



A ROADMAP TO VICTIMS' JUSTICE

1 September 2018

Michelle Bachelet
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VIA EMAIL

Dear Ms Bachelet:

First of all, congratulations on your recent appointment.

We write to bring to your urgent attention the failure of the Human Rights Council (HRC) to ensure any meaningful accountability for some of the worst atrocity crimes of this century, namely, the violations committed at the end of the Sri Lankan armed conflict. While your predecessor made every effort to maintain pressure on the Government of Sri Lanka (GSL) to address impunity, he did not receive sufficient backing from member states. The mass atrocities committed by Sri Lankan forces less than a decade ago remain an indelible stain on the international community's conscience. We encourage you to address this issue as a priority.

Established in February 2016, the Sri Lanka Monitoring and Accountability Panel (MAP) provides independent monitoring, advice, and recommendations on the progress of transitional justice in Sri Lanka.¹ Its members are senior legal practitioners with considerable expertise in national and international criminal justice mechanisms designed to address wartime atrocities.² Since its formation, the MAP has actively engaged in the ongoing debate over the most appropriate manner in

¹ For the latest news and developments, please visit <http://war-victims-map.org>.

² The members of the MAP are Heather Ryan (USA), Richard J Rogers (UK), and Andrew Ianuzzi (USA). Geoffrey Robertson QC (UK) is an advisor to the MAP. Member biographies can be found on the MAP website.

which to deal with allegations of war crimes and crimes against humanity committed during the protracted civil war between the GSL and the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009 and left more than 40,000 dead and some 280,000 displaced.

In October 2015, pursuant to HRC Resolution 30/1,³ the GSL committed to a broad transitional-justice agenda made up of four distinct pillars, namely: an office on missing persons; an office on reparations; a truth and reconciliation commission, and a special court. Notably, with respect to the last pillar, the GSL initially agreed to the participation of international judges and prosecutors to ensure an independent judicial process to prosecute those most responsible for the war crimes and crimes against humanity.

Beginning with the publication of its first report of 15 February 2016,⁴ the MAP has argued that the right choices will help foster accountability and reconciliation in Sri Lanka, while the wrong ones will waste an opportunity to deliver meaningful justice to the many victims and their families. Unfortunately, since the passage of Resolution 30/1 and in the face of rising domestic political pressure, Sri Lankan President Maithripala Sirisena's beleaguered coalition government has reneged on many of the country's international commitments and legal obligations to victims. The MAP has consistently called attention to these failings, as well as provided constructive criticism with respect to the GSL's limited efforts. Notably:

- In February 2017, the MAP announced that the GSL had been proceeding in bad faith with respect to Resolution 30/1.⁵ Yet, despite demonstrable shortcomings, the HRC granted the GSL an additional two years in which to implement its ostensible justice agenda — without imposing any further demands on the GSL or setting any clear benchmarks for its compliance with the original resolution.⁶
- In November 2017, the MAP issued a thematic report emphasizing the GSL's lack of meaningful progress to date; highlighting the government's continued obstruction; suggesting alternative avenues for redress and accountability; and setting out the MAP's renewed and additional recommendations going forward.⁷
- In March 2017, the MAP called attention to the fact that, while international actors dithered over the implementation of transitional justice mechanisms: the GSL continued to act in bad faith with respect to its commitments under Resolution 30/1; international crimes and abuses continued to be committed in Sri Lanka with impunity; key reforms to the country's justice and security sectors failed to materialize; and the GSL's record of actions with respect to impunity and accountability was, if anything, growing more disturbing with time. As noted by the MAP, GSL excuses for failing to meet obligations under Resolution 30/1 —

³ UN Human Rights Council, 30th Session, Resolution 30/1, 'Promoting reconciliation, accountability, and human rights in Sri Lanka', Document No A/HRC/RES/30/1, 14 October 2015.

⁴ See <http://war-victims-map.org/wp-content/uploads/2016/02/MAP-SPOT-REPORT-18.02.16.pdf>.

⁵ See MAP 'Second Spot Report: A Roadmap to Victim's Justice', 28 February 2017 (issued in advance of the HRC's 34th Session).

⁶ See UN Human Rights Council, 34th Session, Resolution 34/L.1, 'Promoting reconciliation, accountability, and human rights in Sri Lanka', Document No A/HRC/34/L.1, 15 March 2017.

⁷ See MAP 'Thematic Report: An Alternative Roadmap to Victims' Justice', 9 November 2017.

cynical one year before — had become contemptuous.⁸ In light of the GSL's reluctance to comply with Resolution 30/1, your predecessor urged member states to explore other avenues to foster accountability in Sri Lanka including the application of universal jurisdiction.

