

Witness Statement

“Sri Lanka’s Democratic Transition: A New Era in U.S.-Sri Lanka Relations”

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Introduction

Following the sudden regime shift in January 2015, Sri Lanka became a country in transition, ostensibly trying to rid its democratic institutions of authoritarian practices¹ that caused, and sustained, the decades-long civil war. Since his election, President Maithripala Sirisena has been celebrated for his leadership in opening up space -- space for internet freedom, political dialogue, and popular protest. While these shifts have generated new conversations in a deeply divided society, substantive progress towards a truly inclusive, democratic, state cannot be gauged on dialogue and rhetoric alone.

In October 2015, the Government of Sri Lanka co-sponsored Resolution 30/1 at the UN Human Rights Council and committed to several reforms, including the creation of an accountability mechanism with international support² to address *both* the past crimes committed *and* the ongoing culture of violence and impunity.³ At the time of this hearing, the former has primarily been addressed by statements, without the establishment of judicial accountability structures,⁴ and while the *magnitude* of rights abuses has decreased in recent years, the entrenched *mode of operating* by the state and systemic nature of human rights violations remain the same.⁵ In key areas of transitional justice, political reform, militarization, and women, peace & security, any potential for meaningful progress and sustainable peace should be assessed on the ability of a particularly policy to address the *structural violence* embedded in state institutions. Using that rubric, the majority of Sri Lanka’s steps towards reform are demonstrably inadequate.

¹ <https://www.washingtonpost.com/news/monkey-cage/wp/2015/01/11/sri-lankas-surprise-political-transition/>

² UNHRC Resolution 30/1, October 2015.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf>

³ South Asian Centre for Legal Studies, “Criminal and Humanitarian Approaches to Missing Persons”, May 3, 2016.

⁴ People for Equality and Relief in Lanka (PEARL), *Withering Hopes*, May 2016.

<http://pearlaction.org/wp-content/uploads/2016/04/Withering-Hopes-PEARL.pdf>

⁵ UN experts urge Sri Lanka to adopt urgent measures to fight torture and strengthen justice system’s independence, May 10, 2016.

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19946&LangID=E#sthash.FzJVvLHL.KTiLdZT3.dpuf>

Transitional Justice

Several rights observers and legal scholars have stressed the centrality of both *truth* and *justice* in the process of transitional justice,⁶ even where the two are at odds with the political agenda of the state.⁷ The continued security-based approach to transitional justice in Sri Lanka has handicapped even promising steps towards reconciliation, such as newly established Office of Missing Persons which has, at the outset, “placed before victims an artificial and unfair choice between truth and justice”⁸ and has not demonstrated any “genuine willingness to consult the victims.”⁹

In this context, obfuscation from Sri Lankan leaders regarding the role of international involvement in the accountability mechanism is particularly unhelpful. Last October at the UN Human Rights Council, Sri Lanka committed to involving international judges, defense lawyers, prosecutors and investigators in creating and executing accountability mechanisms. However since then, President Sirisena and Prime Minister Wickremasinghe have reneged on this key commitment, saying the mechanism will proceed without international judges. Given the Tamil community’s consistent demand for an international accountability mechanism, and the report from the UN High Commissioner for Human Rights that Sri Lanka’s judicial system is an inadequate avenue for redress, the importance of robust international involvement in the accountability mechanism cannot be overstated. Sri Lanka’s pattern of making one commitment to the international community and implementing something different within subsets of its domestic constituency is counter-productive and must stop.

Another element critical to the success of transitional justice in Sri Lanka are the confidence-building measures which restore the faith of the Tamil population in state institutions and justice processes, in order to ensure the non-recurrence of violence. A pervasive fear instilled by the collective punishment of the previous regime has left the Tamil population in the North and East terrified to testify to past atrocities, report ongoing abuses, or request information on missing loved ones for fear of detention or torture. Victims who took the risk to testify before the 2010 Lessons Learnt and Reconciliation Commission faced immediate harassment by state forces following their testimonies. Just last month, the Oakland Institute, a California-based NGO, published a report after Tamil IDPs petitioned the organization for assistance and “urged the Oakland Institute to not publish the names of the signatories because they feared retaliation for contacting an international organization,” having received calls from

⁶ Pablo de Greiff, Observations of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the conclusion of his second advisory visit to Sri Lanka (26 January to 1 February 2016). <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17029&LangID=E#sthash.JoqwIHQ1.dpuf>

⁷ Ibid [referencing SACLs report]. See also, <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/18/sri-lankas-bloody-civil-war-finally-ended-seven-years-ago-but-moving-on-from-the-past-is-not-easy/>

⁸ South Asian Centre for Legal Studies, “Criminal and Humanitarian Approaches to Missing Persons”, May 3, 2016.

