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HUMAN RIGHTS CONCERNS IN SRI LANKA

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

OF THE

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HUMAN RIGHTS CONCERNS IN SRI LANKA

WEDNESDAY, JUNE 20, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2200 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order, and good afternoon to everyone.

The Sri Lankan civil war ended almost 10 years ago this May. The 25-year war cost an estimated 100,000 lives and displaced hundreds of thousands more.

The civil war was a brutal ethnic conflict between the majority Sinhalese and minority Tamils. Both sides—the Sri Lankan armed forces and the rebel Tamil Tigers—have been credibly accused of unimaginable war crimes.

To this day, justice for many of the victims remains elusive. Although many observers hoped that the reformist government of President Sirisena would increase access to justice, focus on human rights, emphasize transparency and accountability, and improve the rule of law, his administration has been criticized for having an inadequate response.

Despite having run on a platform of ethnic reconciliation, President Sirisena has done little to amend the ties between the groups and the political polarization has increased among both ethnic groups.

As one of our experts today, J. S. Tissainayagam, will attest, there has been no progress on holding those responsible for war crimes to account, and he will describe forced disappearances of Tamils and torture that were endemic during the war.

Much of this was facilitated by the draconian Prevention of Terrorism Act, or the PTA. The PTA has yet to be repealed and is still in use by the government and security forces.

Whereas most Tamils nowadays simply desire some semblance of self-government and federalism, their areas in the north and eastern part of the island are increasingly militarized.

A concerning development in Sri Lanka is the resurgence of Sinhalese Buddhist nationalism. As one of our expert witnesses, Dr. Michael Jerryson, will describe, this particularly virulent strand of nationalism preaches exclusion of other ethnic and religious mi-

norities with Buddhist fundamentalists in groups such as the BBS saying this is not a multi-religious country—this is a Sinhalese country.

What are the minority groups such as the predominantly Hindu Tamils then, or the Muslims who constitute a distinct minority, or the Christians, who could either be Sinhalese or Tamil?

If the character of Sri Lanka is solely Buddhist and Sinhala, there is little room for these ethnic and religious minorities to thrive, and reconciliation will remain a far off goal.

Unfortunately, the trend is heading in the opposite direction. In local elections in February of this year, a newly-formed Buddhist nationalist party gained 45 percent of the vote, beating the government coalition combined.

Furthermore, in March of this year, Sinhalese mobs engaged in an anti-Muslim pogrom after a local dispute forcing the President to declare a state of emergency.

Sri Lanka's stability is of critical importance to the United States national interests. Strategically located in the sea lanes, linking the Persian Gulf to east Asia, this island nation has seen a spike in recent activity by the Chinese.

China's strategy globally is one of indenting countries and binding them in servitude so it can extract resources. So it is safe to say that Beijing's initiatives will not emphasize ethnic reconciliation and/or human rights.

This presents the United States with an opportunity to stand up for justice and the rule of law and to oppose China's malign influence.

After a brutal war that cost an unconscionable loss of life, we must do better to help Sri Lanka get on the right page again. The country has promise and the people deserve better.

Once all sides recognize this, this island nation will finally have some semblance of peace.

I'd like to now introduce our distinguished witnesses, beginning first with J. S. Tissainayagam, who was an English language journalist in Sri Lanka for over 20 years. In 2008, he was arrested for writing critically against the Sri Lankan Government and sentenced to 20 years imprisonment.

Tortured and imprisoned for 675 days, he was released due to an international outcry against his unjust imprisonment. He now lives in the United States.

He was a Nieman Fellow at Harvard and a Reagan fellow at the National Endowment for Democracy. Named a prisoner of conscience by Amnesty International, he was awarded the International Press Freedom Award by the Committee to Protect Journalists in 2009, the Peter Mackler Award for courageous and ethical journalism in 2009 as well, and the British Press Freedom Award, foreign journalist of the year, in 2010.

He now contributes to Foreign Policy Magazine and Asian Correspondent, among other publications. We welcome him to the subcommittee and eagerly await his testimony.

We will then hear from Dr. Michael Jerryson, who is a professor of religious studies at Youngstown State University. An expert on religious conflict, he is the co-founder and co-chair of the Compara-

tive Approaches to Religion and Violence through the American Academy of Religion.

Dr. Jerryson has studied and written on Buddhist fundamentalism extensively, his latest publication, "If You Meet the Buddha on the Road: Buddhism, Politics, and Violence."

Dr. Jerryson is also a former Peace Corps volunteer in Mongolia. We welcome him to the subcommittee and, again, look forward to his insights.

Finally, we will hear from Professor Crane, who is a professor of practice at Syracuse University, School College of Law.

From 2002 to 2005, Professor Crane was the founding chief prosecutor of the Special Court for Sierra Leone, an international war crimes tribunal appointed to that position by Secretary General of the U.N. Kofi Annan.

Serving with the rank of Undersecretary General, Professor Crane's mandate was to prosecute those who bore the greatest responsibility of the war crimes, crimes against humanity, and other serious violations of international human rights committed during Sierra Leone's civil war in the 1990s.

An expert on international criminal law, international humanitarian law, and national security, he founded Impunity Watch—a law review and public service blog—he has briefed the Foreign Affairs Committee several times before, notably in 2014 with the Syrian army defector Caesar—an alias, of course—on war crimes committed by the Assad regime.

He's also been a frequent provider of insight and testimony to this subcommittee, especially on the importance of establishing ad-hoc tribunals like the one that he so nobly led.

I would point out parenthetically that the prosecutions that he led to Charles Taylor, the President of Liberia, getting 50 years—sentenced to 50 years at the Hague for his horrific crimes, and that would not have been possible without David Crane's leadership.

So just very grateful for that leadership.

Then we will hear from John Sifton, who I understand is stuck in some traffic and will be here momentarily—serves as an advocacy director at Human Rights Watch. He works on South and Southeast Asia, East Asia, the Middle East, and East Africa.

John Sifton began working at Human Rights Watch in 2001, first as a researcher in the Asia division, focusing on Afghanistan and Pakistan, and then as a senior researcher on terrorism and counter terrorism.

He also founded a public interest investigation firm, One World Research, which he directed from—right on cue—he directed from 2007 to 2010.

In 2000 and 2001, Mr. Sifton worked for the International Rescue Committee, primarily in Afghanistan and Pakistan, and in 1999 he worked for the refugee advocacy organization in Albania and Kosova. We welcome him and, again, look forward to his remarks as well.

Mr. Tissainayagam, the floor is yours.

STATEMENT OF MR. J.S. TISSAINAYAGAM, JOURNALIST AND HUMAN RIGHTS ADVOCATE

Mr. TISSAINAYAGAM. I wish to thank Chairman Chris Smith, Ranking Member Karen Bass, and other members of the subcommittee for hosting this hearing on Sri Lanka this afternoon.

My remarks are a summary of the written statements submitted to the subcommittee and I request that my full statement be entered into the record.

Mr. SMITH. Without objection, so ordered, and that would be for everyone on the panel, and any extraneous material you'd like to include as well will be made a part of the record.

Mr. TISSAINAYAGAM. Thank you.

The Sri Lankan Government and the rebel LTTE were accused of war crimes and crimes against humanity at the end of the civil war in 2009.

The best starting point to address the current human rights situation in Sri Lanka is by discussing what the present government pledged to the U.S. and the international community.

The present government was formed in January 2015 after the election defeat of authoritarian President Mahinda Rajapaksa.

In September 2015, it accepted human rights violations had occurred during the civil war. It proposed four transitional justice mechanisms to provide justice and lasting peace, which were incorporated into the U.N. Human Rights Council Resolution 30/1.

This resolution was co-sponsored by the United States and Sri Lanka. Then Secretary of State John Kerry placed a seal of approval on this agreement by declaring, and I quote, "This resolution marks an important step toward a credible transitional justice process owned by Sri Lankans and with the support and involvement of the international community."

However, progress on the promises made have been dismal. The U.N. High Commissioner for Human Rights, Zeid Al-Hussein, said in March this year, and I quote, "I regret the absence of meaningful progress. It is urgent for the sake of the victims that progress be made on accountability and transitional justice."

Let me elaborate on enforced disappearances where, while setting up structures, Sri Lanka has failed to build trust among its people.

Out of the four transitional justice mechanisms that Sri Lanka promised, only the Office of Missing Persons, or OMP, has been established.

However, by doing so, Sri Lanka has decided to ignore the most affected people—the families of the disappeared.

The stated needs of families of the disappeared in the north are simple. One, they want to develop the role of the state agencies, the LTTE rebels, and paramilitary groups acknowledge in the disappearance of their family members.

Two, they want justice, and three, they want to determine what that justice would be. The OMP does not serve those needs. It cannot try perpetrators and only under very limited circumstances can it refer cases to law enforcement authorities. It is because of the government's unresponsiveness that many of the families of the disappeared want to boycott the OMP.

For families of the disappeared, the most egregious form of enforced disappearances is the fate of their loved ones whom they handed over to the military at the end of the war in 2009 and never saw again.

As one mother, Ms. Pushpambal, said last week while protesting the OMP, and I quote, "We are not here to speak about the missing. We are here to speak about our children who we took by the hand and gave to your military."

Since February 2017, family members of Sri Lanka's north have been protesting every day, hoping their government will hear them.

Finally, when President Sirisena met them, the families asked for the list of those who had been handed over to the military. The President promised to give them a list in 2 days, but defaulted.

After a final meeting, Ms. Yogarasa Kankaranjini, whose son was disappeared, said, and I quote, "Today, we lost faith in this government. But we will continue our unrelenting struggle for our loved ones."

Finally, I would like to say—I would like to briefly touch on the issue of torture in Sri Lanka.

Torture has continued even after the new government took office in 2015. The U.N. special rapporteur on conflict resolution and human rights, Ben Emmerson, said after his visit to Sri Lanka in 2017, and I quote, "Eighty percent of suspects arrested under the flawed antiterrorist legislation in late 2016 had reported torture."

U.K.-based organizations have documented several cases of torture in 2016 and 2017, and their reports are available to this committee.

Studies have shown that impunity for perpetrators of past crimes and continuing human rights violations are risk factors to trigger future atrocities.

An example in Sri Lanka was the violence against Muslims in February this year. Sections of the police and STF, who have been accused of torture in the past, abetted ferocious Singhala Buddhist mobs who were attacking Muslims.

While the future of Sri Lanka looks grim at this point, all is not lost. There is a silver lining. The affected citizens are doing their best to hold their government accountable.

But they need the support of the United States to ensure their government keeps its promises made to them.

The United States remains well placed to use its good offices to persuade the Sri Lanka Government to abandon its policy to protecting the military and the time for the U.S. to act is now.

Recommendations: One, use the Global Magnitsky Act to sanction individuals accused of wartime atrocities; two, use the power of appropriations to ensure human rights violations end and hold Sri Lanka accountable; and three, use congressional oversight to see that the Leahy laws stringently vets individuals and military units in war and wartime atrocities, and ensure that U.S. tax dollars are not used for training those units in the U.S., in Sri Lanka, or in a third country.

Thank you.

[The prepared statement of Mr. Tissainayagam follows:]

Human Rights Concerns in Sri Lanka

J. S. Tissainayagam

Journalist and Human Rights Advocate

June 20, 2018

House Committee on Foreign Affairs / Sub-committee on Africa, Global Health, Global Human Rights and International Organisations

I wish to thank Chairman Chris Smith, Ranking Member Karen Bass and other members of the Subcommittee on Africa, Global Health, Global Human Rights and International Organisations for hosting a hearing on Sri Lanka this afternoon.

I wish to speak today on the pledges made by the Sri Lanka government in September 2015 to the United States and the United Nations Human Rights Council (UNHRC) to address issues of accountability for human rights violations during the country's civil war, only to renege on them later. This has given the country's military and police impunity to continue perpetrating abuses in the post-civil war period, raising the possibility of renewed conflict. At the end of my presentation, I suggest certain recommendations.

In 2015, Sri Lanka elected a new president and a new government, which calls itself the National Unity Government. The change was hailed as the dawn of a new era, friendly to human rights and democracy. But what has unfolded between then and now is not what many had hoped for.

In September 2015, in his appearance at the UNHRC as the representative of the Sri Lanka government, then Foreign Minister Mangala Samaraweera said the new regime was committed to "do right by the people of his country" because it was as the only way "to ensure justice and… lasting peace."

The civil war in Sri Lanka is estimated to have killed 40,000 in the final three months of fighting alone. There is no estimate of how disappeared in that period. Among the remedies the government proposed at the UNHRC were four transitional justice mechanisms that included a judicial mechanism with an Office of Special Counsel, an Office of Missing Persons, a Commission for Truth, Justice, Reconciliation and Non-recurrence, and an Office of Reparations. These proposals and others, such as the repeal of the counterterrorism law – the Prevention of Terrorism Act (PTA) – and replacing it with a law more in conformity with international human rights standards, were incorporated into UNHRC Resolution 30/1. This Resolution was adopted without division with both the United States and Sri Lanka cosponsoring it.

Secretary of State John Kerry reinforced the U.S.'s concurrence with the contents of the Resolution and its support for Sri Lanka stating, "This resolution marks an important step toward a credible transitional justice process, owned by Sri Lankans and with the support and involvement of the international community … As I promised in Colombo … the United States will remain steadfast in our commitment to walk with Sri Lanka as it takes these important but challenging steps."

Three years later not only is the brave new world promised by the Sri Lanka government in jeopardy, but there has been very little tangible headway in implementing Resolution 30/1. Of the four transitional justice mechanisms outlined in September 2015, only the Office of Missing Persons has even been set up. Here again its members are touring the country listening to victims and not begun sittings.

The dismal lack of progress and political will was noted by UN High Commissioner for Human Rights Zaid Al-Hussein at the UNHRC's meeting in March this year. He said, "The fulfilment of the transitional justice commitments made under Human Rights Council Resolution 30/1 has been virtually stalled for more than a year ... and the structures set up to coordinate implementation have not consolidated enough or did not receive sufficient political support to move things forward."

