

The Friday Forum

2, Greenlands Avenue, Colombo 5, Sri Lanka
E-Mail: chandraj111@gmail.com Telephone: 0773634444 Fax: 2504181

PRESS RELEASE

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THE REPORT OF THE UNITED NATIONS SECRETARY-GENERAL'S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA

The Panel of Experts' Report has become a contentious document. The perceived tension between safeguarding state sovereignty, and the need to adhere to international humanitarian and human rights law obligations of the state, has resulted in conflicting interpretations by many who have expressed views on the report. Members of the Friday Forum have read the full report and wish to place before the public views which we hope will contribute to developing a response that will be in the national interest.

A consistent criticism of the Report is that the UN Secretary-General has unfairly singled out Sri Lanka for scrutiny of the events which took place in this country towards the end of the war. We do not dispute that global power politics sometimes impacts on the manner in which accountability issues are dealt with in the UN and other international fora. However, governments which may avoid the international processes of accountability are nevertheless subject to constant scrutiny by national institutions such as legislative committees and media, which are independent of the governments in office. Regional bodies such as the European Court and the Inter-American Court also provide alternative fora of accountability. Besides, all governments which have ratified the various universal human rights instruments are required to submit periodic reports on their implementation of these norms, which are the subject of intense scrutiny by the respective bodies mandated for the purpose in fora open to all states, NGOs and members of the public. Sri Lanka, like all other nations, has obligations to adhere to its own constitutional norms and international standards of human rights and humanitarian law in times of both peace and internal armed conflict. Therefore the argument of double standards in global power politics cannot prevent international scrutiny of Sri Lanka's record.

Even if some Sri Lankans disagree with the Panel Report, personal attacks on the UN Secretary-General, members of the Panel and others associated with it are unwarranted, and will only reinforce negative perceptions of Sri Lankans' response to criticism. A phrase used in the report on page 8 has been taken out of context to suggest that the LTTE is presented in a positive light. This view is not borne out by the contents of the paragraph from which that phrase is taken. The report recognises the liability of non-state actors, and in section 4 it documents in detail alleged violations of human rights and international humanitarian law by the LTTE. We appeal for objective and fair comment on the Report, avoiding responses that mislead the public. We also deplore the unfortunate manner in which such objective discussion is being stifled by some critics who brand other viewpoints as treachery and disloyalty to the nation.

The Panel in our view has not made any findings of fact or conducted an investigation of allegations against the Sri Lankan government or the LTTE in the last stages of the conflict. It has only documented what it considers "credible allegations" against both the Government and the LTTE. It has recommended that these be investigated with a view to ascertaining whether violations of human rights and humanitarian law have in fact taken place. In normal investigation procedures, the Police or administrative authorities look for credible allegations before they proceed with fact-finding and investigation. It is important to note the difference between documenting credible allegations and engaging in a fact-finding process. A discussion on inadequacies in the legal standards of proof in reference to credible allegations is therefore irrelevant and premature.

It is clear from the Report and the subsequent statements of the Secretary-General that he will respond positively to the Panel's recommendation for a review of the United Nations' actions regarding the implementation of its humanitarian and protection mandates during the war in Sri Lanka, particularly in the last stages. In regard to the recommendation that he establish an international investigation mechanism, the Secretary-General has stated that he will require host country consent or a decision from Member States through an appropriate intergovernmental forum. We think that it is extremely important that Sri Lanka as a member of the international community and the United Nations, engages in an effective and non-confrontational response to the Report with the international community. Such a response could help to address concerns in regard to what the Panel describes as credible allegations. This could also prevent possible negative impacts of the Report on trade and foreign investment and consequent burdens on the people of our country. Merely raising issues of

process and procedure, and alleging conspiracies and bias against the Panel, will not serve the national interest.

The Government should in addition address, as a matter of urgency, the issues of good governance specifically referred to in the Report. These matters have been frequently raised in the country after the end of the internal armed conflict in May 2009 as a crucial aspect of reconciliation, rehabilitation, restorative justice, and creating the context for a sustainable peace.