⁹ Letter re: Office of Missing Persons (OMP) to Sri Lanka Ministry of Foreign Affairs from Tamil Civil Society Forum and other organizations and individuals, May 29, 2016.

unidentified numbers threatening their work”.¹⁰ Despite ongoing debates on transitional justice in the capital, a recent survey of the population in the North-East reveals ongoing human rights violations throughout the North-East and a continued deep disillusionment and mistrust of the state, particularly amongst Tamils and other minority populations.¹¹ The continued concentration of power in a central state apparatus which participated in mass atrocities will make the success of any confidence-building measures unlikely.

Political Reform

While Sri Lanka’s regime change in itself signified a move towards a democratic transition, political space for dissent, the devolution of power, and the establishment of inclusive political institutions remain an issue under the Sirisena administration. Similar to countries in transition elsewhere, such as Myanmar, public statements and changes in political dynamics at the national level *cannot* be interpreted as structural shifts to include the perspectives of marginalized populations, protecting their civil liberties and political rights.¹²

In Sri Lanka, a key tool for political repression, The Prevention of Terrorism Act¹³, used by successive regimes throughout Sri Lanka’s history to arrest, detain, and torture dissenters, has not, despite Sirisena’s promises, been repealed. Recent reports highlight the constant intimidation of political actors¹⁴ and the continued use of “white van abductions”¹⁵ to silence the voices of citizens and journalists alike. Again, the physical presence of protestors in the North and East expressing their grievances, cannot be mistaken for a commitment to offer a genuine political space for the Tamil population, as protest organizers were arrested and detained as recently as two weeks ago.

Even more worrying is the recent conclusion by the UN Special Rapporteurs on Torture and Independent Judiciaries, that torture is a “common practice”¹⁶ in a system that “may indirectly incentivize the use of torture”. The judicial system remains heavily politicized and exclusionary, as Ms. Pinto notes, “the diversity of the population is not reflected in the composition of the judiciary, the Attorney-General’s office, the police, or the language in which proceedings are conducted.”¹⁷ Sri Lanka’s post-independence practice of upholding the Sinhala-Buddhist nature of the state remains consistent, even as the political actors in power change.

¹⁰ Oakland Institute, *Waiting to Return Home: Continued Plight of the IDPs in Post-War Sri Lanka*, May 2016. http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/SriLanka_Return_Home_final_web.pdf

¹¹ People for Equality and Relief in Lanka (PEARL), *Withering Hopes*, May 2016.

<http://pearlaction.org/wp-content/uploads/2016/04/Withering-Hopes-PEARL.pdf>

¹² International Crisis Group, *Sri Lanka: Jumpstarting the Reform Process*, May 2016.

[http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/278-sri-lanka-jumpstarting-the-reform-process.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/278-sri-lanka-jumpstarting-the-reform-process.pdf)

¹³ Recently, UN Special Rapporteur on The Independence of Judges and Lawyers found that the Prevention of Terrorism Act allows for “prolonged arbitrary detention” without charge.

¹⁴ OHCHR Report September 28, 2015

¹⁵ <http://groundviews.org/2016/06/01/white-vans-and-unlawful-detention-under-the-pta/>

¹⁶ The UN Working Group on Enforced and Involuntary Disappearances has also uncovered underground detention centers below a naval base in Eastern Sri Lanka.

¹⁷ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19946&LangID=E>

Militarization & Security Sector Reform

In 2014, five years after the end of the war, over 160,000 mostly Sinhalese, soldiers remained in the former conflict zones in the North and East. Progress on de-militarization under the Sirisena regime has been analyzed through the physical markers of armed officials, rather than the deeply entrenched intrusion of the military into civilian life. For example, while the appointment of civilian governors to the Northern and Eastern provinces in place of a military official is a welcome transition, the trend of military control of small-scale businesses (vegetable shops, local hotels), military involvement in civilian activities, and the continued recruitment of civilians into militarized forms of labor¹⁸ has not been reversed. The military's involvement in the North-East has so deeply penetrated the fabric of life that the military runs pre-schools, with Tamil children forced to wear uniforms with military emblems.¹⁹ If demilitarization is the longer term goal, in the interim the Government of Sri Lanka should re-distribute its forces to be proportionately stationed throughout the entire island.