Rather than look at Sri Lanka's performance on upholding a gamut of human rights, I wish to focus here on three – and arguably most egregious – factors that affected the rule of law in the past and continue to do so in the present: a) disappearances, b) torture and c) militarisation.

It has to be noted that Sri Lanka ranks second only to Iraq in the number of unresolved cases of enforced disappearances (5,859 as of May 2017). These disappearances not only took place in the civil war, but during the two insurgencies against the Sri Lankan State by Sinhala youth.

Disappearances of Tamils in the civil war, involved multiple perpetrators and an array of methods. Among the perpetrators there were the Liberation Tigers of Tamil Eelam (LTTE) rebels, Tamil paramilitary groups such as the Eelam Peoples' Democratic Party (EPDP) and the Karuna Group. But by far the bulk of the acts of enforced disappearances were carried out by State actors – the military and the police.

Disappearances of Tamil civilians in the hands of State agencies was not only through routine abduction but also after Tamils surrendered to the Sri Lankan military at the end of the civil war in May 2009. The then government announced that whoever had any contact with the rebels, no matter how small, should declare it to the military and that they would be safe and treated fairly. Those who did were separated and taken away. Almost of all of them, including a catholic priest who went to ensure the safety of those taken away, were never seen again.

Due to successive Sri Lanka governments' reluctance to be forthright about disappearances or holding perpetrators accountable, the family members of the disappeared in the country's North and East have begun protests and demonstrations. Today, many families of the disappeared have said they will boycott the Office of Missing Persons set up to probe disappearances. The boycott is because they want the names of all those who surrendered to the military at the end of war and who are now disappeared to be published, before extending their cooperation to the OMP.

It has to be noted that Sri Lanka ratified the International Convention for the Protection of All Persons from Disappearances on May 25, 2016. Meanwhile a case of the disappearance of 11 persons including Tamil schoolboys in 2008 is before courts. A senior officer of the Sri Lanka Navy, Commodore D. P. K. Dassanayake, and others were arrested in this regard but released on bail earlier this year. While the ratification and a magisterial inquiry are silver linings, they are nowhere near an adequate response to the crime of enforced disappearances in the country.

It has to be noted that no matter when an enforced disappearances occurs, in law it is considered an ongoing crime till the person is found, or the next of kin accept the verdict of a government's investigation. Therefore, the lack of transparency in dealing with past violations has caused bitterness and anger toward the government and has the potential to fuel future conflict.

The second example is torture. Torture was used extensively on Tamil political prisoners during the civil war by both the military and police. This was facilitated by the draconian Prevention of Terrorism Act that permitted arbitrary detention and allowed confessions admissible as evidence.

But the practice has continued even under the present government where torture is used in police stations across the country on suspects regardless of their ethnicity. In his report from a fact-finding mission to Sri Lanka in April-May 2016, Special Rapporteur on Torture Juan Menendez wrote, "Fewer cases are reported today than during the conflict period and perhaps the methods used by the police forces are at times less severe. But sadly, the practice of interrogation under physical and mental coercion still exists and severe forms of torture, albeit probably in less frequent instances, continue to be used."

But it is Tamils who remain the bulk of those continuing to face multiple arrests, severe torture and sexual abuse even in post-war Sri Lanka. Many of those who are repeatedly arrested and tortured are ex-LTTE cadres who have undergone a so-called rehabilitation programme (so-called because within the programme itself it was reported that torture was rampant) and are supposed to be now reconciled with the State. The International Truth and Justice Project interviewed 24 persons who had been tortured and raped by Sri Lanka's police or military in the 2016-2017 and escaped to Europe. Their personal accounts make grim reading, but what stands out is the ITJP's categorical observation "The violations remain systematic and officially sanctioned by command structures within the security forces."

Following the publication of the ITJP report and an expose in the Associated Press, U.S. Senator Patrick Leahy said, "These accounts of torture are horrific and contradict the Sri Lankan government's professed commitment to reconciliation and justice," adding, "I will be looking for convincing evidence that torture has ended and those responsible are being punished."

The third element that is affecting the rule of law in Sri Lanka is militarisation of Northern and Eastern Sri Lanka, which are almost exclusively Tamil-speaking and home to the large majority of victims of the civil war. The saturation of the military in civilian areas was widespread during the years of armed conflict. As in the case of disappearances and torture, high levels of militarisation has continued after armed conflict ended as part of the post-war pacification project of the government.

Militarisation manifests itself in a number of ways in Sri Lanka. One of them is in sheer numbers. According to a report by two research organisations, Adaiyalam Centre for Policy Research and PEARL, in the district of Mullaitivu in the Northern Province, the ratio of military personnel to civilians is 1:2 – 60,000 soldiers to 130,000 civilians. Their presence is traumatising due to continuing surveillance and multiple if isolated reports of sexual abuse. Tamil people in the North and East understand that the military is present not for their security but to control and subdue the civilian population.

The military is also involved in the economic life of the community. It is occupying large tracts of fertile public and private land where it has set up camps; it owns hotels, runs wayside kiosks selling tea and snacks, as well as employs Tamil civilians in its Civil Security Department, which runs farms and offers paid employment to pre-school teachers. In communities struggling to get back productive economic life, these interventions distort markets and force residents to be dependent on the security forces for livelihoods, increasing the military's hold on the civilian population.

Disappearances, torture and militarisation are all carryovers from the wartime Sri Lanka to the post-war period. They manifest clearly that despite the formal control of the military by civilian authority in Sri Lanka's constitution, in reality, the military enjoys impunity for past and ongoing human rights abuses, some of which are characterised as war crimes and crimes against humanity by at least two different UN agencies. The impunity they enjoy has been

made only too clear by President Sirisena who has pledged multiple times that he would not subject any member of the military to trial for war crimes.

Will these issues create more conflict? While that cannot be predicted with certainty, atrocity prevention studies say that "weak institutional governance in countries and contexts where atrocities have previously taken place," could create trigger new atrocities. Attacks on Muslims in February this year by Sinhala-Buddhist mobs, while units of the police and Special Task Force – both accused of atrocities in the past – looked on, is chilling reminder of how impunity fuels more lawless behaviour by those enjoy it.

The immediate solution for impunity and stopping the human rights violations is to punish those at the apex of the chain of command for their crimes through a competent court that would, in this case, have to have international judges, lawyers and investigators.

But at a more fundamental level, reasons for impunity point elsewhere: the character of the Sri Lankan State. The structure of the Sri Lankan State has entrenched one group – Sinhala-Buddhists – in power since the country's independence in 1948. Demographic spread, the electoral system, the role of Buddhism in politics, minimal devolution of power and lopsided politics of patronage set the bar much higher for Tamils and even Muslims to be able to wield political power than it does for Sinhalese.

For instance, the military enjoys such high levels of impunity, not because its role in politics is constitutionally protected as the military's power in Burma. It is because over 90% of the military are Sinhala-Buddhists and share their co-religionists' ethno-nationalist project. Sinhala-Buddhist hegemony is seen in nearly all other areas of national life as well, because of the advantages rendered this group by structure of the State.

Therefore, if the structure of the State, or in other words the constitution, is recast to provide greater checks and balances against Sinhala-Buddhist domination, it would go a long way in transforming the way the State deals with a number of contentious issues including enforcing the human rights of Tamils and Muslims and accounting for past crimes against them.

Before the 2015 national elections, transforming the structure of the State through a new constitution was proposed in the election manifestos the parties that form the National Unity Government, as well as the biggest Tamil party in parliament, the Tamil National Alliance. The TNA's vision for a power distribution through a federal constitution is not shared by the other parties. Although after the lapse of some months, sporadic negotiations seem to have been revived between the parties to finalise proposals for a new constitution, there is little evidence that it will contain measures to check the concentration of power among the Sinhala-Buddhists.

Therefore, controlling impunity enjoyed by the military through judicial initiatives in the short-term, nor in the long-term by reaching a political settlement for stable peace and reconciliation through a new constitution, appear likely at the moment unless the United States and the international community add their voices and good offices to support Sri Lankans who are calling for justice and lasting peace.

The United States remains well-placed to use its good offices to persuade the Sri Lanka government to abandon its policy of protecting the military and work towards an investigation and trial of war crimes and crimes against humanity of all warring parties in Sri Lanka's armed conflict. The U.S. continues to have leverage because it remains Sri Lanka's biggest export market.

Sri Lanka's elite enjoy close physical and cultural bonds with the United States, including participation in military and civilian training programmes, tourism and studying in American universities. These physical and cultural ties developed over decades will not be abandoned by Sri Lanka's elite lightly. This too is a point of leverage. Further, there is at least one person accused of war crimes in Sri Lanka who is a citizen of the U.S. – former Defence Secretary Gotabhaya Rajapaksa – while Field Marshall Sarath Fonseka, among others, is a green card holder.

Using its leverage to enforce human rights norms will be helpful in Washington's fight with Beijing to carve out spheres of influence in the Indian Ocean. After years of combating President Rajapaksa's government ties with China, there was hope that with the advent of National Unity Government things would change. But they have not altered substantially. Chinese investments are continuing to grow in Sri Lanka and military ties with Beijing have not significantly diminished either.

The time for the U.S to use its good offices to support justice and peace in Sri Lanka is now.

Recommendations:

1) This Sub-committee on Africa, Global Health, Global Human Rights and International Organisations and the House Foreign Affairs Committee hold more hearings on Sri Lanka, to study the issues.

2) Use the Global Magnitsky Act to censure and sanction Sri Lankan politicians, military and rebels who were involved in wartime atrocities

3) Use Congressional oversight to see that the Leahy law stringently vets individuals and military units involved in wartime atrocities and ensure that U.S. tax dollars are not used for the training of those units, in the U.S., in Sri Lanka or in a third country.

4) Use the power of appropriations to ensure human rights violations end and hold Sri Lanka accountable.

5) U.S. Congress and the Department of State ensure that a judicial mechanism and Office of Special Counsel with international judges, lawyers and investigators in decision-making positions, is set up without further delay, to bring justice for wartime atrocities..

6) U.S. Congress and the Department of State use all available diplomatic tools to keep Sri Lanka on the UNHRC's agenda after the current Resolution lapses in February 2019 either through a rollover Resolution or a fresh Resolution that holds Sri Lanka to strict benchmarks and timelines to implement its promises in Resolution 30/1.

Mr. SMITH. Thank you so very much for your testimony.

I'd now ask Dr. Jerryson, if you would proceed.

STATEMENT OF MICHAEL JERRYSON, PH.D., ASSOCIATE PROFESSOR OF RELIGIOUS STUDIES, YOUNGSTOWN STATE UNIVERSITY

Mr. JERRYSON. I would like to thank the chairman Smith and the distinct members of the committee.

The task I was asked was to identify how we could avoid the escalation—elevation of violence in Sri Lanka.

As a scholar of religion and violence, my goal is not to make prescriptive claims about a religion but to examine it on the ground.

I want to also alert that I have been targeted by both Buddhist and Muslim groups in the past and my life is in jeopardy of this. So I have no leanings one way or another in this—these reflections.

Religion has a powerful impact in the way people see things. It creates a world view, a way of how we see what's right and wrong, what we should do, and oftentimes it can override human rights concerns, and I believe it's been happening in Sri Lanka for quite some time.

I won't read the entire submission I have. I would like to read some excerpts of it. As has been mentioned before, the Buddhist's nationalist rhetoric has been wedded to violence during the Sri Lankan civil war and its aftermath.

The role of Sinhala Buddhism in the recent anti-Muslim violence suggests that this dominance has a pattern of harmful effects on Sri Lanka's minority communities.

And let me add also that dominance doesn't simply affect adversely those who don't have a lot of power but also those who do have power in both harmful and beneficial ways.

National economic and political instability makes visible the systemic inequality. It also inflames tensions. This religious-ethno stratification engenders a society easily unmoored by ethno religious conflict.

The recent violence in February and March of this year, which began when four Muslims attacked a Buddhist driver, is but a recent example.

Sri Lankan society is also vulnerable to ethnical rhetoric, and we've seen a new surge of this arise with social media and Facebook posts that seem to inflame this.

After Buddhist propaganda on Muslim halal conspiracies, the imminent Islamification of Sri Lanka, tag lines such as calling Muslims gonibilla, which interestingly is, in Sri Lanka, means monsters, widespread riots have taken place.

The power behind propaganda are the Sri Lankan Buddhist monks. The more public and vocal conservative monks have stoked Sri Lankan fears and angers of minority and marginalized identities.

This behavior is distinctly modern. Prior to British colonialism, Buddhist monks legitimated Sri Lanka's governments. However, they did not directly participate in any political system.

This historical role explains the Sri Lankan Buddhist monk's symbol as society's moral foundational and they are so looked upon in this way.

So when Buddhist monks speak out publicly, they do so not only as holy voices, but also as political moral authorities. We have seen a rise in Buddhist monastic political participation.

Monks in mass became active during the 26-year civil war. In 2004, British monks formed the Jathika Hela Urumaya, the JHU—the National Heritage Party. Their political candidates were Buddhist monks. Nine of them won seats in Parliament.

As you mentioned before, Chairman, this has been even on a rise this year.

Now, while some Sri Lankan monks have called on more pluralistic policies and rhetoric, there has been a political consolidation of conservatism among such as the JHU.

In its inaugural year of activity, the JHU called on the extermination of the LTTE. They did not want to have any negotiations.

Shortly after the civil war, two Buddhist monks broke off from the JHU and formed a new organization called the Bodu Bala Sena—the Buddhist Power Force—and within a year the Bodu Bala Sena shifted the rhetoric from the Tamils to Muslims as a threat to the entire country.

When I interviewed founders of the Bodu Bala Sena, it had been only 2 weeks since the co-founder, Gnanasara Thero, had delivered an emotional intense speech that triggered Buddhist riots and attacks in Aluthgama.

