



14 October 2010

S.M. Samarakoon
Secretary
Commission of Inquiry on Lessons Learnt and Reconciliation

Dear Mr. Samarakoon,

Thank you for inviting Amnesty International, Human Rights Watch and the International Crisis Group to appear before Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC). As the invitation notes, we all closely follow developments in Sri Lanka, and we remain committed to helping the Sri Lankan people find a just and peaceful way forward from the decades of civil war and violence they have suffered.

Unfortunately, we are compelled to decline the Commission's invitation. While we would welcome the opportunity to appear before a genuine, credible effort to pursue accountability and reconciliation in Sri Lanka, the LLRC falls far short of such an effort. It not only fails to meet basic international standards for independent and impartial inquiries, but it is proceeding against a backdrop of government failure to address impunity and continuing human rights abuses.

Our three organizations believe that the persistence of these and other destructive trends indicates that currently Sri Lanka's government and justice system cannot or will not uphold the rule of law and respect basic rights. As you will be aware, we have highlighted our concerns in a number of reports. Of particular relevance are Crisis Group's May 2010 report *War Crimes in Sri Lanka* and its June 2009 report *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*; Human Rights Watch's February 2010 report *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka* and its February 2009 report *War on the Displaced: Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*; and Amnesty International's June 2009 report *Twenty Years of Make Believe: Sri Lanka's Commissions of Inquiry* and its August 2009 *Unlock the Camps in Sri Lanka: Safety and Dignity for the Displaced Now*. These and other relevant publications are included in the attached list and are available on our websites www.crisisgroup.org, www.hrw.org, and www.amnesty.org. Unfortunately, Sri Lanka has made no progress since the end of the war in addressing our concerns detailed in these reports.

In addition to these broader failings of the government, we believe that the LLRC is deeply flawed in structure and practice. Of particular concern are the following:

Inadequate mandate

Nothing in the LLRC's mandate requires it to investigate the many credible allegations that both the government security forces and the Liberation Tigers of Tamil Eelam (LTTE) committed serious violations of international humanitarian and human rights law during the civil war, especially in the final months, including summary executions, torture, attacks on civilians and civilian objects, and other war crimes. The need to investigate them thoroughly and impartially is

especially urgent given the government's efforts to promote its methods of warfare abroad as being protective of the civilian population, when the facts demonstrate otherwise.

Nor has the LLRC shown any genuine interest in investigating such allegations. Instead, it has allowed government officials to repeat unchallenged what they have been saying without basis for months: that the government strictly followed a "zero civilian casualty policy". Indeed, during the testimony of Defence Secretary Gotabaya Rajapaksa on 17 August 2010, the primary intervention of the Commission chairman, C.R. de Silva, was to prompt the secretary to provide the Commission with a 14 February 2009 letter from the International Committee of the Red Cross (ICRC) thanking the Navy for assisting in a medical evacuation. While highlighting that one letter, the chairman and his colleagues failed to ask the defence secretary about any of the ICRC's numerous public statements between January and the end of May 2009 raising concerns about excessive civilian casualties, violations of international humanitarian law and insufficient humanitarian access.

The Commission also has not required officials to explain the government's public misrepresentations during the war. Particularly disturbing are the government's repeated claims that there were under 100,000 civilians left in the Vanni at the beginning of 2009 when officials later conceded there were some 300,000, and that Sri Lankan forces were not using heavy weapons in civilian areas when the military eventually admitted they were.

Lack of independence

A fundamental requirement for any commission of this type is that its members are independent. The membership of the LLRC is far from that. To start, both the chairman C.R. de Silva and member H.M.G.S. Palihakkara were senior government representatives during the final year of the war. They publicly defended the conduct of the government and military against allegations of war crimes. Indeed during two widely reported incidents – the shelling of the first "no-fire zone" declared by the government in late January and the shelling of Puthukkudiyiruppu (PTK) hospital in February – H.M.G.S. Palihakkara, then Sri Lanka's representative to the UN, told CNN that government forces had confirmed that even though the LTTE was firing out from the "no-fire zone", the government was not returning fire; and that the military had confirmed they knew the coordinates of PTK hospital and they had not fired on it.¹

Beyond his public defense of government conduct during the war, there is also evidence that as attorney general, C.R. de Silva actively undermined the independence of the 2006-2009 Presidential Commission of Inquiry that was tasked with investigating allegations of serious human rights violations by the security forces. Mr. de Silva's conflicts of interest were repeatedly criticized by the International Independent Group of Eminent Persons (IIGEP), which had been invited by the President to oversee the Commission's work. The members of the IIGEP resigned in April 2008 and cited Mr. de Silva's conflicts of interest as a major reason for doing so. Most other members of the LLRC have some history of working for the Sri Lankan government. None is known for taking independent political positions, and many have publicly declared their allegiance to the President and government.²

¹ "Sri Lanka's U.N. ambassador discusses what the government is doing to protect civilians in the war zone in Sri Lanka", CNN, 3 February 2009 at www.cnn.com/video/#/video/world/2009/02/03/stout.sri.lanka.war.zone.cnn?iref=videosearch.

