



Why the UN Human Rights Council must establish an independent, international war crimes inquiry in Sri Lanka

The UN Human Rights Council should “establish an international inquiry mechanism [in Sri Lanka] to further investigate the alleged violations of international human rights and humanitarian law and monitor any domestic accountability process”

Her Excellency Ms Navi Pillay, UN High Commissioner for Human Rights

An independent international war crimes investigation, in the form of a full ‘Commission of Inquiry’, must be established in Sri Lanka, during this month’s 25th Session of the UN Human Rights Council (UNHRC).

Since the end of the country’s armed conflict in 2009, there has been no truth, accountability or justice for the allegations of war crimes and crimes against humanity committed by the Sri Lankan military and the Tamil Tigers (LTTE). At least 40,000 people died in the final months of the war and as many as 146,000 remain unaccounted for. The prospects of a sustainable peace are also being undermined by the on-going human rights violations and the lack of progress made to ensure reconciliation and enable a comprehensive political settlement that addresses the root cause of the conflict – the marginalisation of the Tamil people.

As the UN Secretary-General’s Panel of Experts on Sri Lanka (PoE) said, “accountability for serious violations of international humanitarian and human rights law is not a matter of choice or policy; it is a duty under domestic and international law.” However the Government of Sri Lanka has shown no political will to credibly investigate the allegations. Sri Lanka’s domestic ‘Lessons Learnt and Reconciliation Commission’ was described as “deeply flawed” by the PoE. The failure of the Government’s approach to accountability and reconciliation has resulted in two critical resolutions at the UNHRC, in 2012 and 2013. The support for an international accountability mechanism continues to grow. However, President Rajapaksa’s regime dismisses the concerns raised by the international community and denounces all those who criticise their policies.

The situation in Sri Lanka is deteriorating. Now is the time to act. This issue is a focus of discussions at the current UNHRC Session, where the United States will table the third resolution on Sri Lanka in two years. The initiation of an independent, international commission of inquiry should be a core component of this resolution and it is recommended by the UN High Commissioner for Human Rights. The Government of Sri Lanka’s rejection of this recommendation should be given no quarter.

Global Tamil Forum (GTF) urges all members of the international community – governments, parliamentarians, civil society organisations and concerned citizens alike – and particularly voting members of the UNHRC to:

- **Support the establishment of an independent, international commission of inquiry, which can credibly investigate the conduct of the final months of Sri Lanka’s war.**

This mechanism, under UN auspices, is imperative to ensure truth and justice for the tens of thousands who perished. It is a fundamental precondition of reconciliation. If this happens, there will be a genuine opportunity to set Sri Lanka on the path to a better future and a lasting peace.

The document overleaf analyses why international action on Sri Lanka is required. This includes information on: the mounting evidence of war crimes, the failure of the accountability process in Sri Lanka, the Government’s efforts to undermine the pursuit of truth and justice, the damage done to the prospects of peace, as well as the duty the UNHRC has to defend international humanitarian and human rights law.