His colleague, Dilanthe, explained the Bodu Bala Sena's reasons for the fears of Muslims, saying, "We want Sinhalese united in a Sinhalese government. We want protection. We have been protecting Theravada Buddhism for the last 2,300 years, and today, Theravada Buddhism is in the West and with the Sinhalese. But the Singhala race may be around only for the next 40 years," and it's a repeated rhetoric—the idea, the fear, that they're going to be obliterated. The Sinhalese will be obliterated and true Buddhism will be obliterated in the process.

Now, for Dilanthe, the Sinhalese Buddhists may enjoy a 69 percent majority, compared to the 8 percent Muslim minority. But Sri Lankan Buddhism is a global minority, in their views.

He and his organization consider their efforts to defend Sri Lankan Buddhism necessary for its very survival.

Now, the Sri Lankan Government has taken very little action against the Bodu Bala Sena. However, last week, the Sri Lankan Government jailed Gnanasara Thero, citing violence against Muslims—for him inciting violence against them.

Reuters journalist Ranga Sirilal reports that Gnanasara Thero told reporters as he boarded the bus to take him to prison, "I have done my duty toward this country. Why should I regret?"

So conservative Buddhist monastics such as Gnanasara Thero and Bodu Bala Sena see themselves as true to Sri Lanka because of protecting Sinhala Buddhism at the expense of minorities, ethnic and religious.

Their decisions require a heightened level of accountability. My recommendations are as follows.

Recent human rights abuses in Sri Lanka are a result of a larger and more historic, systematic, ethno religious problem.

To reduce the potential for it devolving into another period of civil strife, I recommend the U.S. Congress support the Sri Lankan

Government to increase efforts to identify its democratic processes of pluralism, to commission a neutral parties comprehensive review of the public education materials from the national to the local for any ethno religious biases, and, as Buddhist monastics become more political, to encourage the government to support the judicial branch in policing their actions.

Thank you.

[The prepared statement of Mr. Jerryson follows:]

Statement of
Michael K. Jerryson

Subcommittee on
Global Health, Global Human Rights, and International Organizations
House Committee on Foreign Affairs

Human Rights Concerns in Sri Lanka

June 20, 2018 at 2:30pm

Chairman Smith, Ranking Member Bass, and distinguished Members of the Committee:

Thank you for this opportunity to testify before you. Thank you as well for addressing a very important issue facing Sri Lanka, which is also a larger issue of peace and stability for South and Southeast Asia today. I would like to submit this written testimony into the record.

My name is Michael Jerryson. I am a professor of religious studies at Youngstown State University. I have worked on Buddhism and violence for over 20 years (1998 – present). During this time, I have traveled and conducted fieldwork in Asia. Often, my work consists of living and interviewing Buddhist civilians and monks involved in Buddhist-supported violence.

Among my recent publications on the subject matter, I have: authored *Mongolian Buddhism: The Rise and Fall of the Sangha* (Silkworm, 2008), *Buddhist Fury: Religion and Violence in Southern Thailand* (Oxford, 2011), and *If You Meet the Buddha on the Road: Buddhism, Politics and Violence* (Oxford, 2018); I also co-edited *Buddhist Warfare* (Oxford, 2010), *The Oxford Handbook of Religion and Violence* (Oxford 2013), and *Violence and the World' Religious Traditions* (Oxford, 2016).

As a scholar of religion, I strive to understand the socio-cultural and political role of religion through a historical lens. My position is not to judge a religion or its adherents, but rather to illuminate the ways in which religious values motivate or influence people and social patterns.

In my work, I have found that religion is one of the most undervalued and misunderstood causes for violence and for reconciliation in the contemporary world. The current problems in Sri Lanka are rooted in strong pervasive identifications. For many Sri Lankan Buddhists, a true Sri Lankan is a Sinhala Buddhist. This is not only a powerful normative influence throughout Sri Lanka, but also within the larger South and Southeast Asian Buddhist societies today. As such, the change necessary in Sri Lanka is not an easy or simple one. It requires a systemic shift in the way Sri Lankans identify themselves and their concept of the nation (and, concurrently, patriotism).

While I draw on my information from scholars, journalists, and NGO workers, the views I express in this testimony are my own.

No Room for Others: Buddhism and National Consciousness

In 2013, A. R. M. Imtiyaz and I participated in a panel at the Association for Asian Studies. His paper was on the persecution of Sri Lankan Muslims in the post-civil war era. Imtiyaz argued that the Sri Lankan flag serves as a harbinger for the Sri Lankan ethno-religious strife throughout the last four decades.

Sri Lanka formally adopted the flag in 1972. In Figure 1 below, we can see the Buddhist symbol of the gold lion in the right half of the flag; the gold lion symbolizes the Sinhala Buddhists. The four golden *bo* leaves surrounding the lion represent the Buddhist principles of loving kindness, joy, and equanimity. In the flag, the lion is holding a *kastane* sword with its blade turned toward two columns of colors next to it: orange and green. The orange column symbolizes the Sri Lankan Tamils and the green column symbolizes the Sri Lankan Muslims.

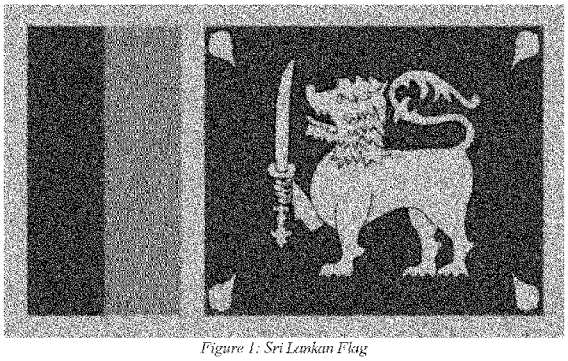

Figure 1: Sri Lankan Flag

In his conference presentation, Imtiyaz explained that the Sinhala Buddhists first turned their "sword" to the Sri Lankan Tamils during the 26-year civil war against the Liberation Tigers of Tamil Eelam (LTTE, 1983-2009). After the Sinhala Buddhist government conquered the last strong holds of the LTTE, they turned their "sword" to the next largest minority in their country: the Sri Lankan Muslims.[1]

For the last five years, I have heard other Sri Lankans explain the flag's imagery in similar ways. Beyond this possible rhetorical correlation between the flag and the recent ethno-religious acts of violence, the flag provides us with several key insights into Sri Lankan society. The first is the dominant role Buddhism plays in Sri Lankan national consciousness.

The Buddhist elements in the flag, namely the *bo* leaves and the gold lion, are remnants of a former flag by the Buddhist kingdom of Kandy (1798-1815). As the kingdom became part of the larger nation-state, it was absorbed into the national flag. We find this connection between

[1] A. R. M. Imtiyaz's conference paper was converted into a publication with Amjad Mohamed-Saleem, "Muslims in post-war Sri Lanka: Understanding Sinhala-Buddhist Mobilization against Them," *Asian Ethnicity* 16.2 (2015): 186-202. http://dx.doi.org/10.1080/14631369.2015.1003691.

Buddhism and the Sri Lankan nation-state is not only in imagery, but also in the Sri Lankan constitution. Under the current constitution, chapter II, article 9, the translation reads, "The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)."[2]

The identification of "Buddhist" in the Sri Lankan context has an ethnic marker attached: Sinhala. This is powerfully displayed in the mytho-historical narrative of Sri Lanka's origins, the *Mahavamsa*. The narrative upholds the Sinhala as the true inhabitants of the island; it also bonds the notion of being Sinhala with being Buddhist. In its twenty-fifth chapter titled "The Victory of Duṭṭhagāmaṇī, the Sinhala king Duṭṭhagāmaṇī fights to unite the island and to protect Buddhism. However, in the process of doing so, he and his soldiers slaughters millions. To pacify his concerns, eight awakened monks (*ārahant*) visit him and explain:

> From this deed arises no hindrance in thy way to heaven. Only one and a half human beings have been slain here by thee, O lord of men. The one had come unto the (three) refuges, the other had taken on himself the five precepts. Unbelievers and men of evil life were the rest, not more to be esteemed than beasts.[3]

In this section of the *Mahavamsa,* the narrative explains that the killing of the adversaries to Buddhism, were Tamils. This means they were non-Buddhists and thus their deaths were the equivalent to the killing of cattle (*pasu*).

This excerpt becomes more than a scriptural reference point. During the 26-year civil war between the Sri Lankan government and the LTTE, Buddhists and Buddhist monks invoked the *Mahavamsa,* arguing that the government needed to fight once more against the Tamils to protect the island and Buddhism.

In 1997, Buddhist Studies scholar Tessa Bartholomeusz interviewed a famous Sri Lankan monk Piyadassi about the conflict. Venerable Piyadassi explained, "You have to defend yourself. These are difficult questions. If someone goes to kill my mother, I'm going to stop him. So this could be a condition in which I am forced to kill."[4]

Piyadassi's choice of this hypothetical seeks to help people to relate to his Buddhist nationalist vision. For monks like Piyadassi, "mother" is metaphorical for the motherland of true Buddhism in Sri Lanka. This is not an historical aberration, but rather a reflection of historical Othering.

The Buddhist nationalist rhetoric was wedded to violence in the Sri Lanka civil war and in its aftermath. The role of Sinhala Buddhism in the recent anti-Muslim violence suggests that this dominance has a pattern of harmful effects on Sri Lanka's minority communities.

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[2] http://www.wipo.int/edocs/lexdocs/laws/en/lk/lk007en.pdf, accessed on 17 June 2018.
[3] Wilhelm Geiger trans., *The Mahāvaṃsa or the Great Chronicle of Ceylon*, (New Delhi & Madras: Asian Educational Services. [1912] 1993), 178.
[4] Tessa Bartholomeusz, *In Defense of Dharma: Just-War Ideology in Buddhist Sri Lanka* (New York: Routledge, 2005), 44.

National economic and political instability makes visible the systemic inequality; it also inflames the tensions. This religio-ethno stratification engenders a society easily unmoored by ethno-religious conflict. The recent February 2018 communal violence, which began when four Muslims attacked a Buddhist driver, is but a recent example. Sri Lankan society is also vulnerable to ethno-religious rhetoric. After Buddhist propaganda on Muslim halal conspiracies[5] and the imminent Islamification of Sri Lanka, widespread riots have taken place.[6]

The Power of Buddhist Monks[7]

The power behind Buddhist propaganda are Sri Lankan Buddhist monks. The more public and vocal conservative monks have stroked Sinhala Buddhist fears and angers of minority and marginalized identities. This behavior is distinctly modern. Prior to British colonialism (1815-1948), Buddhist monks legitimated Sri Lankan governments; however, they did not directly participate in any political system. This historic role explains the Sri Lankan Buddhist monk's symbol as society's moral foundation. When Buddhist monks publicly speak, they do so not only as religious voices, but also as political moral authorities.[8]

Since the early 1900s, there has been a marked rise in Buddhist monastic political participation. Monks in mass became active during the 26-year civil war. In 2004, Buddhist monks formed the Jathika Hela Urumaya (JHU, the National Heritage Party). Their political candidates were Buddhist monks; nine of them won seats in parliament. This was a historical first time for Sri Lankan Buddhist monks to win seats in their government.

While some Sri Lankan monks have called on more pluralistic policies and rhetoric, there has been a political consolidation of conservative Buddhist monks (such as the JHU). In its inaugural year of activity, the JHU called on the extermination of the LTTE.

Shortly after the civil war, two Buddhist monks broke off from the Jathika Hela Urumaya and formed a new organization called the Bodu Bala Sena (Buddhist Power Force). Within a year, the Bodu Bala Sena had focused on a new nationalist threat—Muslims.

When I interviewed the founders of the Bodu Bala Sena (BBS) in the summer of 2014, it had been only two weeks since cofounder Gnanasara Thero had delivered an emotionally intense speech that triggered Buddhist riots and attacks on Muslims in Aluthgama. Gnanasara Thero's

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[5] See Farzanna Haniffa, "Merit Economies in neoliberal times: Halal troubles in Contemporary Sri Lanka," in *Religion and the Morality of Markets*, edited by Rudnyckyj D. & F. Osella, forthcoming.

[6] For an example, see Mark Hay, "Meet the Violent Buddhists Starting Riots in Sri Lanka," Vice, June 27, 2014, https://www.vice.com/en_us/article/ay4jvc/meet-the-violent-buddhists-starting-riots-and-killing-muslims-in-sri-lanka, last accessed 17 June 2017.

[7] I draw some information in this section from my chapter, "Buddhism, Conflict, and Peacebuilding," in *The Oxford Handbook of Contemporary Buddhism*, edited by Michael Jerryson, 546-564 (New York: Oxford University Press, 2016), 553.

[8] A recent editorial by Rohana R. Wasala exemplifies this. Rohana writes, "Buddhist monks feel compelled to respond to what they perceive as aggressive acts by non-Buddhist religious extremists that adversely affect the rights of the exceptionally tolerant, accommodative Buddhists. "Anti-Buddhist propaganda with an academic veneer – III." *LankaWeb*, June 11, 2018, http://www.lankaweb.com/news/items/2018/06/11/anti-buddhist-propaganda-with-an-academic-veneer-iii/, 17 June 2018.

colleague, Dilanthe Withanage, explained the BBS's reasons for their fears of Muslims and Islamification:

> We want Sinhalese united and a Sinhalese government. We want protection; we were protecting Theravada Buddhism for the last 2,300 years, and today Theravada Buddhism is in the West and [with] the Sinhalese. But the Sinhala race may be around [only] for the next 40 years.[9]

For Dilanthe, the Sinhala Buddhists may enjoy a 69 percent majority compared to the 8 percent Muslim minority, but Sri Lankan Buddhism is a global minority. He and his organization consider their efforts to defend Sri Lankan Buddhism necessary to its very survival.

