

**Briefing Note:  
Minimum Requirements  
for an Accountability  
Mechanism in Sri Lanka**

**STOP**

## Minimum Requirements for a Domestic Accountability Mechanism in Sri Lanka

Sri Lanka has a dismal record of achieving truth or justice through the various Commissions of Inquiry it has established in the past, with no accountability of any kind domestically for any past violations. The context of Sri Lanka is also different from the context of other countries in transition as many of the alleged perpetrators and their authority structures are still in place, still wielding power or great influence, still allegedly committing ongoing violations, and still for the most part Sinhalese. In addition, the Rajapaksa and the Sirisena governments have both refused cooperation with the UN OISL Inquiry.

**IIGEP:** The last domestic initiative that involved an international component - the Commission of Inquiry into 16 cases, including the massacre of the ACF aid workers and the murder of five Trincomalee students in 2006 – was an abject failure, primarily due to serious witness protection issues, and a lack of independence of the Commission. The 11 members of the International Independent Group of Eminent Persons (IIGEP) who had been invited by the President to observe his "independent" commission and to ensure that the commission conducted its investigations according to international norms and standards, all resigned in early 2008 for a number of reasons, the most important of which was that it was of their view that the Commission had repeatedly failed to meet international norms and standards. One of the key concerns was the role of the Attorney General, who played the role of chief legal adviser to the army, police and President and was thus in a conflict of interest in becoming the advisor to the Commission. This was more so given the Commission was tasked to investigate why the initial investigations involving the Attorney General's office were failures in the first place. Throughout its mandate, IIGEP attempted but failed to have officers of the Attorney General's office removed from the inner workings of the Commission.

In the current environment of persecution of victims and witnesses (see ITJP, [\*A Still Unfinished War: Sri Lanka's survivors of Torture and Sexual Violence 2009-2015\*](#)) any justice mechanism established must be based on the highest international standards guaranteeing complete independence. Minimum standards should include the following:

- **Composition:** A President of the court and a court composed of an equal number of international judges, international prosecutors, international investigators and international witness protection experts working in partnership with local Judges, prosecutors, investigators and experts in order to ensure that it is truly hybrid. In order to ensure that decisions do not become hostage to the composition of the court, the President of such a court should be an international. This would need its own statute and mandate, its own rules, independent funding and the power to pass criminal sanctions up to a maximum of life imprisonment and, among other things, recognise principles of command responsibility as well as the crimes of aiding and abetting as defined by the Rome Statute and the issue of co-perpetration or joint criminal enterprise.

- **The witness protection mechanism:** would need to be fully independent including its funding, from the government and have law enforcement powers and funding for resettlement of witnesses outside Sri Lanka where necessary. Without witnesses there can never be justice. Identifying witnesses to the security forces will, based on our evidence of past events will simply lead to more suffering.

- **Offshore Testimony:** There would need to be some method of taking evidence from witnesses outside the country, whether through a mobile branch of the mechanism or an off shore branch, or testimony by video conference and in a manner that provides the witnesses abroad safety as well as their families back home.

- **Outreach:** funding for extensive outreach, which must be comprehensive and robust.

- **Tamils:** The inclusion of domestic practitioners who are of Tamil origin and/or who have no affiliation with the authority structures, and have never worked for the government in any way.

- **Vetting:** Each and every Sri Lankan and international appointee would need to be vetted by the UN/international leadership of the Tribunal to ensure there is no connection between past alleged crimes and these individuals or any other conflict of interest. Under no circumstances can any individual who was part of the security forces structure previously serve as members or staff on the hybrid tribunal.

- **Access and Powers:** Investigators working for the hybrid tribunal must have full and unfettered access to any and all evidence from any

*and all sources including that of the security forces and all branches of government and should be empowered and authorised to conduct searches, seizures, and interviews of any and all individuals within or outside the government and security forces structures, without any prerequisite procedures (such as waivers of immunity and the like.)*

*- **Multilingual:** Interpreters of an internationally recognised standard must be used to enable witnesses to testify in all three languages of Sri Lanka and a quota system for Tamil speaking staff applied.*

*Documentation and records should be kept in three languages.*

*- **Security Force Cooperation and Disclosure:** The Sri Lankan military must be compelled to make available to the Tribunal all evidence in its possession or control, including but not limited to all drone and video surveillance footage from the war, all electronic signals communications and records, as well as wireless recordings and transcripts and situation reports, satellite material and also radio intercepts of the LTTE by the SLA. It should also make available all files from rehabilitation and detention facilities including interrogation and confession records.*

*- **Temporal Jurisdiction:** Crimes considered should be war crimes and crimes against humanity and other grave breaches of human rights under both domestic and international law should date back in temporal jurisdiction to a date mutually acceptable to all parties and include the concluding phase of the war in the East as well as in the Vanni and should extend until the present day.*

*- **Documentation:** Any mechanism established should have full and complete control over all documentation and evidence collected and used in the course of proceedings (pre-trial, trial and post trial).*

### **Prior Steps Before Establishing an Accountability Mechanism:**

*- A Security Sector Reform process that includes the security sector, the judiciary, the Office of the Attorney General and the prison system.*

*- The repeal of the death penalty and the Prevention of Terrorism Act.*

*- Ratification of the Rome Statute and the incorporation into domestic law of international crimes, including criminalising war crimes and*

*crimes against humanity and adding procedural provisions of command responsibility similar to those found in the Rome Statute. This must be done before any domestic or hybrid Tribunal is established.*

*- That there be no statute of limitations in relation to the crimes.*

*- That no head of state secures immunity from prosecution.*

*- That the right to reparations for victims be acknowledged with the government committed to establishing a fund for reparations and legislating this.*

ITJP: The International Truth and Justice Project was set up in 2013 and is administered by the Foundation for Human Rights in South Africa under transitional justice expert Yasmin Sooka. For more information and our two full reports on ongoing torture and sexual violence dated March 2014 and July 2015 see [tjpsl.com](http://tjpsl.com)

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