Why an independent, international war crimes inquiry in Sri Lanka is required

March 2014

Why international action is necessary	Government of Sri Lanka's views on accountability issues	Realities of accountability in Sri Lanka	International reaction to the accountability issues in Sri Lanka
Mounting evidence of war crimes	<p><i>"[Channel 4's] latest attempt to denigrate Sri Lanka is a continuation of your pernicious campaign. [...] Your allegations [of war crimes] are such unmitigated and unsubstantiated rubbish that you make even gutter journalism appear to be Pulitzer Prize-winning professionalism"</i></p> <p>Government of Sri Lanka, 2014</p>	<ul style="list-style-type: none"> Two UN reports since the war, and many others from leading NGOs, have found credible evidence that Government forces were largely responsible for civilian casualties. In March 2014, the team behind Channel 4's 'Sri Lanka's Killing Fields' films revealed new evidence of abuse by the Sri Lankan military towards the bodies of female Tamil fighters. Their previous footage has been described as <i>"crimes of the highest order – definitive war crimes"</i>, by the UN Special Rapporteur on extrajudicial executions, Christof Heyns. In February 2014, the International Crimes Evidence Project found there was an <i>"evidentiary platform for an international investigation into war crimes"</i>. Evidence of Government culpability for extensive human rights abuses has, allegedly, <i>"been covertly destroyed"</i> by the Sri Lankan military. 	<p><i>"The Government of Sri Lanka has [...] failed to ensure independent and credible investigations into past violations of international human rights and humanitarian law. [...] Meanwhile, new evidence continues to emerge on the events that took place in the final stages of the armed conflict"</i></p> <p>Office of the UN High Commissioner for Human Rights, 2014</p>
Broken promises on accountability	<p><i>"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"</i></p> <p>Statement – UN Secretary General & Government of Sri Lanka, 2009</p>	<ul style="list-style-type: none"> No-one has been prosecuted for the alleged violations of international humanitarian and human rights law. Sri Lanka's 'Lessons Learnt and Reconciliation Commission' (LLRC) was only established due to international pressure. According to the UN Secretary-General's Panel of Experts (PoE), the LLRC's mandate was not tailored to investigate war crimes allegations. 	<p><i>"The absence of accountability for the serious violations of human rights and international humanitarian standards during and after the civil war is unacceptable"</i></p> <p>Prime Minister of Canada, Rt. Hon Stephen Harper MP, 2013</p>
No truth or justice possible from within Sri Lanka	<p><i>The "protection of civilian life was a key factor in the formulation of a policy for carrying out military operations. [...] the Commission concludes that the Security Forces had not deliberately targeted the civilians in the No Fire Zones"</i></p> <p>Report on the final stages of the war - Sri Lankan Army, 2013</p>	<ul style="list-style-type: none"> The Government of Sri Lanka stated that it conducted a <i>'zero civilian casualty policy'</i> during final months of armed conflict, despite overwhelming evidence to the contrary. In January 2013, the Sri Lankan army released a report which maintained that there was no deliberate shelling of civilians by Government forces. The National Action Plan to implement the recommendations of the LLRC stated that military, rather than independent, courts of inquiry would look into the handful of cases of alleged army and navy abuses deemed worthy of consideration by the LLRC. 	<p><i>"The Government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilians population to concentrate. [...] Most civilian casualties in the final phases of the war were caused by Government shelling"</i></p> <p>UN Secretary-General's Panel of Experts on Sri Lanka, 2011</p>



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Failure of Sri Lanka's LLRC in achieving accountability	<i>The "entire endeavour [of the LLRC] requires that what happened in the past must be relegated to history"</i> Government of Sri Lanka, 2011	<ul style="list-style-type: none"> ✦ The LLRC Panel was neither independent nor impartial. The Chairman, amongst others, was a senior government representative during the final year of the war and had previously publicly defended the conduct of the government and the military against allegations of war crimes. ✦ The LLRC lacked a witness protection programme and the PoE raised concerns regarding witness intimidation. ✦ There was a lack of a victim centred approach, as well as patterns of discrimination against women. 	<i>"The LLRC is deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process"</i> UN Secretary-General's Panel of Experts on Sri Lanka, 2011
History of failed commissions of inquiry into human rights violations in Sri Lanka	<i>Sri Lanka is committed to "investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards"</i> Government of Sri Lanka, 2012	<ul style="list-style-type: none"> ✦ Even the LLRC raised concerns that <i>"continued failure to give effect to [...] critical recommendations of past commissions [on human rights violations] give rise to understandable criticism and scepticism regarding Government appointed Commissions"</i>. ✦ A culture of impunity exists. Along with many other cases of unresolved human rights abuses, there has been no accountability for the murder of 17 Action Against Hunger aid workers in Muttur or for the deaths of 5 Tamil students in Trincomalee, both in 2006. ✦ In December 2013, Action Against Hunger stated that the aid workers in Muttur <i>"were likely assassinated by members of Sri Lankan security forces and the criminals must have been covered up by Sri Lankan top authorities"</i>. 	<i>"Past commissions of inquiry [on human rights violations] have not always completed their mandate, their reports have not been published and their recommendations have not been implemented or followed by prosecutions"</i> Office of the UN High Commissioner for Human Rights, 2014
The Government of Sri Lanka denounces all those who question the credibility of the accountability and reconciliation processes	<i>"The Government of Sri Lanka reiterates its rejection of resolution 22/1 [by the UN Human Rights Council], as well as the High Commissioner's report [on Sri Lanka] in its entirety, which are fundamentally flawed"</i> External Affairs Minister, G.L Peiris, 2014	<ul style="list-style-type: none"> ✦ President Rajapaksa has already rejected the first, draft resolution on Sri Lanka at the 25th Session of the UNHRC stating that <i>"only the people of this country can decide if the war was right or wrong and not the human rights council"</i>. ✦ The UN High Commissioner for Human Rights, Ms Navi Pillay, has been labelled as <i>"the Tamil Tigress in the UN"</i>, by some Sri Lankan Government Ministers and members of the media. ✦ During her visit to the island in August 2013, Ms Pillay raised alarm at <i>"the harassment and intimidation of a number of human rights defenders"</i>, including those who had the chance to meet her. 	<i>"Sri Lanka [...] is a country where critical voices are quite often attacked or even permanently silenced"</i> UN High Commissioner for Human Rights, 2013



