during the armed conflict in Sri Lanka and the ineffective response by the Sri Lankan authorities, it is time for the Human Rights Council to support international efforts to investigate the allegations.

In May 2009, witnesses to the final conflict were locked away in military-run displacement camps -- where they would remain for many months. But even with nearly 300,000 survivors locked away, confirmation of stories from the conflict zones began to trickle out, and it became clear that many thousands of people had died, thousands more were injured, and that great wrongs had been committed against Sri Lankan civilians and surrendered combatants, whether in the name of “Eelam” or in the name of “counterterrorism.”

A report submitted to UN Secretary-General Ban Ki-moon on 12 April 2011 by the Panel of Experts¹ he appointed to advise him on accountability issues in Sri Lanka “found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity.”²

The Panel’s report confirms many of Amnesty International’s conclusions, derived independently from eyewitness testimony and information from aid workers: that more than 10,000 civilians were killed; that the LTTE used civilians as human shields and conscripted child soldiers; that the Sri Lankan army shelled areas it knew were densely populated by civilians; and that people trapped by fighting suffered severe deprivation of food, water and medical care. The Panel calls on the Sri Lankan Government to “immediately commence genuine investigations into these and other alleged violations of

¹ The members of the panel were Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); and Yasmin Sooka (South Africa)

² Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, Executive Summary, Page ii.

international humanitarian and human rights law committed by both sides involved in the armed conflict.”³

The report also recommends that the Secretary-General “immediately proceed to establish an independent international mechanism” to: “(i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings; (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations; and (iii) Collect and safeguard for appropriate future use information provided to it, which is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system.”⁴

Amnesty International has repeatedly called for the Secretary-General to launch such an independent inquiry and urges this Council to support such an inquiry. The Panel’s efforts should mark the beginning of a process of accounting for these and other alleged violations.

The Sri Lankan authorities have consistently refused to address the very serious crimes that have been alleged in the final stages of the war. On 13 April, only a day after receiving the Panel’s report, the Sri Lankan External Affairs Ministry issued a rejection, despite acknowledging that it had not yet reviewed the report in depth. On 17 April, Sri Lanka’s President, Mahinda Rajapaksa called for mass demonstrations against the Panel’s report during the country’s annual May Day rally; the UN reminded Sri Lanka that it had an obligation to protect UN staff in the country.

History demonstrates that Sri Lanka lacks the political will to address serious allegations of abuse or to end impunity.⁵ It has not attempted to identify government personnel alleged to be responsible for violations of international human rights and humanitarian law committed in the final stages of the armed conflict, let alone initiate steps necessary to ensure that justice is served.

Sri Lanka has ignored commitments it made during its Universal Periodic Review in 2008, including promises to take all necessary measures to prosecute and punish perpetrators of a variety of violations of international human rights law and humanitarian law. It has likewise failed to make good on promises made in a joint communiqué issued at the conclusion of Secretary-General Ban Ki-moon’s 23 May 2009 visit to Sri Lanka.⁶ The Panel of Experts is explicit that Sri Lanka’s latest *ad hoc* mechanism, the Lessons Learnt and Reconciliation Commission (LLRC), “does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process.”⁷

In view of Sri Lanka’s unwillingness to uphold its international obligations, the United Nations must act. The Human Rights Council should lend its full support to the call by the Secretary-General’s Panel of Experts for an independent international mechanism to pursue justice for victims and their families.

³ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, Executive Summary, Page vii.

⁴ Ibid.

⁵ See, *Amnesty International, Twenty-years of Make-believe: Sri Lanka’s Commissions of Inquiry (AI Index: ASA 37/005/2009)*

⁶ Joint Statement by UN Secretary-General, Government of Sri Lanka, SG/2151, 26 May 2009. “Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka’s international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.”

⁷ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, Executive Summary, Page v.

An international inquiry into the alleged international crimes committed in Sri Lanka should not be contingent upon the outcome of any domestic process, let alone the LLRC, which the Panel has concluded was “deeply flawed.” It found that the LLRC was not adequately independent or impartial; it had failed to “conduct genuine truth-seeking” about alleged violations in the final stages of the armed conflict and had not adequately protected witnesses or treated them with respect.

Delaying accountability for alleged crimes under international law in Sri Lanka has encouraged disregard by Sri Lankan authorities for international law and UN mechanisms aimed at protecting individuals from harm and providing accountability. Sri Lanka’s refusal to acknowledge and investigate allegations of such crimes and bring perpetrators to justice fuels a growing lawlessness in the country, including by members of the state security forces and their paramilitary affiliates, who have been involved in enforced disappearances and killings.

The Council should press Sri Lanka to end ongoing violations of human rights. It should also call on Sri Lanka to ensure that domestic and international NGOs and the independent media can carry out their activities freely in safety and without threats and intimidation and thereby provide important checks against abuse of state power.

Conclusion:

In the words of the Panel, “the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.”⁸ The UN must act to counter this dangerous precedent by:

- Supporting the immediate establishment of an independent international mechanism by the Secretary-General to pursue accountability for alleged violations of human rights and humanitarian law in Sri Lanka.

The Human Rights Council and the members of the United Nations also have a responsibility to support genuine efforts to encourage the Sri Lankan government to better protect the rights of all Sri Lankans and to avoid a repeat of the violations that became so commonplace. The Council should call on Sri Lanka to take the following measures to protect human rights:

- Investigate new reports of abductions, enforced disappearances and killings in northern Sri Lanka and throughout the country, and ensure perpetrators identified are brought to justice and tried in full conformity with international standards for fair trial.
- Stop harassment, intimidation and attacks against human rights defenders, journalists and other peaceful critics exposing past or present violations or abuses.
- Fully implement recommendations made in successive reports by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions aimed at ending human rights violations and bringing perpetrators to justice, including investigation of evidence of possible war crimes.
- Fully implement recommendations accepted and commitments made by Sri Lanka during its Universal Periodic Review in 2008.
- Ensure the independence of key justice institutions in Sri Lanka necessary to protect human rights and combat impunity; initiate reforms to bring the functioning

⁸ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, Pages ii and 71.

of domestic institutions such as the Police, Attorney General's Office and the national Human Rights Commission into line with international standards, including by establishing an effective witness protection scheme.

- Fully protect and respect the rights of internally displaced persons, in accordance with the UN Guiding Principles on Internal Displacement.
- Release detainees, including all persons held in “rehabilitation camps” unless they are charged with internationally recognizable crimes and tried in full conformity with international standards for fair trial and without recourse to the death penalty.
- Ratify the Rome Statute and cooperate fully with the International Criminal Court.

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