



Via Electronic Mail

September 23, 2015

Ambassador Keith M. Harper
U.S. Representative to the U.N. Human Rights Council
Permanent Mission of the United States of America to the
United Nations and Other International Organizations in Geneva
11 Route de Pregny
1292 Geneva

Dear Ambassador Harper:

We welcome and fully support the call of U.N. High Commissioner for Human Rights Zeid Ra'ad Al Hussein to create a hybrid special court to investigate alleged international crimes on both sides of the Sri Lankan civil war. This recommendation follows last week's long-awaited release of the report by the Investigation on Sri Lanka led by the Office of the U.N. High Commissioner for Human Rights (OISL).

CJA has worked closely with Sri Lankan civil society and victims' groups over the past two years, and we share their firm belief that a genuine commitment to accountability is the only way for all Sri Lankans to move forward. We are not alone: on September 14, 2015, Sri Lankan Foreign Minister Mangala Samaraweera told the U.N. Human Rights Council (UNHRC) that "this is the only path available to ensure justice, remove the causes of terrorism and achieve a durable peace for the long-suffering people in our country."

In this context, we are deeply troubled by recent statements made by Sri Lankan officials regarding the proposed accountability mechanism. Media reports quote Prime Minister Ranil Wickremesinghe as saying, "There is nothing to be got from abroad," seeming to reject international involvement in an accountability process.

The United States has led the way on accountability in Sri Lanka, co-sponsoring resolutions before the UNHRC in 2012, 2013, and 2014. This year, as the U.S. prepares to introduce another resolution, it should ensure that the Sri Lankan government makes good on its promise to create "independent, credible and empowered mechanisms for truth seeking, justice, reparations and guarantees of non-recurrence." CJA cautions against any attempt to "water down" the proposed accountability mechanism in the name of cooperation, as this would go against long-term interests of peace, security, justice, and reconciliation in the country.

We should not forget the structural barriers to truth and justice in Sri Lanka's domestic system that brought us to the OISL investigation in the first place: politicization of the Attorney General's Department and courts, lack of adequate witness protection, evidence tampering, and the lack of capacity to investigate international crimes. These barriers remain unchanged today. This is why the OISL report concluded that "for an accountability mechanism to succeed in Sri Lanka, it will require more than a domestic mechanism" and why the report recommended "hybrid special courts, integrating international judges, prosecutors, lawyers and investigators."

The U.S. should insist on the following core elements, which are critical for accountability *and have already been agreed to in one form or another by the Sri Lankan government*:

1. **Special Courts and Special Prosecutor.** The volume and specialized nature of war crimes cases necessitates a special court, with trial and appeals chambers, and a special prosecutor, independent from the Attorney General's office, to prosecute alleged war crimes and crimes against humanity on both sides of the Sri Lankan armed conflict. Foreign Minister Samaraweera *agreed* on September 14 to set up a "judicial mechanism with a Special Counsel to be set up by statute."

2. **International Judges.** Sri Lanka's history reflects decades of failed investigations with less than a handful of successful prosecutions of low- and mid-level military personnel. To end impunity, restore the rule of law, and curb widespread politicization of the judiciary, international judges are key. Foreign Minister Samaraweera *agreed* to international judges last January, telling the media: "We hope for technical assistance from the UN, perhaps judges from the Commonwealth." He likewise stated on September 14 that the accountability mechanism would be empowered to "obtain assistance, both financial, material and technical from our international partners including the OHCHR."

3. **International Crimes.** Sri Lanka's current legal framework does not incorporate international crimes or modes of liability. To effectively prosecute such crimes, the Parliament will have to pass statutes criminalizing war crimes and crimes against humanity, with retroactive effect. This is permissible under Sri Lankan constitutional law and non-negotiable to ensure the credible accountability mechanism that the government has repeatedly promised. Sri Lanka will also need to incorporate command responsibility and other modes of liability into its domestic framework if it hopes to address impunity at the highest levels. The Foreign Minister *agreed* on September 14 to criminalize enforced disappearances, signaling an opening to incorporate international crimes into Sri Lankan law.

Some in Sri Lanka may balk at prosecuting members of the Armed Forces, but it is important to remember that one of the goals of individual accountability is to shift blame from whole groups ("Army" or "LTTE") to those individuals who are most responsible for international crimes. In so doing, accountability helps break down nationalist myths on both sides and promotes reconciliation across ethnic divides. Indeed, the OISL report noted significant abuses by the LTTE during the final stages of the war, and the Tamil National Alliance party rightly called for an "introspection into our own [Tamil] community's failures and the unspeakable crimes committed in our name."

Of course, for Sri Lanka to become a success story, any truth or accountability mechanism must be shaped at every level by meaningful consultations with war-affected communities. Sri Lanka must also enact better witness protection legislation, reform security structures currently in place, and repeal the Prevention of Terrorism Act that is the root cause of systemic human rights abuses against Tamils. Foreign Minister Samaraweera promised all of these things in his September 14 address, but his government will be judged by actions, not promises.

Sri Lanka is a post-war country, but is not yet post-conflict. After 26 years of violence and loss, now is the moment for the U.S. to help Sri Lanka look to a shared future marked by unity, justice, truth, and healing. The U.S. must stand firm in its commitment to accountability and fully support the High Commissioner's call for a hybrid special court. As Foreign Minister Samaraweera stated, Sri Lanka "has faltered far too many times since Independence and [it] cannot afford to fail once again."

Sincerely,



C. Dixon Osburn
Executive Director

cc

Nisha Biswal, Assistant Secretary of State for South and Central Asian Affairs
Tom Malinowski, Assistant Secretary of State for Democracy, Human Rights, and Labor
Atul Keshap, Ambassador to Sri Lanka and Maldives
Samantha Power, Ambassador to the United Nations
Michele Sison, Deputy Representative to the United Nations