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Hon. Zeid Ra'ad al-Hussein
UN High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva
Switzerland.

Sri Lanka Publication of UN Investigation into war crimes

Dear High Commissioner,

I am writing to add my voice of protest at your outrageous decision to postpone the release of the UN investigation into war crimes in Sri Lanka (OISL) from March 2015 to September 2015.

I am an Australian citizen of Sri Lankan descent originally from the majority Sinhalese community. I have campaigned for more than six decades (1948 to be specific) for the right of the Tamil people – the Plantation 'Indian' Tamils in 1948, and the ethnic Tamils since 1956, to live with equality, dignity and safety (and now to live at all) in Sri Lanka – the Tamil North and East in particular.

My concerns are, and have always been, the violation of basic human rights by a succession of Sri Lankan governments, the worst being the one led by Mahinda Rajapaksa.

As the High Commissioner for Human Rights, I am entitled to believe that your concerns should be the same – the protection of human rights. Your actions should not be to ensure that the trauma which these people are undergoing is prolonged.

I sent you my recently published book "*Sexual Violence of Tamils in Sri Lanka*". I clearly set out the problems faced by the people in the North and East, an area run by the Sri Lankan (Sinhalese) Armed Forces who treat the area as 'Occupied territory' and the people as 'The spoils of war' to be used and abused with no accountability.

I drew attention to the outstanding publication of Human Rights Watch "*We will teach you a lesson: Sexual violence against Tamils by the Sri Lankan Security Forces*". This is one of the most damning indictments of the Sri Lankan government ever published on the subject. Coming as it does from one of the most important human rights organizations in the world, what have you, as the High Commissioner for Human Rights done, other than to give another six months, possibly longer, for this outrageous situation to continue?

I refer to the Report by Yasmin Sooka "*An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014*". Yasmin Sooka needs no introduction. She was one of three international experts appointed by the UN Secretary General Ban ki-Moon to advise him as to what happened in the closing stages of the Armed conflict

in Sri Lanka.. She says that the findings in her recent investigation should be referred straight to the UN Security Council. Have you done that? No you have not. Why not?

The International Crisis group published "*Sri Lanka: Women's Insecurity in the North and East (Asia Report No 217)*", which establishes just that – women's insecurity in the North and East –an area run by the Sri Lankan Armed Forces.

There is documented evidence that the Sri Lankan Armed Forces will remain in the area. What have you done about this? To give them another six months to continue to do what they have done. Is that a responsible or acceptable act – coming as it does from the High Commissioner for Human Rights? I do not think so.

Here is what you said in your Opening Statement at the Human Rights Council 27th Session on 8 September 2014:

"Moreover, I attach great importance to the investigation on Sri Lanka mandated by this Council, on which OHCHR (Office of the High Commissioner for Human Rights) will report later...." High Commissioner, note your word "mandated".

You then go on to quote the Preamble to the Universal Declaration of Human Rights:

"Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

Do you really think that the Sri Lankan Armed Forces that have been, and will continue to remain in the area and who have, as pointed out by credible international human rights organizations, to be the main cause of the violation of the 'dignity and the equal and inalienable rights' of the Tamil people, will result in "freedom, justice and peace"? Or are these just words with no meaning despite the fact that you call them 'resonant words' (your words, not mine).

Let me get to the current fiasco. On 16 February 2015 you 'explained' the reasons for your decision to defer the Report.

You start by saying that "*This has been a difficult decision*". I cannot see the 'difficulty'. Your predecessor Navanethem Pillay picked three eminent people – the former President of Finland, the former Governor General of New Zealand and the former President of the Pakistan Human Rights Commission and asked them to present their Report to the UN Human Rights Council in March 2015 –some 9 months away. I cannot see a particular 'difficulty' in your doing so.

You then go on to say that "*There are good arguments for sticking to the original timetable*" High Commissioner, there are no 'arguments'. Three well known experts backed by a dozen investigators and coordinated by a UN Senior Official were given a job of work to do. They had to present a Report in nine months. What exactly is the 'argument'?

You go on "*There are also strong arguments for deferring the report's consideration a bit longer*". Why a 'bit longer'?

You go on to answer this by saying "*..given the changing context in Sri Lanka*"

May I ask 'what changing context'?

A tyrant Mahinda Rajapaksa has been replaced by his Health Minister, Maithripala Sirisena. Sirisena has said clearly and unequivocally that the murderous Sri Lankan Armed Forces that have been responsible for almost all the serious violations of human rights in this area, will stay in the area (the North and East). Is that a 'changing context'? If it is, I fail to see it.

Internationally credible human rights organizations – Amnesty International, Human Rights Watch and International Crisis Group will not be admitted to the area. Is that a 'changing context'? Your own credibility would have been less damaged if you had agreed to the postponement from March to September 2015 provided that international human rights organisations, one of them (AI) a Nobel Prize winner, are admitted to the area. You did not do so. Why not?

The notorious Prevention of Terrorism Act, condemned by every major human rights organization which has enabled so many serious violations of human rights to take place – sexual violence, torture, 'disappearances', abduction and detention without charge or trial at undisclosed locations for long periods of time without access to lawyers or even family members, will not be repealed. Bishop Rayappu Joseph of Mannar, has asked that this be removed. It will not be. So where is the 'changing context'?

High Commissioner Zeid, your claim that there has been a 'changing context' is not supported by facts.