The followers of Sri Lanka's BBS share this view and collaborate with pro-nationalist Burmese Buddhist monks, such as U Wirathu. In September 2014, U Wirathu addressed thousands of Sinhalese Buddhists and met with the BBS. There were international outcries over the invitation and U Wirathu's anti-Muslim rhetoric.

One of the monastic cofounders of the BBS, Kirama Wimalajothi, responded, "This is not a multireligious country. This is a Sinhalese country."[10]

The Sri Lankan government has taken very little action against the Bodu Bala Sena. On June 14, 2018, a Sri Lankan court jailed Gnarasara Thero for inciting violence against Muslims. Reuters journalist Ranga Sirilal reports Gnanasara Thero told reporters as he boarded the bus to take him to prison, "I have done my duty towards the country. Why should I regret?"[11]

Conservative Buddhist monastics, such as Gnanasara Thero and the BBS, see themselves as true to Sri Lanka because of protecting Sinhala Buddhism. Their decisions require a heighten level of accountability.

Recommendations

Recent human rights abuses in Sri Lanka are a result of a larger and more historic systemic ethno-religious problem. In order to reduce the potential for devolving into another period of civil strife, I recommend that U.S. Congress support the Sri Lankan government: to increase efforts to identify its democratic processes with pluralism; to commission a neutral party's comprehensive review of the public educational materials (from the national to the local) for ethno-religious biases; and, as Buddhist monastic become more political, to increase support of its judicial branch to police their actions.

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[9] Personal communication with Dilanthe Withanage at the Bodu Bala Sena's headquarters in Colombo, Sri Lanka, 25 June 2014.

[10] Dharisha Bastians, "Radical Monk in Myanmar Pledges to Protect Global Buddhism," September 28, 2014; https://www.nytimes.com/2014/09/29/world/asia/radical-monk-in-myanmar-pledges-to-protect-global-buddhism.html, accessed on 17 June 17, 2018.

[11] Ranga Sirilal, "Sri Lanka jails extremist Buddhist monk for six months over threats to woman," *Reuters*, June 14, 2018, https://www.reuters.com/article/us-sri-lanka-monk-sentence/sri-lanka-jails-extremist-buddhist-monk-for-six-months-over-threats-to-woman-idUSKBN1JA1B4, accessed on 17 June 2018.

Mr. SMITH. Thank you very much.

I would like to now recognize Professor Crane.

STATEMENT OF MR. DAVID M. CRANE, PRINCIPAL, JUSTICE CONSULTANCY INTERNATIONAL, LLC

Mr. CRANE. Thank you, Chairman Smith. It's, again, my pleasure to be in front of you and the distinguished committee that you chair, along with all the members who we have worked together for almost two decades, bringing justice to the oppressed.

I have submitted my comments and so you have put them in the record. I will not go through those. I would just like to make a few important points, particularly related to justice and the involvement of Congress and the United States, related to the tragedy that took place for—between 1983 and 2009.

Like my colleague here, I approach this with nothing more than neutrality. I have been doing this for almost 40 years as far as advising and investigating and prosecuting those who commit mass atrocities.

The conflict that took place—we've seen law of armed conflict violations, war crimes, crimes against humanity, committed on all sides.

That's a given. We can talk about that in further questioning. But let's just use as a baseline that all parties committed violations of both domestic and international law.

International efforts to try to bring the parties together have been, largely, neutral at best and a failure most of the time, and that is because of the long term challenges that go with long term guerrilla conflict.

Sri Lanka will never be at peace—a sustainable peace—unless these is both truth and justice through some type of truth commission reconciliation as well as some type of justice mechanism, either domestically, regionally, or internationally.

In my mind, with all of this experience and have studied and worked with and dealt with on a practical level these types of issues, the short and medium term outlook for any type of truth or justice is bleak, at best.

I see little to no U.S. ability to influence any of the parties to bring them to the table to talk in a constructive and just like way.

Perhaps in the long term there may be some political openings and sunlight that will appear on this beautiful land, which I have walked for many weeks, particularly exploring the—and visiting all the battlefields of that last 4 months in 2009 as a member of a panel of experts looking into potential war crimes and crimes against humanity.

My suggestion would be this, Mr. Chairman, in conclusion, is that your committee—the committee headed by Chairman Royce and Congress at writ large, as well as the U.S. Government, to first show empathy—a recognition of the pain on all sides.

If we lock ourselves into narrative on either side, then we are starting off on the wrong foot. I would also encourage engagement.

Despite the challenges that we currently have as a nation that seems to be pulling away from the very fundamentals that's established this country, particularly in the human rights realm, which we have led for so many years, we still need to be engaged with

Sri Lanka at all levels, both economically, socially, culturally, politically, and practically, and engage all parties.

We also should be encouraging to ensure that dialogue takes place both at the local, regional, and international efforts to move parities in a way or to a realization that the only real future for this war-torn land is through compromise, discussion, and accountability.

And then, of course, I concur with my colleague at the end of the table. The real ability of the United States to draw attention is economic persuasion, both soft and hard persuasion.

We do have some influence. They're interested in our business. But that business comes with some type of quid pro quo.

So that will conclude my remarks and I look forward to your questioning, sir.

[The prepared statement of Mr. Crane follows:]

Subcommittee on Africa, Global Health, Global

Human Rights and International Organizations

Testimony of David M. Crane

Justice Consultancy International, LLC

20 June 2018

Justice for All Sri Lankans and Tamils

Mr. Chairman and members of this esteemed subcommittee. It is my pleasure to talk to you about issues related to human rights violations and violations of international humanitarian law during the civil war in Sri Lanka, 1983-2009.

I approach this issue as a neutral, someone who stands for the rule of law, particularly on the battlefield and for the protection of noncombatants. We live in an age of extremes. Dirty little wars arise across the globe. Parties to the conflict pay little head to the laws of armed conflict. Many of these largely non- international armed conflicts see civilian casualties mount, most of them women and children. The conflict in Sri Lanka was one such dirty little war, which saw the death and destruction of tens of thousands of human beings on both sides.

My perspective on the conflict in Sri Lanka comes from a lifetime of developing, teaching, and practicing the principles of international humanitarian law. I assisted in creating and then teaching the US Department of Defense Law of War program as the Chairman of the International and Operational Law Department at the US Army's Judge Advocate General's School at the University of Virginia in Charlottesville. The focus of that program was never again to repeat violations of the laws of armed conflict stemming from the Vietnam War, specifically the massacre at My Lai in 1968.

Additionally as a member of the Senior Executive Service of the United States my job was to oversee the Department of Defense's intelligence community (which is 80% of the US intelligence community) ensuring that these asset followed law, policy, and the US Constitution, to include international humanitarian law where appropriate. After 30 years in the US federal government dealing with IHL issues, I was appointed by the Secretary General of the United Nations to be the Chief Prosecutor of the international war crimes tribunal in West Africa, called the Special Court for Sierra Leone where I investigated, indicted and prosecuted the leadership of all parties in the civil war in Sierra Leone. Among those crimes were war crimes and crimes against humanity.

As a member of a panel of experts advising the Commission of Missing Persons set up by the GOSL in the Fall of 2014, I spent days walking the battlefields of the conflict in Sri Lanka, particularly the final campaign in the Winter of 2009. I have talked to parties on all sides

listening to them about what happened. Bottomline: I know what I am talking about when I tell this subcommittee the following:

First-Violations of international humanitarian law were committed on all sides. There are four governing principles that govern the laws of armed conflict established by the Hague Rules, the Geneva Conventions, other human rights and weapons treaties, along with customary international law. Though the lawful use of force is an international norm and accepted once allowed through legal sanctioning by an international or regional body, that force must follow the principles of military necessity, proportionality, unnecessary suffering, and discrimination. All four of these principles were violated by the GoSL armed forces and the LTTE.

Second-Civilians were intentionally targeted in a campaign of terror to seek a military and political conclusion of the conflict, particularly by the LTTE. A fundamental principle of international humanitarian law is that civilians cannot be intentionally targeted. The use of terror as a weapon is also a violation of international norms. Though both sides intentionally attacked civilians and need to be held accountable, this tactic was part of the overall strategic political and military plan of the LTTE.

Third-The brutality of the final campaign of the conflict in the Winter of 2009 was intentionally exacerbated by a desperate LTTE. As the LTTE was pushed back slowly to the northeast of the country they allowed and even forced civilians to retreat with them. Their policy was to use them for their own military gain as human shields in most instances placing them in harms way. Though there were instances of voluntary acts by civilians, the truth is most were forced to withdraw with the LTTE. As the final campaign narrowed the geographic space for these civilians to seek safety disappeared. It was only the NFZ's set up by the parties that these Tamil civilians could go. The LTTE then infiltrated these protected spaces engaging the GOSL armed forces. Using these human shields was perfidy a violation of IHL. In order to maneuver against a hostile force the Sri Lankan army was forced to engage with civilians all around. The result was an increased loss of civilians.

Third-The GOSL may have won the war, but they lost the peace. Due to the approach of the GOSL related to international interest in a just conclusion to the conflict have allowed the LTTE to turn the tables and highlight the excesses of the GOSL during the conflict and the resulting peace. Vigilantism, revenge, and retribution do not set the stage for a solution that can restore peace and security to the country. A policy of intransigence is and never will work. This hampers a practical and political space for accountability. Overt and subtle human rights violations continue by the GOSL.

Fourth-Accountability is the only key to a true sustainable peace in Sri Lanka. This can only be accomplished by a neutral body given the practical, moral, political, and ethnic issues that surrounds the creation of a justice mechanism. A model to consider is a hybrid international war crimes tribunal similar to the Special Court for Sierra Leone. Its mandate should be simple

and straight forward: Prosecute those who bear the greatest responsibility for war crimes and crimes against humanity from 1983 to 2009. The location of the court should be in Sri Lanka.

Fifth-A Truth and Reconciliation Commission should also be created made up of internationals, Lankans, and Tamils. Their goal would be to let the victims tell their stories and that a formal record be created. It must be noted that in Sierra Leone a tribunal and a truth commission operated successfully at the same time from 2002 to 2004. To have a sustainable peace one must have both truth and justice.

In conclusion, various political entities in Sri Lanka hope that the political interest by the international community in accountability will subside and that Sri Lanka will fade into history as a tragic dirty little war. This is not the solution. There must be a neutral accountability mechanism to ensure that all of the victims of the atrocities carried out in the conflict in Sri Lanka receive justice and that they have the ability to tell their stories to their fellow countrymen and to the world.

Mr. SMITH. Thank you very much, Professor Crane.

John Sifton.

STATEMENT OF MR. JOHN SIFTON, ASIA ADVOCACY DIRECTOR, HUMAN RIGHTS WATCH

Mr. SIFTON. Thank you. Thank you for providing Human Rights Watch the opportunity to testify also.

More than 9 years after the conflict, the people of Sri Lanka are still struggling to rebuild their country's democratic institutions but also obtain justice for the crimes that were committed during the conflict.

It's only after President Sirisena was elected in 2015 that the government really began to take more seriously the work that needed to be done to address past abuses.

But this came about because of intense pressure from minority Tamil and Muslim communities and local activists, but also from strong pressure from concerned countries including the U.S.

The U.S. played a huge role in convincing the government to engage with the U.N. Human Rights Council, and I am going to talk about the Human Rights Council a little later.

I think we've heard—you know, we all know that the LTTE committed horrific abuses during the conflict—sectarian massacres, political assassinations, executing detainees, using child soldiers—and as we documented, you know, terrorizing ethnic Tamils there and abroad to raise money for their operations.

The Sri Lankan security forces, for their part, committed countless arbitrating tensions, extrajudicial killings, forced disappearances.

But the abuses at the end of the war were, obviously, among the worst of all, and between indiscriminately showing civilians using human shields and killing rendered combatants and other Tamil men who surrendered at the war's end, it was a horrific time, and that's why there was so much pressure by the U.S. at the Human Rights Council.

The two resolutions since 2015 setting up these four different mechanisms, a special court for alleged war crimes, reparations, office of missing persons, a truth and reconciliation—you know, those were great resolutions and it marked a huge progress.

Unfortunately, as we've already heard, it's really only the Office of Missing Persons that's up and running and even their work has not really shown a lot of fruit.

The reparations process has been very slow. There was a bill but, you know, it's still stalled out. But most worrying of all is that there's no progress that's really been made on creating a special court and both the President and the Prime Minister have all but said that there never will be a court, and that's a huge tragedy that I think they should be criticized for a lot.

But this brings me to the issue of a human rights council. When we think about our recommendations, what needed to be done on this issue, obviously, U.S. is a big point of leverage and we urge Members of Congress and administration officials to keep pressuring that.

But when I drafted my testimony, I had not yet watched Ambassador Haley's comments yesterday, withdrawing the U.S. from the

Human Rights Council, and it really just changes everything that I was going to say.

I also had not read the letter that Ambassador Haley sent to my organization and Amnesty International this morning specifically blaming us for their withdrawal, saying that we had sided with Russia and China to sabotage their efforts at reform.

The response within Human Rights Watch this morning to that letter was shocking. This country, Sri Lanka, was among the ones we worked with U.S. the closest to create resolutions to address the country's human rights problems, and we found that letter to be not just an insult to us and our work, and our work together with U.S. officials but an insult to the people of Sri Lanka, to North Korea, to Burma, and other places where the U.S. have worked together.

And so I hope one thing that can come out of this hearing is that Members of Congress can press Ambassador Haley on why she made the disastrous, shortsighted and, frankly, childish decision to withdraw from the Human Rights Council yesterday.

Going forward, I think the U.S. could still use its role at the Council, even if it's not a member, to urge the next resolution in March 2019 to find fault with Sri Lanka and say what is going on here—you'd agreed to do these four things and you haven't done them.

Unfortunately, if the U.S. is not going to be in Geneva to do that, it'll fall to other countries, and that is a terrible indictment of this administration's commitment to promoting human rights.

