

Congress of the United States

Washington, DC 20515

September 19, 2023

The Honorable Antony J. Blinken
Secretary of State
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Blinken:

We write regarding the lack of justice and accountability for Sri Lanka's violations of both international human rights law and international humanitarian law, including torture and other acts that may constitute international crimes. In our view, the impunity enjoyed by Sri Lankan perpetrators, which has also enabled Sri Lanka's ongoing economic and political crises, is counter to America's commitment to upholding human rights and democratic principles and must be stopped. Thus, we respectfully request your leadership in ensuring the United States holds Sri Lanka accountable under the Convention against Torture for decades of torture for which Sri Lankan perpetrators have yet to be held legally accountable.

The Sri Lankan government and military are credibly accused of committing international crimes during Sri Lanka's armed conflict with the Liberation Tigers of Tamil Eelam (LTTE). Of particular concern are Sri Lanka's actions from January through May 2009, when the Sri Lankan military intentionally shelled Tamil civilians and civilian objects, including hospitals, in so-called "No Fire Zones";¹ raped and sexually mutilated hundreds of Tamil women and girls before or after killing them;² extrajudicially executed LTTE members who had surrendered with white flags;³ and forcibly disappeared both LTTE members and Tamil civilians, whose fates remain unknown.⁴ In these five months, the number of Tamil people unaccounted for and presumed to have been killed ranged from 40,000 to 169,796.⁵

¹ U.N. Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, p. ii (March 31, 2011), available at <https://reliefweb.int/report/sri-lanka/report-secretary-generals-panel-experts-accountability-sri-lanka>.

² *Island of Impunity? Investigation into International Crimes in the Final Stages of the Sri Lankan Civil War*, Public Interest Advocacy Centre (Feb. 2014), ¶ 11.34, https://piac.asn.au/wp-content/uploads/island_of_impunity.pdf.

³ *Report of the OHCHR Investigation on Sri Lanka*, 30th Sess., U.N. Doc. A/HRC/30/CRP.2 (Sept. 16, 2015), ¶¶ 285-287 [hereinafter *OISL Report*].

⁴ See generally *OISL Report*, ¶¶ 429-443.

⁵ U.N. Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, ¶ 137 ("40,000 civilian deaths"); Submission by the Catholic Diocese of Mannar to the Lessons Learnt and Reconciliation Commission (Jan. 8, 2011), 4, available at

https://www.tamilnet.com/img/publish/2011/01/LLRCsubmission_by_MannarDiocese.pdf ("146,679 people seem to be unaccounted for"); International Truth and Justice Project, *Death Toll in Sri Lanka's 2009 War* (Feb. 2021), https://itjpsl.com/assets/ITJP_death_toll_A4_v6.pdf (estimating 169,796 people unaccounted for based on World

Instead of investigating and prosecuting allegations independently, the Sri Lankan government has rewarded many alleged war criminals with high-ranking political⁶ or military leadership positions,⁷ which some still hold today.⁸ The Sri Lankan government has also continued perpetrating human rights violations against Tamils, including torture,⁹ sexual violence,¹⁰ and enforced disappearances.¹¹ Additionally, persistent militarization in the North-East has perpetuated land grabs, displacement,¹² and repression of the right to memorialize.¹³

That the Sri Lankan government and military could commit such horrific crimes against Tamil people with total impunity is, unfortunately, unsurprising given Sri Lanka's long history of torture and related human rights violations. Tamils have long been subjected to the Sri Lankan security forces' "almost universal practice" of torturing and ill-treating those in their custody, even before the armed conflict began in 1983.¹⁴

Sri Lankan law facilitates these violations through the Prevention of Terrorism Act (PTA), a law that the government has used since 1979 to disproportionately target Tamils and Muslims, including human rights defenders and journalists, with arbitrary arrest and detention, enforced disappearances, and torture.¹⁵ Of the detainees who participated in the Human Rights Commission of Sri Lanka's Study of Prisons in Sri Lanka, the vast majority of those arrested

Bank household data).

⁶ E.g., PEARL, *Delayed or Denied: Sri Lanka's Failing Transitional Justice Process*, p. 33 & n. 82; "Press Release: Sri Lanka - The President's Inner Circle" International Truth and Justice Project (May 5, 2020), <https://itjpsl.com/assets/2-press-release-inner-circle-english-copy.pdf>.

⁷ E.g., Shavendra Silva was appointed UN deputy ambassador to the UN, and Jagath Jayasuriya was appointed ambassador to six Latin American countries. "UN Role for Sri Lanka Ex-Army General Shavendra Silva" *BBC News* (Jan. 27, 2012), <https://www.bbc.com/news/world-asia-16763509>; "Why a Sri Lankan Leader May Be Tried for War Crimes in Brazil" *The Washington Post* (Aug. 30, 2017), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/30/why-a-sri-lankan-leader-might-be-tried-for-war-crimes-in-brazil/>.

⁸ Comprehensive Report of the United Nations High Commissioner for Human Rights, 51st Sess., U.N. Doc. A/HRC/51/5 (Sept. 6, 2022), pp. 6.

⁹ See generally International Truth and Justice Project, *Sri Lanka: Torture and Sexual Violence by Security Force* (Sept. 2021), <https://itjpsl.com/assets/ITJP-Torture-report-2021-Sep-ENGLISH.pdf>.

