

18 September 2015

## **JOINT STATEMENT ON THE OISL REPORT**

We welcome the report of the Office of High Commissioner for Human Rights' Inquiry on Sri Lanka (OISL) released on 16 September 2015. The report is to-date the most comprehensive fact-finding report on the atrocities that have been committed in Sri Lanka between February 2002 and November 2011, the temporal mandate of the OISL. We believe that it is essential reading for anyone interested in justice and accountability in Sri Lanka. The report should provide to be a key resource for all stakeholders involved in the civil war in Sri Lanka in a much-needed process of introspection and critical reflection.

We welcome the report's unequivocal finding that a criminal investigation into the serious crimes committed cannot be undertaken through a domestic mechanism. This is not just because of lack of capacity owing to the systematic distortion and corruption of the security sector and judicial system in Sri Lanka by decades of emergency, conflict and impunity but also, despite the change in regime, an apparent lack of political will. The Sri Lankan Foreign Minister's address to the UN Human Rights Council on the 14th of September 2015, while expletive in calling for a plea to trust the new government is doubtful for its *bona fides* given his assertion in the same speech that the accountability mechanism will help clear the good name of the Sri Lankan Armed Forces.

It is in this context that we take note of the OISL Report's suggestion for a hybrid mechanism. Given that the report has suggested that the details be worked out in detail through a participatory, consultative process we would await the Government of Sri Lanka to make public its detailed proposals and refrain at this point in time from commenting on the adequacy of a hybrid mechanism for accountability in abstract. We however wish to emphasize that for a hybrid mechanism to be truly hybrid in character it needs substantive international involvement not just by incorporating international judges, investigators and prosecutors but also in terms of it being in part led by the UN and by being internationally legally mandated. Quite obviously the Sri Lankan Government appointing international judges to its domestic mechanism will not constitute a hybrid mechanism. The international component should be given pride of place and control over the domestic component in a hybrid mechanism for it to be deemed credible. We emphasize this because the domestic component in a hybrid mechanism for reasons spelt out in the OISL report will have to be kept to a minimum so as not to affect its overall credibility. It is our understanding that this would be the minimum necessary requirement of a genuine accountability process in Sri Lanka. It is important to make sure that victims are not misled and frustrated again with a half-baked attempt at accountability.

We also welcome the call by the UN High Commissioner for Sri Lanka's ratification of the Rome Statute of the International Criminal Court (ICC). We would urge that

Sri Lanka while ratifying the Rome statute also submit a declaration voluntarily providing retroactive jurisdiction to the International Criminal Court<sup>1</sup>. This would truly reflect Sri Lanka's genuine concern for accountability and justice.

We welcome the detailed recommendations of the Report on all other aspects of Transitional Justice and urge the Government of Sri Lanka to implement the recommendations of the Report immediately, particularly those relating to *inter alia* enforced disappearances, return of land and de-militarisation. We reiterate Special Rapporteur Pablo de Grieff's recommendation that a transitional justice process be devised which includes reform of the security sector (military, police, intelligences services included), the establishment of independent truth-seeking mechanisms and the design of a comprehensive reparation scheme. Such a process needs to be, as Mr. de Grieff noted, guided by carefully designed and conducted consultations that includes by necessity victims of gross violations. It also needs to be closely monitored and supervised by the UN. None of these, we wish to emphasise are alternatives to criminal justice but rather should be complimentary to a criminal justice process and part of a broader Transitional Justice process. We also wish to draw in particular the Government's attention to the report's finding that most of the repressive structures and institutional cultures that remain deeply entrenched remain in place. As the report rightly points out crimes continue to be committed to date. Unless these structures are removed, crimes, no doubt will continue to be committed.

The UN Human Rights Council, as the OISL report suggests, should remain seized of the matter. The resolution that is being considered for presentation before the current session of the UNHRC should reflect the OISL report in word and spirit. If Sri Lanka fails to establish a genuine hybrid mechanism within a specific time framework, the UNHRC, other relevant UN organs and member states should initiate necessary steps for a UN Security Council referral to the ICC.

*Signatories:*

1. Tamil Civil Society Forum (TCSF)
2. Centre for Human Rights and Development (CHRD)
3. Home for Human Rights (HHR)
4. Centre for the Protection and Promotion of Human Rights (CPPHR), Trincomalee
5. Vavuniya Citizens Committee
6. Mannar Citizens Committee
7. Tamil Lawyers Forum
8. North East Coordinating Committee of the Relatives of the Forcibly Disappeared
9. Jaffna University Teachers Association

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<sup>1</sup> Article 11(2) and Article 12(3) of the Rome Statute read together would allow Sri Lanka to make such a declaration.

10. Jaffna University Science Teachers Association (JUSTA)
11. Jaffna University Employees Union
12. Vanni Christian Union
13. Foundation of Changers - Batticaloa
14. East Civil society Activist Alliance – Batticaloa
15. Commission for Justice and Peace of the Catholic Diocese of Jaffna
16. Batticaloa Social Workers Network
17. Paduvaankarai People’s Alliance
18. Vadamarachchi Christian Union, Jaffna
19. Mannar Economic and Social Development Organization
20. Hindu Development Society Karaithivu – Amparai
21. Tamilar Valvurimai Maiyam
22. Valikamam North Development Board, Jaffna.