- In the same month, noting attacks on Muslims in Sri Lanka by extremist Buddhist elements, former US Ambassador-at-Large for War Crimes Stephen Rapp argued that a failure to effectively prosecute crimes of mass atrocity in Sri Lanka could lead to a contempt for the rule of law and further bloodshed — what he termed, 'the real dangers of a situation of impunity'.⁹ In a similar vein, MAP member Richard J Rogers suggested that ongoing and systemic torture and sexual violence perpetrated by the GSL against Tamils, 'leaves the impression that it's an integral part of the [...] Government's counter-insurgency strategy'.¹⁰

In terms of its limited progress, the GSL has established an office on missing persons (OMP) and approved a reparations bill. However, the new offices do not include foreign staff and have not gained the trust of the affected communities.¹¹ Nearly ten years after the end of the war and three years after the adoption of Resolution 30/1, there has been no action on a truth and reconciliation commission or a special court to address wartime atrocities. And, regarding the latter, the GSL has repeatedly and emphatically stated that it will not allow for the participation of international actors.

Since its inception, the MAP has called for the following measures (among others) by the OHCHR and other concerned actors:

- a special court with a majority of international judges, a co-international prosecutor, adequate witness protection, participation of victims, and independent monitoring;
- condemnation by the HRC, in detailed terms, of the GSL's failure to fulfill: (i) its commitments under Resolution 30/1 (as extended) and (ii) its legal obligations to victims;
- concrete time-bound benchmarks for the implementation of Resolution 30/1's specific commitments;

⁸ See MAP 'Third Spot Report: How the International Community's Passivity Has Enabled Further Mass Atrocities in Sri Lanka: the Case of Ongoing Illegal Detention, Torture, and Sexual Violence', 7 March 2018 (issued in advance of the HRC's 37th Session).

⁹ See MAP panel discussion between former Ambassador Rapp and MAP member Richard J Rogers, (a side event to the HRC's 37th Session), Geneva, 13 March 2018.

¹⁰ *Ibid.*

¹¹ See MAP Press Release, 'Cautious Welcome of Reparations Bill', 14 June 2018 ('Unfortunately, any enthusiasm [for the bill] must be tempered with caution. Since the passage of the HRC Resolution, the Sri Lanka Government has acted with a lack of transparency and bad faith, breaching both the word and spirit of the HRC Resolution. Assuming the Reparations Bill becomes law, it remains to be seen whether the Office for Reparations will assess claims in a fair and objective manner, irrespective of ethnicity. Careful monitoring is required. The incoming UN High Commissioner for Human Rights, the Human Rights Council, and concerned governments, must ensure that the Government of Sri Lanka fulfills all its obligations to victims.')

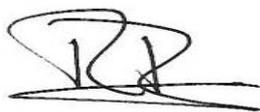
- active investigation into allegations of ongoing illegal detention, torture, and sexual violence committed by state actors;
- public identification of persons who may be responsible for war crimes and crimes against humanity in Sri Lanka;
- bilateral diplomatic and economic pressure to persuade the GSL to act in accordance with Resolution 30/1 and its international legal obligations to victims — including support for civil-society actors committed to the cause of accountability and realization of the GSL’s commitments under Resolution 30/1;
- lobbying of the UN Security Council to refer the Sri Lanka situation to the International Criminal Court, as a statement of support to the victims and human-rights defenders seeking accountability in Sri Lanka, as well as such referral by the Security Council;
- intensified advocacy to end impunity for ongoing allegations of illegal detention, torture, and sexual assault.

Given so little progress to date — and the GSL’s continued manipulation of the process for its domestic political ends — some commentators have suggested that further HRC involvement will only provide ‘an unwarranted veneer of legitimacy’.¹² We certainly hope that your office will do its utmost to counter such claims. And we stand ready and willing to work with you toward that end.

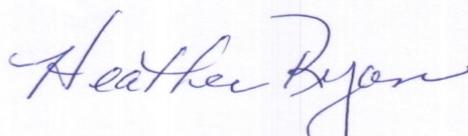
Among other things, the MAP will be issuing a comprehensive report prior to the HRC’s 40th Session in March 2019. We would appreciate the opportunity to meet with you or someone from your office in advance of that crucial milestone.

Again, congratulations on your new post. We wish you all the best.

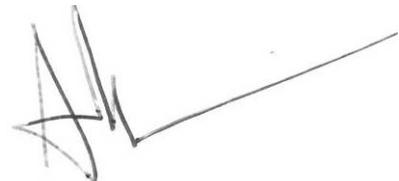
Yours sincerely,



Richard J Rogers



Heather Ryan



Andrew Ianuzzi

¹² Taylor Dibbert, ‘Sri Lanka Is a Human Rights Council Failure’, *International Policy Digest*, 17 April 2018.