I am sorry that this issue had to sideline, you know, the hearing about Sri Lanka. I would be glad to talk more about the Sri Lanka problems in particular. But I had to address this issue with the Human Rights Council.

I have a written version of my testimony, which includes the World Report chapter from Human Rights Watch's 2018 world report on Sri Lanka and I would ask that it be entered into the record.

[The prepared statement of Mr. Sifton follows:]

House Foreign Affairs Committee
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

Human Rights Concerns in Sri Lanka

Testimony of John Sifton, Asia Advocacy Director, Human Rights Watch
June 20, 2018

Mr. Chairman,

Thank you for providing Human Rights Watch with the opportunity to testify today.

More than nine years after the end of the country's brutal civil war and the defeat of the separatist Liberation Tigers of Tamil Eelam (LTTE), the people of Sri Lanka are still struggling to rebuild their country's democratic institutions and obtain justice for the crimes committed.

The previous government of Mahinda Rajapaksa largely denied that any investigations of wartime abuses were warranted. Only after President Maithripala Sirisena was elected in 2015, did the government begin to make more serious efforts to address past abuses. Intense pressure from minority Tamil and Muslim communities and local activists, as well as strong pressure from concerned countries, including the United States, helped convince the government to engage with the United Nations Human Rights Council and begin setting up mechanisms to investigate and prosecute past crimes by all parties to the conflict.

The LTTE committed horrifying abuses during the conflict – carrying out sectarian massacres and political assassinations, executing detainees, conducting suicide bombings against civilians, using child soldiers, and even terrorizing ethnic Tamils under their control to extort money for their military operations.

The Sri Lankan security forces committed countless arbitrary detentions, extrajudicial killings, and enforced disappearances, and often brutally tortured detainees in their custody. The abuses the military committed in the final months of the fighting were especially egregious. The army indiscriminately shelled civilians being used as human shields by the LTTE. Videos emerged at the war's end of soldiers summarily executing prisoners and jeering over the bodies of women combatants whom they had stripped, possibly raped, and murdered. Several LTTE leaders were seen on video surrendering to government forces but later were found shot and killed. Many LTTE fighters and other Tamil men who surrendered to the army at war's end are still missing, most presumably executed.

Today, despite the promises of the Sirisena government, justice for these crimes, and answers about the fate of those forcibly disappeared, remain elusive. With respect to the LTTE, most of its leadership was wiped out during the final weeks of the conflict, and there are few who can be held accountable for their atrocities today. On the government side, the steps taken have been too few and taken too slowly.

Since 2015, two separate resolutions at the UN Human Rights Council have passed by consensus with Sri Lanka's consent, affirming a commitment by the government for four transitional justice mechanisms: a special court for alleged war crimes, a reparations tribunal to provide victims and survivors potential restitution, an office for missing persons to investigate disappeared persons, and a truth and reconciliation office.

As of 2018, the office of missing persons is the only entity of these four that the government has established. It has begun to hold hearings in various parts of the country. But work has been slow, and it has yet to issue any public reports, and many families of the disappeared remain in the dark about the fate of their family members.

For relatives of the disappeared, it has been too many long years of waiting. Some families have held outdoor vigils continuously for over a year seeking answers, despite declarations from the president and prime minister that all the missing are dead. For our staff who visit these vigils, and who have worked to document abuses and disappearances, it is painful to observe the wives or parents living, eating, and sleeping outside, on thatch mattresses under small canopies, waiting for answers that aren't coming. But, of course that is nothing compared to the pain of these families, deprived even of information about the fate of their loved ones.

On reparations, progress has similarly been slow. The cabinet recently adopted a bill to provide reparations to certain persons effected by the conflict, but many fear payments will later be used as a justification for not addressing other issues, from missing persons to the need for investigations of war crimes. As for truth and reconciliation legislation, it remains stalled.

Most detrimental for Sri Lanka's long-term stability, no real progress has been made on creating a special court to investigate and prosecute wartime crimes. Despite pledges by the government to undertake this key step, the president and prime minister have both publicly stated that "war heroes" will not be tried for their abuses.

A court with participation by foreign judges and legal experts was specifically promised in the 2015 Human Rights Council resolution, so the lack of progress will only serve to disillusion victim families. Many victims and survivors have told Human Rights Watch that they won't accept reparations unless they start seeing real progress on justice and accountability. The debate over accountability is also likely to have political ramifications as the parties vie for popular support. Among those who may run in the next election is the former president's brother and former defense secretary, Gotabaya Rajapaksa, a dual US-Sri Lanka citizen, who has been implicated in military abuses at the end of the war.

Sri Lanka's human rights problems today extend beyond issues of justice and accountability. The draconian Prevention of Terrorism Act, which has long facilitated torture and other abuse, remains in effect. The government has also failed to initiate reforms to the security sector and criminal justice system, such as establishing accountability for police abuses or bringing criminal laws in line with international standards. Muslims and other religious minorities face ongoing threats and violence from ultra-nationalist Buddhist groups. I am including as an appendix to my written testimony a copy of Human Rights Watch's 2018 World Report chapter on Sri Lanka, which discusses all of these issues in more detail.

What can the US government do about all of these problems?

First and foremost, US government officials, including members of Congress, should continue pressing Sri Lanka on the importance of addressing its human rights challenges. Tuesday's announcement that the US will be leaving the UN Human Rights Council, over objections to some of its supposed procedural

flaws and biases, will undermine efforts to improve human rights in many countries. It was the US government that led the council to put forward resolutions that are central to post-war efforts to achieve progress in Sri Lanka. Leaving the council is going to send a terrible message about the US government's commitment to promoting human rights in general, and in Sri Lanka specifically.

Absent pressure from the UN, the US can, and should, use its leverage of financial assistance and military training to incentivize Sri Lanka to address human rights, justice, and accountability issues. Although US assistance to Sri Lanka is not extensive, it has been growing since the new government was elected in 2015, including in training for UN peacekeeping.

Existing legislation—and possibly new appropriations committee legislation in the Foreign Operations spending bill—impose conditions on some forms of assistance unless and until Sri Lanka carries out key steps on accountability and human rights reforms. We urge all members to retain and support these types of provisions in new appropriations legislation and also press the State Department and Pentagon to ensure that they communicate to the Sri Lankan government that US assistance will remain conditioned until Sri Lanka meets key benchmarks of reform.

Thank you again for allowing me to testify, and I look forward to answering any questions you may have.

Appendix: Human Rights Watch World Report 2018 – Sri Lanka

The general openness for media and civil society groups that emerged after the electoral defeat of the Mahinda Rajapaksa government in 2015 continued in 2017 under the administration of President Maithripala Sirisena. However, action stalled in 2017 on Sri Lanka's October 2015 pledges to the United Nations Human Rights Council (UNHRC) to address accountability and political reconciliation emerging from the country's 26-year civil war with the secessionist Liberation Tigers of Tamil Eelam (LTTE).

Despite a presidential pledge to release names of people in government custody, particularly those forcibly disappeared since the war's final months in 2009, the list was not produced. The government enacted a law to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance, but made clear that the law would not be retroactive.

Religious minorities remained at risk. In June 2017, then Justice Minister Wijeyadasa Rajapakshe publicly threatened a lawyer who criticized the government's failure to protect minorities. In September, authorities took 31 Rohingya Muslim refugees into protective custody following threats by Buddhist extremists. There were further flares of violence in Galle and Vavuniya in November between Muslim and other communities, with allegations of mobs attacking Muslim homes and businesses.

Truth, Reconciliation, and Accountability for Past Abuses
In October 2015, the UNHRC adopted a consensus resolution in which Sri Lanka pledged to undertake several human rights reforms, including transitional justice demands arising from the civil war, and to establish four transitional justice mechanisms, including a judicial mechanism with "participation of international judges, prosecutors, lawyers and investigators" with an independent investigative and prosecutorial body.

Civil society leaders, appointed by the government, conducted nationwide consultations in 2016, and handed a comprehensive report to the government in January 2017. It contained strong recommendations, including for a hybrid justice mechanism, acknowledging the need for independent international participation to ensure justice for victims of war crimes and other grave human rights abuses by all sides. The report included the need for justice for all victims of the long conflict, regardless of ethnicity, religion, or political persuasion.

Neither the president nor the prime minister received the report publicly and it has since languished, with scant government attention. The government's response to the report since January 2017 has also been disappointing. Senior cabinet ministers explictly rejected the recommendation that foreign nationals particpate in the special court. Both the president and the prime minister publicly reiterated the point, and further emphasized that the government would not allow "war heroes" to be prosecuted.

Enforced Disappearances
One of the four pillars of the 2015 resolution was to create an Office of Missing Persons (OMP). Although the government enacted a law in August 2016, efforts operationalize it remained stalled until September 2017. The OMP had yet to be formally set up at time of writing, and as of November, commissioners to the OMP had not been appointed.

Families of the disappeared said that the OMP was decided without proper consultation with affected groups, particularly as it was passed before the national consultation was finished. The act therefore does not address some of its central recommendations, including the need for psychosocial support, victim and witness protection measures, a minority rights commision, and symbolic gestures to allow public grieving, such as commemorating their dead.

The government failed to properly implement promised security sector reforms to ensure human rights protections. It failed to repeal or revise the draconian Prevention of Terrorism Act (PTA) and reform the Witness and Victim Protection Law. At least two separate drafts of the PTA were floated throughout the year, both of which could facilitate serious human rights abuses. Troubling provisions included overly broad definitions of terrorist offenses to possibly include peaceful political protesters. The government received feedback on the drafts from various UN offices specializing in counterterrorism, but at time of writing the drafts continued to fail international standards.

Lack of Accountability
With a few exceptions, particularly in cases that generated considerable publicity, Sri Lankan police were not held accountable for routine torture and ill-treatment in custody.

In April-May 2016, the UN special rapporteur on torture visited Sri Lanka. The report, presented to the March 2017 Human Rights Council session expressed "extreme alarm" at the failure to investigate credible allegations of torture, and corroborated accounts of ongoing torture, including sexual abuse.

The UN special rapporteur on counterterrorism and human rights, following a visit in July 2017, similarly reported that use of torture by Sri Lankan security forces is routine, and continues despite government claims of security sector reforms.

The National Human Rights Commission, although limited in resources, actively visited and monitored prisons and places of detention throughout 2017; despite occasional difficulties, the commission experienced no obstacles securing access to detainees.

Constitutional Reform
The government issued an interim report in September 2017, but it did not properly reflect recommendations from a 2016 national consultation. Nonetheless, its publication was welcomed by many political parties keen to see progress on constitutional reforms. However, the efforts stalled and parliament had yet to debate the report at time of writing. Nor had the government issued timelines for when a final report on constitutional reform could be expected.

Migrant Workers
The government took some steps to protect the rights of more than 1 million migrant workers in the Middle East and other parts of Asia, but many continued to face long working hours with little rest, delayed or unpaid wages, confinement in the workplace, and verbal, physical, and sexual abuse.

In June, the government announced the appointment of a committee to study strategies to reduce the number of domestic workers abroad and to end the kafala sponsorship system that operates in many Middle Eastern countries, restricting employment and transfer opportunities for migrant workers.

Sexual Orientation and Gender Identity
The government failed to make progress during the year toward implementing a 2016 plan forwarded by the Ministry of Health to establish a clear procedure for transgender people to change their identity documents. State and non-state discrimination against the lesbian, gay, bisexual, transgender and intersex (LGBTI) population persisted. Sections 365 and 365A of the penal code prohibit "carnal knowledge against the order of nature" and "gross indecency," commonly understood in Sri Lanka to criminalize same-sex relations between consenting adults. At a UN review in November, Sri Lanka rejected recommendations to repeal sections 365 and 365A.

Women's Rights
The UN Committee on the Elimination of Discrimination against Women (CEDAW) reviewed Sri Lanka in February 2017, noting in its concluding observations that the government had yet to fully implement the Convention on the Elimination of All Forms of Discrimination against Women, although it did note some progress on policies and plans designed to protect women against trafficking, and sexual and other violence.

Key International Actors
Sri Lanka continued its engagement with the international community. UN special mandate holders made several visits to the country during the year. Sri Lanka appeared before the UN Universal Periodic Review Working Group in November.

The government engaged with the Human Rights Council and the Office of the High Commission for Human Rights regularly throughout the year. The UN High Commissioner for Human Rights called on Sri Lanka for speedier and more meaningful implementation of its promises during the September 2017 council sessions.

The Sri Lankan government, in responding to the CEDAW in February, seemed unable or unwilling to answer questions of concern that committee members put to the government delegation.

The United Nations expressed an interest in vetting Sri Lankan forces before sending them abroad for peacekeeping duties in light of the numerous wartime abuses attributed to the armed forces.

Mr. SMITH. Without objection, so ordered.

Mr. SIFTON. Thank you.

Mr. SMITH. Thank you, Mr. Sifton.

Let me just begin.

You know, the Office of Missing Persons, and Mr. Tissainayagam, you were very, very critical of that and pointed out that many of the families said that they will boycott the office missing persons set up to probe disappearances.

If all of you, perhaps, could focus on the shortfalls, what needs to be done to fix it, and, again, what pressure might we bring. I mean, missing persons—I've held hearings.

I've done site visits all over the world, even during the war in former Yugoslavia. The issue of missing persons was a huge—still is—a huge issue at the time.

Our own POW MIAs in North Korea as well as in Vietnam was—I mean, the first speech I gave on the floor of the House in 1981 was about our missing in Vietnam that we did not get a full accounting for.

It seems to me that regarding the brokenness of the families—asking for that basic information really needs to be pressed very hard. So if all of you could speak to that.

Because, obviously, the families probably thought this would work and they have been disappointed.

Mr. TISSAINAYAGAM. Thank you, Mr. Chairman.