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Ever increasing support for an independent, international war crimes inquiry	<i>"I see the allegations of war crimes attempted to be brought against Sri Lanka in Geneva as a victory for those who are opposed to peace"</i> President Mahinda Rajapaksa, 2014	<ul style="list-style-type: none"> ✦ The initiation of an independent, international investigation, in the form of a 'Commission of Inquiry', is a key recommendation of the PoE and the UN High Commissioner for Human Rights. ✦ The 2012 UNHRC resolution on Sri Lanka was sponsored by 40 countries and supported by 24 voting members of the UNHRC. In 2013, the follow-up resolution was sponsored by 42 countries and supported by 25 UNHRC voting members. ✦ In recent months, the UK Government, the European Parliament, the Australian Senate and the US Congress have joined the chorus of support for an international accountability mechanism. 	<i>If by March 2014 "Sri Lanka doesn't deliver an independent investigation [into war crimes allegations], the world will need to ensure an international investigation is carried out instead"</i> Prime Minister of Great Britain and Northern Ireland, Rt. Hon David Cameron MP, 2013
The UNHRC has a duty to promote and protect international law	<i>"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"</i> Statement – UN Secretary General & Government of Sri Lanka, 2009	<ul style="list-style-type: none"> ✦ The UNHRC should be at the forefront of safeguarding universal rights as well as the precepts of international humanitarian and human rights law. ✦ The UNHRC has an important opportunity to reinforce the authority of the Council by supporting an international inquiry. ✦ The Council can send a powerful message to other countries that Governments accused of complicity in war crimes and crimes against humanity would not be able to avoid international reproach for their actions. 	<i>"We want to emphasise that Sri Lanka's recent history is an issue that concerns all of us. Whether or not the Human Rights Council is able to summon the will to act on [Sri Lanka] could have ramifications for the global standing of human rights and international humanitarian law – and for the prestige and authority of the council"</i> The Elders, 2012
The lack of accountability undermines the prospects of sustainable peace	<i>"We should march towards progress giving the highest priority to the principles of tolerance with unity and determination"</i> President Rajapaksa, 2013	<ul style="list-style-type: none"> ✦ In August 2013, Navi Pillay, expressed her concerns regarding the "curtailment or denial of personal freedoms and human rights [...] persistent impunity and the failure of the rule of law". ✦ There are "continuing reports of extrajudicial killings, abductions and enforced disappearances", according to a report, from March 2013, by the Office of the High Commissioner for Human Rights. ✦ No progress has been made on a comprehensive political settlement that can address the root cause of the armed conflict – the marginalisation of the Tamil people. Powers have been centralised in the hands of the President. These actions are likely to "sow the seeds of future discord", according to Navi Pillay. 	<i>"The war may have ended, but in the meantime democracy has been undermined and the rule of law eroded. [...] I am deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction"</i> UN High Commissioner for Human Rights, 2013