² For instance, in presenting the annual memorial oration for President Rajapaksa's father in November 2009, Commission member Professor Karunaratne Hangawatte said about the President: "It is no secret that the national and international community stands in gratitude and salutes Your Excellency for your unwavering leadership, our defense leaders and personnel for their enormous sacrifices". He also called on

Lack of witness protection

Equally worrying is the absence of any provisions for the protection of witnesses who may wish to testify before the Commission. Sri Lanka has never had a functioning witness protection system, nor has the Commission established any ad hoc procedures for witness protection. The lack of witness protection is particularly crippling in the current atmosphere in Sri Lanka in which government officials label as “traitors” persons making allegations that government forces might have committed violations of international law. Only a brave few have testified before the LLRC about war crimes in the north despite that threat. Moreover, even though the war is over, the country is still operating under a state of emergency, with laws that criminalize political speech and where there is no meaningful investigation of attacks on government critics. This clearly undermines the Commission’s ability to conduct credible investigations of alleged violations of international or national law. Until effective protection of witnesses can be guaranteed, no organization or individual can responsibly disclose confidential information to the Commission.

Past commission failures

Our decision to decline the LLRC’s invitation to testify also stems from Sri Lanka’s long history of failed and politicized commissions of inquiry. Amnesty International’s report, *Twenty Years of Make-Believe: Sri Lanka’s Commissions of Inquiry*, documents the failure of successive Sri Lankan governments to provide accountability for violations, including enforced disappearances, unlawful killings, and torture. The most recent instance is the work of the 2006-2009 Commission of Inquiry into 16 cases of serious human rights violations by both the government security forces and the LTTE. Even with broad international support and technical assistance from the IIGEP, the Commission investigated only a handful of cases, failed to protect witnesses from harassment by security personnel, and produced no evidence that led to more effective police investigations. The final report of this Commission is said to have been given to President Rajapaksa and remains unpublished.

Today Sri Lanka has no credible domestic mechanisms able to respond effectively to serious human rights violations. The Sri Lankan Human Rights Commission lacks independence and has itself acknowledged its lack of capacity to deal with investigations into enforced disappearances. At the international level, Sri Lanka has 5,749 outstanding cases being reviewed by the UN Working Group on Enforced and Involuntary Disappearances, several hundred of which have been reported since the beginning of 2006.

In the current context of human rights violations in Sri Lanka, even an independent and fully empowered commission would face grave difficulties in pursuing accountability or contributing to lasting reconciliation. Even though the war is over, a state of emergency continues to be in place. Anti-terrorism laws and emergency regulations grant extraordinary and arbitrary powers to the military and police and continue to be used to target critics of the government. Tamils in the north are living under a heavy military presence.

“every peace loving Sri Lankan [to] bond together with the Government”. See www.dailynews.lk/2009/11/13/fea01.asp. Similarly, reportedly “[i]nspired by the historic victory of President Mahinda Rajapaksa against terrorism”, recently deceased Commission member M.T.M. Jiffry painted a “larger-than-life portrait” of the President after the end of the war, described as “perhaps, the most sincere tribute to President Rajapaksa from an Artist”. See www.sundayobserver.lk/2009/06/21/spe01.asp.

Impunity remains the order of the day: there have been no prosecutions in any of Sri Lanka's well-documented cases of human rights violations from 2005 onwards, and media personnel and human rights activists continue to report harassment and threats by persons linked to the government. In addition, the recent passage of the 18th Amendment further empowers the presidency and effectively removes any remaining independence of commissions on human rights, elections, the judiciary and other issues. Without positive change in these areas, it is hard to see how even the best-intentioned commission of inquiry could make any meaningful contribution to accountability and reconciliation.

Should a genuine and credible process eventually be established – featuring truly independent commission members, effective powers of witness protection, and a mandate to explore the full range of alleged violations of national and international law; and backed up by government action to end impunity and ensure that police and courts launch effective and impartial prosecutions – we all would be pleased to appear.

Yours sincerely,



Louise Arbour
President and CEO
International Crisis Group



Kenneth Roth
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Human Rights Watch



Salil Shetty
Secretary General
Amnesty International



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