Let me start by saying a few words about the—what led to the OMP. As I said, it was one of the—one of the proposals made by the Sri Lanka Government. At the U.N. Human Rights Council meeting in 2015 in Geneva, basically, what the OMP was supposed to do was to look not only—was supposed to looking to the missing—into missing persons across the board, but particularly, it was supposed to look into disappearances.

When—but when the—but when it started the whole process of setting it up—when that started, there were a lot of issues that came which led to what came out finally, being truncated or a crippled version of what it ought to have been.

What the people—the families of the disappeared wanted was not only that the OMP would look into finding out the truth about the disappearances because in the case of many people, as I said, who had handed over their children and their loved ones to the military at the end of the war, they didn't need much information as to what happened to them. They saw their children be—or their husbands being handed over to the military and then they disappeared.

What they wanted was justice. This does not preclude the fact that they didn't want to know what happened to them eventually, but that was only one of the issues.

What they wanted was justice, and if you see the way the office of missing persons has been now established, the law establishing the OMP excludes justice—the office of missing persons the power to punish perpetrators.

That is because Section 13 says that whatever arises from the investigations of the office of missing persons will not give rise to civil or criminal proceedings.

Secondly, it says that they are—I mean, the whole law is a bit confused. It also says that if the OMP wants it can hand over some of the investigative material to a court of law.

But, that again, there are caveats. It says that it is only if there is no social or other problems or problems to the nearest relatives arising from that.

Now, just imagine if a military officer is accused of war crimes, and if that matter goes to court, you can be pretty sure from what Professor Jerryson described, that the whole Singhala Buddhist ethos being what is is, there is going to be—there is going to be chaos. So the OMP has the discretion not to put it forward to their court of law.

Now, that is completely against what the people, especially the victims, want.

So, therefore, while the victims do want to know what happened to their loved ones and that is assuming that the OMP at least does that function properly, one of the other things that they have been asking for is justice, which the structure and the character of the OMP will not allow it to provide.

Thank you.

Mr. SIFTON. Just a brief word about the—it's pretty clear that out of the menu of the four things that have been proposed to the resolutions that the government, obviously, prefers things that are less likely to cause high-level officials to worry that they be held accountable.

And so reparations and the office of missing persons has been more appetizing to the leadership as things that can be done that won't have that impact.

And yet, not even these things appear to have been done. One warning sign is that a lot of families are now telling us that they won't accept reparations unless there's some progress made on justice or accountability or truth. They simply won't take the money. That may be a sign that, you know, this could boil over in coming weeks and months.

The other warning sign is that the debate over accountability can have political ramifications. You know, among the people who may run for office in the next election is Gotabhaya Rajapaksa, who was Defense Minister at the time of the worst abuses in the war and also, incidentally, a U.S. citizen who's under investigation by the Justice Department for those alleged war crimes.

He's been implicated. That's a huge political ramification right there in the sense that if he's held accountable that could lead him to engage and have more political support.

If he's not held accountable, that, in turn, could provide a reason for why the ruling party may fail in the next election because the northern vote on which they were so dependent will not be delivered for them because of the profound disappointment in the government in not holding anybody accountable.

Mr. CRANE. Just one point. You know, the issue of justice, which all victims—and it's at the end of the day all about victims—what they want is truth and they want justice.

They want to tell the world their story, what happened to them; whether it be before a small body like a truth commission or an international or a local court.

But at the end of the day, particularly in Sri Lanka, but it's also proven to be in my practice in international criminal law for over two over decades, is that the bright red thread of all of this is politics.

It will be a political decision someday that someone's going to say we've got to do something about this, and that time is not present. So we have to just understand that as a word of caution.

When that happens, I have no idea. But it will be a political shift that will cause people to begin to move toward some of the—that four-cornered stool which the put in place in 2015, 2016, which has all the possibilities.

But the politics of it weaken that whole structure.

Mr. SMITH. Let me just ask you, Mr. Crane, after the civil war of the Sri Lankan Government put together the commission of inquiry with the intention of investigating both the Sri Lankan military and the Tamil Tigers, can you describe your role in that commission and, if you could, how effective has it been? How disappointing has it been?

And you also suggested in your testimony that a court, similar to the one that you so effectively led in Sierra Leone be established in Sri Lanka.

How realistic is that? Do you think that is something that could be achieved?

Mr. CRANE. Well, thank you for those questions, Mr. Chairman.

Yes, I was on the panel. I was on the panel of experts with Sir Desmond De Silva and Sir Geoffrey Nice and myself, advising that initial commission looking at what the possibilities were related to war crimes and crimes against humanity took place.

I was brought in in 2014 to advise that body, which we did. We found that as many of the inquiries have already found but unequivocally, neutrally, and with great depth, found that international and domestic crimes were replete.

We focused particularly in a lot of the dust that was in the air related to those final 4 months, and the three of us, literally, walked that campaign all the way to the beach—last day of the conflict, for lack of a better term.

At the end of the day, there are accountability on both sides. I could certainly go into my professional sense of this neutrally as to those 4 months.

But at the end of the day, the commission—well, interesting enough, the President that had set that up, literally, 3 weeks after I left Sri Lanka was thrown out of office and just disappeared into a cloud.

So at the end of the day, I would have to honestly say to you, Mr. Chairman, that really it just disappeared. There was no concrete ability to build from that.

To answer your second question, yes, of course, when the political decision is made to do something, certainly, a hybrid international court such as Sierra Leone is certainly a possibility, and it's and encouragingly possibility because we could involve all parties, which is what the Sierra Leone court was.

It was an international court but we also had members of the country in key and significant positions and judges, deputy prosecutor, deputy registrar, what have you.

You know, the history of the Special Court for Sierra Leone shows that a hybrid international war crime tribunal works and can be done efficiently and effectively, and yes, certainly that is a possibility.

You know, really, at the end of the day, the real possibilities here are either a internationalized domestic court—I just don't see a domestic court happening.

Potentially, an internationalized domestic court or a hybrid international court of some sort with variations at a time yet to be determined when a political climate decision is made that that might be something that would be useful to the people of Sri Lanka.

But, again, I have to underscore that it will be a political decision to do that.

Mr. SMITH. Yes.

Mr. JERRYSON. To add to this too—I applaud Professor Crane his suggestions.

There's a lot of delicacy right now that remains at the Sirisena administration in that if they push too much one direction they're going to lose a lot of political support, with Rajapaksa waiting in the wing right now, who's been much more supportive of the Bodu Bala Sena and other groups beside the Bodu Bala Sena.

This is going to be, I think, a very careful approach I think we should be aware of. The Bodu Bala Sena has been training young monastics since 2013. They have been trying to change the way people see what it means to be a Sinhala Buddhist—what does it mean to be a Sri Lankan.

And in the end, I think it's going to be the long game, not the short game here.

Mr. TISSAINAYAGAM. Thank you.

While I agree with everyone here that politics will be a very important part in determining when this—a credible justice mechanism is going to be set up, I also feel that the Sri Lanka Government is using certain myths to push the fact that politics is not conducive to bring about a solution at this point of time.

I am not saying that it can happen at this point of time, but I think it can be expedited. But that the Sri Lankan Government, by putting forward some of these myths is trying to delay it, for obvious reasons.

Now, one of the main things that the Sri Lankan Government says, and I believe Professor Jerryson also referred to it, is about Gotabhaya Rajapaksa, who is the former Defense Secretary, and the general myth is that if he is arrested or if he is accused of anything there is going to be a huge outcry in the country and, more than that, that there is going to be a coup in the military.

Now, this story has been there for about 2009. First and foremost, they said that Field Marshal Fonseca, who was at that time the—he's known as the butcher of the north because he led the military and he's accused of various war crimes—that anyone who touches him would end up killed or that they would—or that they would be victimized by the regime—yeah, by the regime and by the Sinhalese people.

But then he was arrested, he was put behind bars, and then he came back. The military did not—did not revolt.

Then they said, if Gotabhaya Rajapaksa, who is the Secretary of Defense, if something happens to him that there would be a huge outcry and there would be a coup.

Gotabhaya Rajapaksa comes and goes to courts very regularly because he is charged with various crimes, but they're not war crimes, but corruption issues, and the military has not erupted. They have not—there is no coup.

Thirdly, there is—there is D.K.P Dasanayake, who is a Commodre—sorry, he's a naval officer. He's also a senior officer—but who has been implicated in the disappearance of 11 people, and some of them are young kids.

He, too, has been—he's now on bail. But he was arrested, and there was no outcry or no coup. It was no big deal.

So while I agree with everyone here that politics will play a role in when this is going to be set up, I think the Government of Sri Lanka propagated this myth to push it as much—as much backwards as possible.

Thank you.

Mr. SMITH. Yes.

Professor.

Mr. CRANE. Thank you again for your time.

As we were sitting here having this important discussion, things come to mind. You know, I've been sitting here thinking about this very intently for the past week and in my experience with working with the Government of Sri Lanka and others and meeting the President, all the way down to various individuals, I think what they're doing right here right now is a waiting game.

They are—it's a slow roll. They'll give and take here and there to ease pressure. But they're looking at, over time, that the interest in accountability for Sri Lanka will wane because, again, the placement geopolitically of Sri Lanka itself puts it right in the middle of three major powers—particularly, India and China but also on and off interests by the United States and trying to develop and influence in that part of the world.

And so they're banking on their—the other geopolitical aspects of where they are versus—and just weighing this out and seeing what the result will be.

Adjusting as it goes, maybe they'll be forced to do something. But I think they're on a waiting game at this point, Mr. Chairman.

Mr. SMITH. If I could, Mr. Tissainayagam, you had focused on torture and the fact that the Prevention of Terrorism Act—the draconian PTA—not only permitted arbitrary detention but allowed confessions that were admission through torture.

I wonder if you could speak to why the government has not dismantled, eviscerated, done away with, repudiated this terrible law.

Mr. TISSAINAYAGAM. Thank you. Well, I think the very simple answer is that they don't want to do that because it would take away a very important tool that the government has to punish people who they think are culpable or at least who have been charge on human rights—on various violations—but who can be charged as terrorists.

One of the things that we have to understand is that from the time the PTA was made into law in 1979, not only were people who were charged who had—whose offenses were convincibly terrorist

offenses, but even people who expressed dissent, people whose speech and whose actions should have been safeguarded and protected as legitimate, as only criticizing the government or the people in power, were made to look terrorist because the way the law is couched—the way the law is written is so broad that it includes almost anything as an act of terror.

And once you do that, there are various things that you can use including confessions. Now, one of the things that—including confessions, which is made admissible under the PTA to charge these people, and torture is related to that. In the case of many of the—many of the—many suspects who are taken in, usually what happens is that they are tortured.

In fact, Ben Emmerson, as I said, said that 80 percent of the people who had been—who had been taken in between 2015 and 2016 had complained of torture.

Now, the problem here is that—this is a way of suppressing dissent and legitimate—people who are legitimately expressing something against the government.

Now, I was a victim in that sense. I was a journalist, and I didn't go around carrying a gun or killing people. But I was charged under the Prevention of Terrorism Act, and I was jailed under the Prevention of Terrorism Act.

I was arrested and jailed under the Prevention of Terrorism Act.

So I think that is the main cause—how you can use this over broadly defined terrorism in the PTA to keep and discipline a society. That is why the government is keeping this and that is why it is also keeping torture, because you can torture people into making confessions which you can use.

Thank you.

Mr. SIFTON. Just to direct the committee's attention to two facts. One is that the special rapporteur visited in July 2017 and found that torture is continuing apace and routine. We issued a report about the PTA as well a few months ago in which we documented several major cases of torture of PTA detainees.

But it's important to recognize not only have they failed to repeal it, these draft texts for new versions are even worse and they contain these broad definitions of political activity as terrorism, that are highly troubling.

I think it's good to pivot here to talk about how the U.S. can voice its displeasure with this situation. If we are not going to have the human rights council as a vehicle anymore then the United States at least can use its Embassy to voice these concerns and its spending power through appropriations.

I think it's a good opportunity that there's a new Ambassador coming in. We've worked with her very closely in Nepal and other places.

I mean, not to say anything bad of the current Ambassador. Atul is a wonderful servant of the U.S. and we wish him well.

But the next Ambassador, coming in like this, can bring a new approach—a little tougher and say to these—this government, look, we have a problem. There's a lot of restrictions on what we can do with you militarily—you know, our spending on law enforcement, counterterrorism, the Leahy law.

A lot of this will be made better if you start reforming and if you show progress on human rights and accountability it will make it easier for Congress to approve funding for more and more things and we can have joint training. This addresses the issue of the sandwiching between China and India.

Having been to PACOS and Honolulu, I can tell you that the Pacific Command looks at Sri Lanka with, you know—they're very appetizingly looking at Sri Lanka as a place where they want a closer military relationship. But they can't have it because of appropriations.

This is something Ambassador can say to them and say it in sort of an offering way. We want to be closer to you but you need to help yourself by reforming.

Mr. SMITH. Let me just ask you—I was the prime sponsor of the Frank Wolf International Religious Freedom Act, which takes us further down the road of trying to hold designated persons lists, the use of sanctions, which are parallel to the Global Magnitsky Act—I was the House Sponsor of that.

It did get passed into law by way of amendment, which was great, through the NDAA.

And that is another tool that you mentioned, Mr. Tissainayagam, as something we ought to, in your list of recommendations.

Is it time to really pull the trigger on those kinds of tools that are in the toolbox? Seems to me.

Mr. SIFTON. I wish it was. I wish I could say yes.

The problem is that the current way in which the administration's State Department considers sanctions under Global Magnitsky requires that the abuses in question be somewhat recent, and so you would really have to focus on current bad actors in the last 3 to 5 years.

You cannot really make a successful Magnitsky petition to the government about abuses that took place in 2009. It's intensely frustrating to us as a human rights group. But that's the reality that we are dealing with.

Mr. SMITH. Especially since the torture is ongoing.

Mr. SIFTON. That you could. If you identify Sri Lankan officials who are implicated in torture in the last 3 to 5 years, by all means they should be recommended for sanctioning under——

Mr. SMITH. Is Human Rights Watch compiling lists of people that could be held accountable?