Militarization has also shaped the lived experience of civilians in the North and East in several ways. Even with a diminished number of visible checkpoints, the military appropriated vast swathes of private and public property in the North East during and immediately after the war. Though 3,000 acres have been returned to their owners under President Sirisena, one NGO notes that over 12,000 acres of private land²⁰ are still being held and over 67,000 acres of state and private land have been appropriated by the military.²¹ Over 70,000 Tamils and Muslims remain in Internally Displaced Camps, unable to return to their lands (several in the expanding High Security Zones), while some who have been returned are forced to live in the shadow of military camps or in toxic proximity to coal and other newly established state-run factories.²²

Sri Lanka continues to be looked to as a model for counter-terrorism,²³ and congratulated by key U.S. figures such as Samantha Powers as being a "global champion for human rights," even as the success of a militarized approach to an ethnic conflict was predicated on violations of human rights that amounted to crimes against humanity.²⁴

Women, Peace & Security in the North and East

The context of militarization and impunity highlighted above has led to a particularly challenging situation for Tamil women whose vulnerability is heightened as they live in an environment entirely mediated by military forces. Everything from income opportunities (Civilian Defense Force) to shopping for groceries or walking to school requires a constant interaction with the military.

¹⁸ "The Forever Victims: Tamil Women in Post-Conflict Sri Lanka", White Paper, Colin Powell School for Civic and Global Leadership. 2015.

¹⁹ <http://www.tamilguardian.com/article.asp?articleid=17840>

²⁰ <http://www.cpalanka.org/wp-content/uploads/2016/03/Land-Occupation-in-the-Northern-Province.pdf>

²¹ <http://www.tamilguardian.com/files/File/BTF/Land%20occupied%20by%20Security%20forces%20in%20Northern%20province.pdf>

²² ²² Oakland Institute, *Waiting to Return Home: Continued Plight of the IDPs in Post-War Sri Lanka*, May 2016. http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/SriLanka_Return_Home_final_web.pdf

²³ Sri Lanka hosted several conferences on techniques of counter terror, there are new alliances being formed between U.S. Military Institutions, such as West Point, to train U.S. cadres in counterterrorism strategies on the island.

²⁴ OISL report

My own recent report, which relies on over fifty interviews with women in the North and East has some critical findings on the position of Tamil women. Among them are the allegations of rape by state forces, which have declined since the immediate post-war period, however the deep trauma from this period -- coupled with the complete impunity offered to perpetrators of these crimes -- allows rape to persist as one of the primary concerns of Tamil women.

*While some sub-groups of Tamil women are 'particularly vulnerable' to rape (those living near large army camps, the disabled), most Tamil women live with a disturbing spectrum of aggressive sexual behaviors from military personnel. This extends to what one Tamil activist called, "psychological forms of sexual violence, threats of rape and sexual intimidation, through the military that is still there, even if the numbers of personnel have decreased." The pervasive fear of rape, in itself, prevents the mobility of women, limiting their productivity and willingness to participate in any public activity whether social, cultural, or political.*²⁵

Tamil women have consistently been absent from substantive political or peace-building conversations, a significant oversight as noted by the 2015 UN Sustainable Development Goals which cite the exclusion of women as a detriment to the sustainability of peace.

Role of the U.S. & International Community

The role of the United States in the 'democratic transition' is vital. While it has been a leader in the pressure which led to a shift in regime, continued pressure is required to see structural changes that will see the country through a transitional period to a genuine democracy.

- Going forward, the U.S. must take a more cautious approach—while noting progress by Sri Lanka, the broad commendation for statements and small steps detracts from areas where pressure by U.S. and international community has gotten victims some attention—but attention alone is not enough to ensure justice and equality (for example, see comments from new ICG report at pp. 28-29). Statements from the US government must be calibrated based on conditions on the ground, and particularly the North-East, which has borne the brunt of decades of war.
- As the U.S. connections to the North-East, it must be mindful of the military mediation, as it ensures the victim/survivor community has opportunities to engage with the international community and to ensure the international community's evaluation of Sri Lanka's progress on its pledges are appropriately fact-based.
- The U.S. should foreground the cessation of human rights violations, press for the release of military-occupied land, the release of Tamil political detainees, the resettlement of IDPs and, most critically, the demilitarization of the North-East.
- The U.S. and International Community should push the Sri Lankan government to communicate the need for accountability to Sinhala populace as well— the government's own statement that

²⁵ "The Forever Victims: Tamil Women in Post-War Sri Lanka", White Paper, Colin Powell School for Civic and Global Engagement. 2015.

the Channel 4 films depicting horrific war crimes are authentic is a step in the right direction, but this acknowledgement must translate to a broader educational campaign regarding the breadth of abuse the Tamil community has suffered. This is an important step that is undermined by ongoing references to military as “war heroes”, which limits the potential for democratic transition in a “Victor’s Peace”.

- As numerous authorities have noted, Sri Lanka by itself does not have the capacity to deal with the scale of crimes committed during and after the war and would be well-advised to call on outside expertise to deal with these serious breaches of the laws of war and international law. The US has assisted in similar circumstances in other parts of the world.
- The US should keep in place the effective regime of incentives and disincentives that have worked well in the past until significant reforms are in place and working effectively. For instance, restrictions on military aid, licensing and training, should remain until major security sector reform has been accomplished.