You can point to the replacement of a bogus 'Chief Justice' Mohan Peiris by Dr Shirani Bandaranayake (for one day!) and the dismantling of the Executive Presidency. Welcome though they may be, these are not the problems facing the vulnerable Tamil people in the North and East. Their problem is security or rather the lack of it, in an area where the Armed Forces and the Police do what they want to whoever they want with no accountability or consequences.

High Commissioner Zeid, can you even at this late stage see that you have missed the point? Having done serious damage to the Tamil civilian population in the North and East, can you even now insist on the immediate admission of international human rights groups such as Amnesty International and Human Rights Watch into the area? If not, why not? Are there 'strong reasons' or any reason at all why this cannot be done? Why has this very obvious action not been taken?

Not surprisingly, there has been an outrage worldwide to an extent that I have never seen. Dr. Karunyan Arulanantham – President – US Tamil Political Action Council (USTPAC) is a much-respected senior doctor in the US who has campaigned for the Tamil people for years. His letter to you has been forwarded to me.

Let me quote from it:

"The mass atrocities that transpired in 2009 were not a singular event, but rather an especially heinous manifestation of the decades-long oppression Tamils have suffered. Our community has been and continues to be systemically disadvantaged by Sri Lankan institutions of power. The OISL investigation and timely release of a strong and credible report are critical steps towards addressing this deeply rooted injustice. We have heard repeated promises of internal accountability measures, but to date there have been no credible domestic investigations. We do not think President Sirisena's mention of a domestic process is sufficient to believe this would change"

I completely agree with what Dr Arulanantham says. I note that what he has said has been endorsed by 15 major Tamil organizations representing a million expatriate Tamils. In the six decades that I have been involved in all this, I have never seen such a massive 'coming together' of this number of people. It must surely send a very strong message to you that what you have done is simply wrong.

Just in the past few days I have had a copy of a letter written to you by the Northern Provincial Council (NPC) in Sri Lanka whose Chief Minister is former Supreme Court Judge C.V. Wigneswaran.. It is signed on behalf of the Council by M.K.Shivajilingam a Member of the Northern Provincial Council, and a former Member of the Sri Lankan Parliament. It says that the *Tamil people are highly disappointed and dismayed at your announcement on February 16, to delay the OISL investigation on Sri Lanka.*

Yes, High Commissioner Zeid, 'disappointed and dismayed'

Recently, this Council unanimously adopted a Resolution tabled by Justice Wigneswaran on Genocide of the Tamil people. I myself have written extensively on this and even recorded a dvd "*Sri Lanka: Genocide, Crimes against Humanity, Violation of International Law*"

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I have just heard that some 250 people, ordinary Tamil civilians, had launched a public protest in Jaffna, in the Tamil North, against your decision to postpone the tabling of the OISL Report. High Commissioner Zeid, these are ordinary people who are taking the not inconsiderable risk of launching a public protest. You will not understand how risky it is to do so with a murderous Sri Lankan Armed Forces and Police who effectively run the area and do what they want with no accountability. The fact that they decided to take this risk speaks volumes about how distressed they are by your irresponsible action.

You do not have to suffer the consequences of your action, they do. As the High Commissioner for Human Rights, it is their fears, based on valid reasons, that should be of concern to you, not placating the regime in Colombo whose new President was a senior Cabinet Minister, indeed the acting Minister of Defence at a time when the worst atrocities were taking place. I am certain that you know, or should know, all this. Yet you decided for the most absurd reasons, to allow these people to suffer for another 6 months, if not longer.

In addition to being an insult to your distinguished predecessor, Navanethem Pillay, who decided to set up this international investigation after the passage of Resolution put forward by the United States of America at the UN HRC in March 2014.

The Human Rights Council has a dreadful past record. A week after the mass murder of thousands of Tamil civilians in the North and East of Sri Lanka (which ended on 18 May 2009), on May 26 and 27, 2009, the UN HRC in a 'Special session', clearly sponsored by Sri Lanka, passed a Resolution *commending* Sri Lanka. Human Rights Watch slammed the Resolution: "*Sri Lanka: UN Rights Council Fails Victims*"

In an interview with the BBC, Geoffrey Robertson QC, a world authority on Human Rights, called the Human Rights Council "*a highly politicised body. It is made up not of experts on human rights, but of paltering diplomats*". His entire interview can be seen in the dvd I have recorded which I have referred to earlier.

You had a chance to change this 'highly politicized body' into something that really did what is expected of it – to safeguard the human rights of people who suffer serious violations under brutal regimes. However, it is clear that you have failed.

What is now in question is not only the integrity of the Human Rights Council but your own. It is a pity because you had the power and authority to do what had to be done – to table the findings of the OISL in the March meeting of the HRC, but failed to do so.

I gather that you will be going to Sri Lanka before September 2015, to see things for yourself. I am sure you will be shown the things that 'the regime wants to show, not what has to be hidden. If there is nothing to hide, on what grounds are AI, HRW and ICG excluded from the country? The Sri Lankan government, whether it be run by Rajapaksa or Sirisena cannot have it both ways.

I ask you again whether even at this late stage when all the damage has been done, you will ask the Sri Lankan regime to admit Amnesty International, Human Rights Watch and International Crisis Group into Sri Lanka with immediate effect. If not, why not?

Yours sincerely

Brian Senewiratne