Mr. SIFTON. Sri Lanka is one of several countries that we've recommended.

Mr. SMITH. For those names—could you convey them to this subcommittee? That would be very helpful.

Yes, Professor.

Mr. CRANE. Mr. Chairman, though I would—I certainly would love to see that kind of movement I helped in the Senate draft the Magnitsky Act.

But the point is, is how far do we want to—how hard do we want to push right now?

I agree with my colleague here we have new Ambassador coming in. If we push too hard, what ends up happening is nothing happens.

Go ahead, they'll say do it, but then they'll turn to India or China, and we lose that important base. And, again, remember, just within a month the Department of Defense did something that it rarely does—change the name of a combatant command to the Pacific India Command, which shows you how important, from a geopolitical point of view they see this region.

So it's a delicate dance. Yes, altruistically, that's t the way to go. But I think, practically speaking, we need to be able to show them that we could do this but there are other openings that might be able to allow us, because again, it's been my experience if you push the Sri Lankan Government in whatever the issue may be too hard, they will dig their heels in and throw the baby out with the bathwater. And so all of a sudden we had something and now all of sudden we have nothing.

Mr. SMITH. Before I go to one of my final questions, we are joined by a constituent of mine, Balan Akuga Palan, who is from Mercer County. He and his family are here today. I want to welcome them. Thank them for coming.

Let me just ask you a couple final questions. The state of the media or lack of media freedom in Sri Lanka today—where is it today?

Can journalists write openly and critically without the fear of that knock on the door in the middle of the night?

And how do we address, or how are they addressing, the plight of religious and ethnic minority groups such as Christians?

And before you go to your answers, just let me also point out that Tikuma is here. Tikuma is with Amnesty International. He spent over 5 years as a prisoner of conscience. So I want to thank him for his insights.

He frequently testifies before this subcommittee. So I want to thank him for those insights which are very much valued.

If you could speak to those issues—status of press freedom or lack of it, as well as the issue of other minority groups and how well or poorly they're treated.

Mr. TISSAINAYAGAM. Thank you.

Well, basically, when you look at Sri Lanka's performance with—as far as free press—as far as press or media freedom goes, generally, it has improved from what it was in 2009, and in fact from 2015.

And when you look at the RSF's index, for instance, Sri Lanka has come from the 162nd position to 142. So when you look at it from that point of view, people can write, people can say what they want and stuff like that.

But I think there is a very important think that we have to recognize. There are certain things that cannot be spoken about in the Sri Lankan media and one of those about things like war crimes and crimes against humanity and about disappearances and issues like that.

So while there is much more freedom to write about general political issues, there is absolutely nothing, or I would say very little to speak—to have in-depth discussion on issues like war crimes, disappearances, torture, and stuff like that.

Now, I think it's really important—I mean, people might say, okay, there is just one thing. I mean, you can speak about everything else.

But I think it's fundamental. If Sri Lanka is to reconcile—if its groups are going to reconcile and come together that you have a situation where the media is free enough to be able to discuss and have conversations on this matter.

So I think there are—the main issue that does not permit this is the Prevention of Terrorism Act. The PTA does not allow you to write. I mean, if you want to write something that is critical of the government, even today, especially something that is—that doesn't—something that the—on ethnic reconciliation and stuff like that, it is not permitted.

So this is done in two ways. In the north and east, even yesterday, someone was covering something on the disappearances, was arrested—was harassed by the military, and this happens right along.

So anyone who does anything about the military or—sorry, about the protests or about any sort of—or disappearances or anything like that—journalists can be harassed. They can be asked to give their names of their sources. Their photographic equipment has been taken away from them and stuff like that.

In the south, it's different. While this happens—this happens, the other problem is that the government looks upon anybody who is Sinhalese—or most Sinhalese who are writing about the ethnic issue and asking uncomfortable questions, as traitors, you know, you are going against our government. And our government, which destroyed terrorism and killed off the LTTE.

So that project does not allow some of the editors and journalists who want to write to write, and that, very importantly, creates self-censorship as far as the southern newspaper and media people are concerned.

That's all. And also the other—the third thing is that a lot of—a lot of Web sites that speak about some of these issues are now blocked in Sri Lanka, 13, as of 2017 December. Thank you.

Mr. SMITH. Mr. Garrett.

Mr. GARRETT. I will yield for the time being. I will wait in reserve.

Mr. SMITH. Close to the end.

If anyone would like to touch on the—how the Christians and other religious minority groups are being treated.

Mr. JERRYSON. I think we can look at the—I mean, there has been a rise in the persecution of Christians. They were—first off, the Tamils during the civil war were not just all Hindus. There were Christians as well that were persecuted during that time period.

There's been an increase in persecution of Christians in Sri Lanka. Not to the extent that we see Muslims being persecuted. This is, I think, being a ripple effect throughout not just Sri Lanka but also in South Asia as a whole with India as well—the mobilization of Hindutva and, so yes.

Mr. SMITH. Is there anything else before we go to Mr. Garrett that any of you would like to add that we have not touched upon today, just so we have a complete comprehensive record?

We do have a number of submissions for the record: A statement by Amnesty International USA and also a testimony from MAP. So without objection, those two testimonies will be made part of the record.

Mr. GARRETT. So I would speak briefly and begin with an apology for my tardiness, and I know that Mr. Sifton in particular has raised a number of concerns as it relates to the United States action with regards to the UNHRC.

I would submit that membership in an entity who purports to espouse particular values as it relates to basic human rights and yet allows actors who are some of the most egregious violators of those values the positions and authority that the UNHRC has over the years almost undercuts the mission purported by the entity to begin with.

I would also submit, at least in the opinion of this member, that advocacy on behalf of human rights of one group at the expense of human rights of another group also becomes self-defeating.

And so I certainly don't commend all actions as it relates to the United States with regard to the UNHRC. But I understand that perpetuating the idea that the UNHRC and the membership thereof is somehow worthy to pass judgment wherein member states like China, like Saudi Arabia, like Russia, like Cuba, and, in the past, Venezuela, whose human rights records are far from gleaming, again, undercuts the stated mission of the entity. So it's a little bit more complicated than I think perhaps it could be made.

With that, again, my sincerest apologies and I thank the chairman for the time and would yield back, reserving.

Mr. SMITH. Thank you, Mr. Garrett.

The chair recognizes my good friend from California, Brad Sherman.

Mr. SHERMAN. Thank you, and I want to thank you for allowing me to participate. I am not a member of this subcommittee but I've been very involved in Sri Lanka as ranking member of the Asia Subcommittee, which had its own hearing, hence delaying me from being here.

Although the war ended in 2009, Sri Lanka's northern and eastern provinces have an awful lot of property controlled by the ministry of defense, including an extensive portfolio of previously civilian properties, a number of businesses, and multiple hotels.

Is it inappropriate for these civilian properties to remain under military control almost 10 years after the end of the conflict? And is the Sri Lankan Government taking steps to restore civilian control to these properties in the northern and eastern provinces?

Mr. TISSAINAYAGAM. Thank you.

Well, originally, these properties were taken over by the government, saying that this was for security and related reasons. This was during the war. And this happened over a period of about almost 30 years.

The problem is that the war came to an end in 2009 and, to your question, there is no need for the Sri Lankan Government to hold on to all this amount of land.

What the government says is that it needs this land to establish camps and control the security of the area. There are a couple of problems here.

The first is what I referred to in my written—in my written statement about militarization. First and foremost, you don't need so many soldiers and military personnel in the north and east.

According to some statistics that came out very recently, in a town called Mullaitivu, the ratio between soldiers to civilians is two to one. There are 130,000 people to 60,000 soldiers.

So first and foremost, we don't need so many soldiers there so you can close some of those camps. Coming down—coming back to the—coming to the land itself, there are two types of land that is being held.

One is state-owned land and the other is private land. So while the government, under a lot of international and local pressure from human rights organizations and stuff like that, are giving back land, it is nowhere near what the people want because many of those people who are not—who want that land back, especially in the case of private owners, they are mostly in refugee camps. So you don't want to live as a refugee when the army is occupying your land.

So while land is being given back, it is very slow and not in keeping with the demand of the rate at which people want that land to be given back. That is the first—that's a second issue.

The third issue is that the government tells you, okay, right, we are giving you 20 acres, 100 acres, or whatever it is, and the people go and settle there.

But then the next day the military comes and says, no, no, you can't—you can't—I mean, we said that, but there are land mines here or that for security reasons you can't go and live there. So those people go back.

So even if there isn't—officially this land is given back, actually it is not. So in reality, those people continue to live in refugee camps.

Mr. SHERMAN. I wonder if any of the other witnesses has a comment on that question.

Mr. Crane.

Mr. TISSAINAYAGAM. Thank you.

Mr. CRANE. Thank you, sir.

Yes, I do, you know, and the international humanitarian laws are in conflict too to recognize property seizure in a general sense but there's got to be an appropriate and, in most cases, militarily necessary reason to seize that property.

And even if that is done, particularly in situations like that, some type of compensatory arrangement is made. You know, Geneva IV deals with the laws of occupation and, of course, during conflict a party to the conflict can seize property for an appropriate reason.

Initially, after the conflict ended, movement of military forces into that part of Sri Lanka was legal and probably appropriate.

But what's over a period of 10 years now is that the militarily necessary reason for them to be doing that has waned, and now all this is is really just a visible reminder of raw power and the——

Mr. SHERMAN. Does it produce a stream of income that goes directly to the military coffers?

Mr. CRANE. Congressman, I just don't know those facts so I would not comment on that.

Mr. SHERMAN. That's—I don't know if Mr. Sifton——

Mr. SIFTON. The assumption is that that would not be a stretch of an assumption. But let's be clear about the laws at work. The conflict is not underway. There is no active state of armed conflict in Sri Lanka today.

Mr. SHERMAN. It ended in 2009.

This year's omnibus appropriations law conditions U.S. economic and security aid to Sri Lanka on its government meeting certain human rights benchmarks.

Should we further condition our assistance to Sri Lanka on progress on human rights issues including accounting for missing persons and providing some degree of political autonomy to the Tamil minority?

Mr. SIFTON. In a perfect world, that's a recommendation that we would make. But, honestly, not necessary in the sense that the existing law already gives tools and ammunition to the incoming Ambassador and other U.S. officials to say to the Sri Lankan Government there's more that we could do if you started taking actions on——

Mr. SHERMAN. That assumes that the executive branch and the legislative branch are agnostic as to which of them is controlling American policy. Would that the executive branch always take our advice, we wouldn't need to put provisions in the statute.

I will ask any other witness whether you have a comment on whether it would be important for Congress to put such conditions into statute or should we be confident that the executive branch will use the tools that other statutes have given them and doesn't need to be told what to do on further statutes.

Does any—yes, Mr. Crane.

Mr. CRANE. Yes. It's always a good thing to have legislation that highlights human rights and links it to moneys that would be benefit of a country that is maybe violating those human rights.

I think it's a decision by both the legislative branch and the executive branches, and I had mentioned this to the chairman—how hard do we want to push at this moment?

You would know as well as anybody in this room the Sri Lankans are very sensitive about this. If we go all out, we may lose everything. If we continue to engage quietly and encourage versus jam it down their throats, then that's exactly what's going to happen. They're going to gag and we are going to be back at ground zero.

So that's not an answer but a caution.

Mr. SHERMAN. And I would point out the one disadvantage we have as a legislative branch is when we want to influence the executive branch we can do that quietly, but when we want to control the executive branch it's in a public statute—which means that it's not subtle, and sometimes we should be subtle and sometimes we should be less than subtle.

With that, I yield back.

Mr. SMITH. Thank you.

Let me just ask one final question, if I could, and the question is to you.

Oh, go ahead.

Mr. JERRYSON. Just one thing to note. If you're going to put anything into the statutes about the Tamil minorities, please also include Muslims as well. Many of them do not identify as Tamil and they're also being persecuted at this time.

Mr. SMITH. If you could elaborate—you noted in your testimony that you interviewed the founders of the BBS in the summer of 2014, only 2 weeks before Gnanasara Thero gave a speech that triggered Buddhist riots and attacks on Muslims.

Could you elaborate on this seemingly escalating threat of this extremism?

Mr. JERRYSON. Absolutely, Chairman. Just to be clear, do you want me to reflect more on the meeting or on the current escalating threat?

Mr. SMITH. Current escalating threat. But you, obviously, having talked to them—the founder back in 2014—I think would have some very useful insights.

Mr. JERRYSON. The Buddhist nationalist groups right now in Sri Lanka are feeding off of not just themselves but also adjoining Buddhist organizations, such as the Ma Ba Tha and the 969 Movement in Myanmar.

And so they are beginning to feel more and more emboldened of the fact that they're alone—that the West is only concerned with Christians and colonial rhetoric, and that they have to take matters into their own hands.

Mr. SMITH. Well, we speak out—if you would yield for a moment—very aggressively on the Rohingya, which, obviously, are in the crosshairs.

Mr. JERRYSON. Yes. Yes, absolutely.

There was—actually, in September of this past year there was a U.N.-sanctioned refugee camp in Sri Lanka for Rohingya refugees that were attacked by Buddhists and Buddhist monks that were Sri Lankan.

So this is—the rhetoric of pointing out that Buddhism is under threat is becoming more and more, I think, solidified, more clear for many people. It's getting more traction.

The one small silver lining is, again, the fact that Gnanasara Thero was arrested and there's rumors that he's going to be defrocked. But this is something that, hopefully, we can see more of.

Mr. SMITH. Dr. Jerryson—yes.

Mr. SIFTON. I would just add to that. I think there is—with respect to what Representative Sherman said about the administration, there are some allies who are willing to be more forceful on some of these issues. They're spread a little bit thin. One of them is former Senator Brownback, who is now Ambassador-at-Large on these issues.