In particular we call upon the government to:

1. Establish a credible domestic mechanism with adequate powers and resources to comprehensively address accountability issues relating to violations of human rights and humanitarian law during the armed conflict in the northeast. Such an accountability mechanism should have a clearly spelled out mandate over both state and non-state actors. The structure and work of the mechanism must necessarily avoid failures of commissions of inquiry of the past which, in turn, exacerbated grievances of the victims. In particular, it is imperative that the accountability mechanism is credible both according to international and domestic standards, particularly with regard to independence, competence, transparency and witness protection. Not only should its members be able to function independent of political influence, but also the investigators and prosecutors must necessarily be free of such constraints. Its proceedings and reports should at all times be accessible to the public. We also urge the government to publish reports of previous Commissions of Inquiry in the interest of transparency and the public's right to know.

The Lessons Learnt and Rehabilitation Commission (LLRC) already established should conclude its work according to its current limited mandate and make the report available to the public. It should not be transformed at this stage into the type of accountability mechanism we have proposed. The new mechanism however should act on any issues of accountability brought up by the LLRC that require investigation and prosecution.

2. Commit to a political process to develop a clear road map and time frame for constitutional changes that will meet the aspirations of all Sri Lankans for good governance, equality and justice, addressing the special concerns of minority communities.
3. Cease to govern the country through Emergency Regulations under the Public Security Ordinance and repeal the Prevention of Terrorism Act. De-militarise the North and East and ensure speedy transfer of administration to civilian authorities, combining this with measures to strengthen law enforcement throughout the country, while preventing impunity for criminal offences and human rights violations.
4. Address the situation of the war-affected and strengthen services for psychosocial counselling and care, moving forward with the re-settlement process with the support of international agencies and national civil society. It is essential to end all restrictions on freedom of movement in the North, including the restrictions imposed by the Presidential Task Force on NGOs. Reportedly, even Members of Parliament are denied free access to parts of the North and East.
5. Make available the names and other particulars of all persons still in detention, whether in army camps or any other locations, releasing all those not being charged. Death certificates should be provided speedily in respect of all those known to have died in the war.
6. Ensure that economic and infrastructure development and post war reconstruction are based on the urgent need for reconciliation. The process must be inclusive, ensuring that local communities, particularly those that have been marginalised for various reasons, are enabled to exercise their legitimate right to a voice in the development of their region. Priority should be given to issues such as safety and security, shelter and housing, improved access to health care, education and skills development, and provision of livelihood options.
7. In accordance with the constitutional law and jurisprudence of the country, respond effectively to the criticisms regarding the lack of media freedom and freedom of expression and the right to information. Journalists must be protected from intimidation and violence. Providing space for articulating diverse viewpoints, so that issues of public concern are freely discussed and debated, is essential for balanced

development and any effort to make Sri Lanka the “knowledge hub of Asia.” It is also critically important that the Panel of Experts’ Report is accurately translated into Tamil and Sinhalese and made available to the media and the general public so that all Sri Lankans can obtain firsthand knowledge of its contents.

Jayantha Dhanapala

On behalf of Friday Forum, the Group of Concerned Citizens

Mr. Jayantha Dhanapala, Rt. Reverend Duleep de Chickera, Ms. Manouri Muttetuwegama, Professor Arjuna Aluwihare, Professor Savitri Goonesekere, Ms. Suriya Wickremasinghe, Mr. Ahilan Kadirgamar, Mr. Lanka Nesiya, Mr. J.C. Weliamuna, Dr. A. C. Visvalingam, Dr. Jayampathy Wickramaratne, Dr. Camena Gunaratne, Dr. Deepika Udagama, Ms. Sithie Tiruchelvam, Ms. Shanthi Dias, Dr. Selvy Thiruchandran, Professor Siri Hettige, Dr. Devanesan Nesiya, Dr. G Usvatte-aratchi, Mr. Ranjit Fernando, Mr. Daneshan Casiechetty, Mr. Chandra Jayaratne,