¹⁰ *Id.*

¹¹ See generally Amnesty International, *Sri Lanka: Refusing to Disappear* (Jan. 2017), <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3754972017ENGLISH.pdf>.

¹² See generally Oakland Institute, *Endless War: The Destroyed Land, Life, and Identity of the Tamil People in Sri Lanka* (2021), <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/endless-war-web.pdf>.

¹³ Meenakshi Ganguly, "As Sri Lanka's Tamils Remember War Dead, Justice Remains Elusive," Human Rights Watch, May 16, 2022, <https://www.hrw.org/news/2022/05/16/sri-lankas-tamils-remember-war-dead-justice-remains-elusive>. See generally People for Equality and Relief in Lanka, *Erasing the Past: Repression of Memorialization in North-East Sri Lanka* (Washington, D.C.: Nov. 2016), <https://pearlaction.org/wp-content/uploads/2022/08/pearl-erasing-the-past-nov-1-2016-report-b-1.pdf>.

¹⁴ The International Commission of Jurists documented enforced disappearances of Tamils and custodial torture, ill-treatment, and death from July 1979 through June 1983, and Amnesty International documented torture in 1981 through February 1982. "Torture - 'Almost Universal Practise' of Sri Lankan Authorities" Tamil Nation, <https://tamilnation.org/indictment/indict026.htm> (quoting reports by the International Commission of Jurists and Amnesty International).

under the PTA were tortured in custody,¹⁶ and confessions obtained under torture or the threat of torture are legally admissible as evidence under the PTA.¹⁷

The PTA has enabled 60,000 to 100,000 enforced disappearances since the 1980s.¹⁸ Journalists, human rights defenders, critics of the government, and thousands of innocent Tamil civilians have been disappeared, been tortured, and even killed under color of that law.¹⁹

Successive Sri Lankan governments have consistently failed to make tangible progress toward justice and accountability, including non-recurrence, reconciliation, and a political solution. This failure underscores the need for international action to achieve meaningful justice for Tamils and Muslims in Sri Lanka.

Since 2011, civil and criminal cases on behalf of Tamil victims and survivors have been filed in third-party states, including the United States, against Sri Lankan political and military leaders responsible for international crimes, including torture. However, due to diplomatic or head-of-state immunity and/or the third-party state's lack of political will, legal actions have not achieved justice.²⁰ Consequently, no alleged Sri Lankan government or military perpetrator has been held responsible for international crimes in or outside Sri Lanka.

Therefore, we respectfully urge the State Department to follow Article 30 of the Convention against Torture and hold Sri Lanka formally responsible for breaching its treaty obligations regarding torture:

- Through formal negotiations;
- If negotiations fail or become futile or deadlocked, through arbitration;
- If the dispute is not resolved within six months, bring a claim against Sri Lanka to the International Court of Justice.

This year marks 40 years since the armed conflict in Sri Lanka began. Ensuring Sri Lanka is held accountable for torture will not only provide redress to tens of thousands of Tamil victims and survivors, but also demonstrate the State Department's strong commitment to the rule of law and stability in Sri Lanka and internationally.

15 Ben Emmerson, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Visit to Sri Lanka, ¶ 47, UN Doc. A/HRC/40/52/Add.3 (Dec. 14, 2018) [hereinafter Special Rapporteur on Countering Terrorism]; “Sri Lanka: UN Experts Call for Swift Suspension of Prevention of Terrorism Act and Reform of Counter-Terrorism Law” OHCHR (Mar. 2, 2022), <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and> ; <https://www.ohchr.org/en/statements/2023/06/sri-lanka-promoting-reconciliation-accountability-and-rights>

16 Prison Study by the Human Rights Commission of Sri Lanka (Nov. 2020), <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>, pp. 657,670

17 Prevention of Terrorism Act (1979), § 16; Human Rights Watch, “*In a Legal Black Hole*”: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act (Feb. 2022), https://www.hrw.org/sites/default/files/media_2022/02/srilanka0222_web.pdf.

18 Amnesty International, Sri Lanka: Refusing to Disappear, pp. 3, 11 (2017), <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3754972017ENGLISH.pdf>.

19 See generally Human Rights Watch, “*In a Legal Black Hole*”.

20 See generally <https://pearlaction.org/wp-content/uploads/2022/08/No-Trials-Only-Tribulations-for-Tamil-Victims-of-Sri-Lankas-CRSV-August-2022.pdf>, pp. 57-70 (detailing the allegations and procedural history in international justice filings against six alleged Sri Lankan political and military perpetrators).

Thank you for your leadership and your consideration of these concerns and suggestions for ensuring Sri Lanka is held accountable for torture and on the path towards sustainable peace on the island.

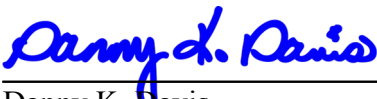
Sincerely,



Summer Lee
Member of Congress



Bill Johnson
Member of Congress



Danny K. Davis
Member of Congress



James P. McGovern
Member of Congress



Jamie Raskin
Member of Congress



Ilhan Omar
Member of Congress



Cori Bush
Member of Congress



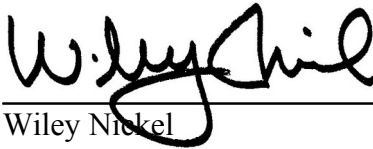
Deborah K. Ross
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Jeff Jackson
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Brad Sherman
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