Encouraging him to visit the country would probably be to the country's benefit in the sense that it would revitalize efforts at C Street and in Washington, in general, to really address these issues with a little bit more vigor.

Mr. SMITH. I will take that up with him. A great idea.

Anything else you'd like to add before we conclude?

Mr. SIFTON. I would like to respond to the issue of the Human Rights Council, if I may, very briefly.

There is no doubt that the Human Rights Council in Geneva is deeply flawed. But it has also given us things like the U.N. Commission of Inquiry on North Korea and the two resolutions that pressured Sri Lanka to do everything that they have done, as inadequate as it is.

There was a reform process underway in Geneva. Ambassador Haley, instead of working within that process, tried to lead a shortcut through the U.N. General Assembly where the U.S. lacked requisite political support and where also would have opened a Pandora's Box of other amendments by bad actors, including Russia and China, that would have ended with a net result of a worse Human Rights Council.

So for all those reasons, we suggest that they not do this, and I would submit that if the measure of how flawed a U.N. body is is its members have egregious human rights records, then what are we to do with the U.N. Security Council? Should we withdraw from that as well?

Mr. SMITH. I thank you.

I would just provide one insight: When the Human Rights Commission was established, the predecessor for the Human Rights Council—many of us had very, very high hopes that it would matriculate into a true, robust human rights organization of U.N. member states that really had as close to impeccable records as possible.

I, for one, believe that we should always stay and fight from within. But it is so egregiously flawed. The way it focuses on Israel is an abomination and when countries like China, where torture is absolutely pervasive and all their other human rights abuses—I've gone to the Council many times, raised issues. Went to the press conference that the Chinese held and raised these issues—they just closed down the press conference and didn't want to talk any further.

So, hopefully, withdrawal—if that's what will actually happen—will lead to some very robust introspection. I've raised issues with Prince Zeid many times. I think he has made numerous mistakes.

I am sure he's well meaning, but numerous mistakes, especially as it relates to Israel. I mean, how many votes are had in that Council that are all directed at Israel when so many—I mean, even on the issue of killing or enabling terrorists subsidized by the PLA and paying their families—pay to slay is what we call it.

We recently had legislation on the floor of the House to at least ding them on some of the money. I am going to introduce a new bill that says we'll hold criminally and civilly liable those at the PLA who provide this blood money to terrorists and to their families and also hold the position in the PLA leadership depending on how many years you spend in prison when you commit a terrorist act. I mean, there were a few—and yet, does the PLA—I know it's an organization. It's not a de facto government, per se. It is a government—that gets away with this murder.

So I thought we should have stayed and fought from within. But I am shocked and dismayed how the cast of human rights abusers remain dominant at the Human Rights Council. It's not much different, if at all, from the Human Rights Commission. So the hope that, as a replacement, it would have led to a more transparent,

open, aggressive, "This is where human rights are really done" institution didn't happen.

Mr. SIFTON. Well, we'll keep fighting to reform it. We will keep fighting, because it needs help and it will reform, whether the U.S. is there or not.

Mr. SMITH. Gotcha. Yes, sir.

Mr. JERRYSON. If I can add to this discussion, briefly.

So as I mentioned before, there's a battle of rhetoric taking place in Sri Lanka about the fact that there might be Western propaganda taking place, Western interests.

My concern is the timing of all this. The fact of being pulled out of the Human Rights Commission means also the Council can also start looking at the United States about possible human rights problems that we have here and that could be used as fuel for fake news and false information in Sri Lanka and disregard what we have to say. So just a concern I just want to put out there.

Mr. GARRETT. Mr. Chairman?

So would you suggest then that if we hadn't pulled out of the UNHRC that there wouldn't be any fake news or propaganda?

Mr. JERRYSON. No. No. Not at all.

Mr. GARRETT. So, in other words, we are going to get that either way, right?

I mean, this is almost like, I would argue, giving the fox the keys to the proverbial henhouse, and if you wanted to have credibility then maybe there should be some standards for membership thereon. That's a rhetorical assertion.

But, again, I have great sympathy for the administration, for the chair, for Ranking Member Sherman. There's no right answer here.

Having said that, as it relates to Mr. Sifton's comment to the U.N. Security Council, you know, there are those who would say you're absolutely correct, right.

The question is what baby do you throw out with the proverbial bathwater. Having said that, if I were to review and enumerate the human rights violations of the members of the UNHRC just right now, we'd have to book another several hours. [Laughter.]

Right? That's all. I don't disagree with you guys. In fact, I admire you and I think you're doing the right thing. But there is no panacea here wherein we go, well, if we are a member everything will be good and if we are not everything will be bad.

It's frustrating. Thank you.

Mr. SIFTON. One point is that the Human Rights Council votes on these resolutions passed by unanimous consent. So these egregious human rights actors who have, you know, caused our staff huge problems, put us in peril, allowed these resolutions to go forward.

So yes, it's flawed, and yes, there are egregious human rights violations.

Mr. GARRETT. But by virtue of participation you essentially legitimized those edicts. That's the problem. If you turn and walk away from it—you say, we don't recognize the authority of this particular entity, right—we've seen this recently as it relates to the arbiters of what is and isn't, for example, a hate group.

When you give blanket authority to a subset of individuals to determine who is bad and who is good, ultimately, those individuals,

in a world corrupted and inhabited by fallen human beings, would probably tend to err on the side of whatever agendas they harbor, right.

You can know, and I do, that Israel is not perfect without agreeing with every assertion that somehow Israel is evil.

Mr. SMITH. I want to thank all of my colleagues. I want to thank our very distinguished witnesses for your extraordinarily incisive and illuminating testimony. It helps us to do a better job on the subcommittee, and we will be in touch with the administration on many of the recommendations you have made. So thank you so very much.

The hearing is adjourned.

[Whereupon, at 3:56 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith (R-NJ), Chairman

June 19, 2018

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs to be held by Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2200 of the Rayburn House Office Building (and available live on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Wednesday, June 20, 2018

TIME: 2:30 p.m.

SUBJECT: Human Rights Concerns in Sri Lanka

WITNESSES: Mr. J.S. Tissainayagam
Journalist and Human Rights Advocate

Michael Jerryson, Ph.D.
Associate Professor of Religious Studies
Youngstown State University

Mr. David M. Crane
Principal
Justice Consultancy International, LLC

Mr. John Sifton
Asia Advocacy Director
Human Rights Watch

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, Global Human Rights, and International Organizations* HEARING

Day *Wednesday* **Date** *June 20, 2018* **Room** *2200*

Starting Time *2:30pm* **Ending Time** *3:55pm*

Recesses ____ (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Chairman Smith

Check all of the following that apply:

Open Session ☑
Executive (closed) Session ☐
Televised ☐

Electronically Recorded (taped) ☐
Stenographic Record ☑

TITLE OF HEARING:

Human Rights Concerns in Sri Lanka

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Garrett

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

Ranking Member Sherman

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ **No** ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

-Rep. Smith: Statement by Amnesty International USA

-Rep. Smith: Sri Lanka Monitoring and Accountability Panel Written Statement

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED _____

Subcommittee Staff Associate

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

Date: June 20, 2018

RE: House Foreign Affairs Subcommittee Hearing on Human Rights Concerns in Sri Lanka

Statement by Amnesty International USA

In 2015, Sri Lanka made important commitments to the UN Human Rights Council that it would finally provide truth, justice and reparations to victims of human rights violations and that it would enact reforms to ensure that such violations would not recur. Over the past 35 years, Sri Lanka has suffered two brutal internal conflicts in which both the security forces and opposition groups committed human rights violations and abuses. In the vast majority of these cases, no one has been held accountable. Instead, impunity has prevailed. The government's commitments in 2015 marked a welcome change.

Since 2015, the Sri Lankan government has taken some steps to fulfill its promises. After signing the International Convention for the Protection of All Persons from Enforced Disappearances in December 2015, in May 2016, Sri Lanka ratified the Convention. Domestic legislation giving effect to the Convention was passed in March 2018. The law establishing an Office on Missing Persons was passed in August 2016, and was deemed operational by the President in September 2017. The members to the Office were appointed late February 2018 and the Office, which is tasked with investigating cases of enforced disappearances, has started its work. Amnesty International has estimated that as many as 60,000 to 100,000 alleged enforced disappearances have occurred in Sri Lanka since the late 1980s. While the government's progress is welcome, the fact that it took over two years to adopt implementing legislation on the Disappearances Convention is evidence that progress on meeting human rights commitments has slowed. Further, no progress has been made on establishing a justice mechanism, a commission on truth, justice, reconciliation and non-recurrence. Legislation to set up the Office for Reparations was only approved by cabinet this month.

Another example of delay in meeting human rights commitments is repealing and reforming the Prevention of Terrorism Act (PTA) in line with international standards- a commitment made under UNHRC resolution 30/1. The present Act permits extended administrative detention and shifts the burden of proof to detainees alleging torture or other ill-treatment. The PTA has

been used against suspected members of armed opposition groups (such as the Liberation Tigers of Tamil Eelam) as well as against independent journalists. It has facilitated the use of torture. Following the government's promise to repeal and reform the PTA, it subsequently produced a draft policy and legal framework for a Counter Terrorism Act. However, this would have continued to give police broad powers to detain suspects without charge and hold them in administrative detention. Fortunately the draft framework has not been enacted into law but nothing has emerged so far in its place. More than two years later, the PTA is still in operation and is used to arrest and detain persons without charge for prolonged periods. Torture is still widespread, with the Human Rights Commission of Sri Lanka in its 2016 report to the Committee Against Torture stating, "torture is routinely used in all parts of the country, regardless of the nature of the suspected offence for which the person is arrested."

The passage of the 19th amendment to the Constitution in 2015 established the Constitutional Council, tasked with recommending appointments to several key independent commissions. The Human Rights Commission reformulated under the 19th amendment recently received an 'A' grade accreditation by the Global Alliance for National Human Rights Institutions (GANHRI), recognizing the Commission's independence and good work. However it is reported that although it is one of the Commission's main tasks to advise the government on drafting rules and regulations maintaining compliance with human rights, drafts are not shared with the Commission for their scrutiny, making it challenging for the Commission to input into government policy. This is especially problematic since there is no post-enactment judicial review of legislation in Sri Lanka.

The government promised in 2015 to establish a judicial mechanism to investigate alleged human rights violations and violations of international humanitarian law (including war crimes). No progress has been made at all in establishing this mechanism. Senior government officials have made public statements since 2015 promising that members of the security forces would not face justice for alleged war crimes or crimes against humanity; these statements create grave concern that the government may not follow through on its stated commitments in this area.

In the absence of the justice mechanism, impunity for alleged war crimes and many other human rights violations and abuses is continuing, including in cases in which the government has carried out some investigations. Emblematic cases include: the January 2006 extrajudicial execution of five students in Trincomalee, the August 2006 killing of 17 aid workers with the NGO Action Against Hunger in Muttur, the January 2009 killing of newspaper editor Lasantha

Wickrematunge, the January 2010 disappearance of dissident journalist/cartoonist Prageeth Eknaligoda, and the December 2011 disappearances of political activists Lalith Weeraraj and Kugan Muruganandan.

Christian and Muslim minorities have faced threats and physical violence from members of the majority Sinhalese community, including some extremist Buddhist monks. Notable instances of attacks against Muslims occurred in Aluthgama in 2014 and in Kandy and Ampara earlier this year. While recent government steps to prosecute those responsible for this year's violence are welcome, they must be seen in a context in which for many years such attacks have occurred without anyone being held responsible and while the security forces for the most part took no action to protect the victims while the attacks were occurring. The government must proactively use law enforcement to tackle violence, protect the human rights of the affected and ensure accountability in order to prevent recurrence.

Congress should impress on the Administration and the Sri Lankan government the importance of Sri Lanka fulfilling its human rights commitments to the international community and its own citizens. In particular, Congress should insist that the government of Sri Lanka undertake the following actions:

- Repeal the Prevention of Terrorism Act and replace it with legislation in line with international standards
- Release all PTA detainees unless they are promptly charged with a recognizable crime under international standards and given fair trials
- Publish list of all detainees and detention centres
- Provide the families of the disappeared with information they have requested, including detailed lists and information on persons who surrendered to the armed forces at the final phase of the war in 2009 and full and effective reparation
- Establish the office for reparations, the judicial mechanism with a special counsel, and the truth justice, reconciliation and non-recurrence commission without delay and in line with the recommendations made by Consultation Task Force on Reconciliation Mechanisms
- Implement commitments made under UNHRC resolution 30/1, including returning land to their civilian owners, introducing effective security sector reforms and establishing independent and effective victim and witness protection systems
- Publish a timeline for implementation of all of the government's human rights commitments made in UNHRC resolution 30/1

- Conclude prompt, thorough, independent and effective investigations into the emblematic cases noted above and, where sufficient evidence exists, prosecute those suspected of responsibility for these crimes
- Share draft rules and regulations with the Human Rights Commission for their scrutiny and input prior to enactment
- Take strong action to protect human rights defenders and journalists and investigate attacks by individuals and groups on journalists, human rights defenders, members of religious minority groups and other members of civil society, with a view of holding perpetrators to account

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MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

Human Rights Concerns in Sri Lanka

Sri Lanka Monitoring and Accountability Panel Written Statement

Before

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

Committee on Foreign Affairs
U.S. House of Representatives

Hearing: Wednesday, June 20, 2018

The Sri Lanka Monitoring and Accountability Panel (MAP) is pleased to submit this written statement on human rights concerns in Sri Lanka.

The Sri Lanka Monitoring and Accountability Panel (MAP) was established to provide independent monitoring, advice, and recommendations on the progress of transitional justice in Sri Lanka since the end of the war in 2009. Its members are senior legal practitioners with considerable expertise in national and international criminal justice mechanisms designed to address wartime atrocities.[1] Since its formation in 2015 the MAP has actively engaged in the ongoing debate over the most appropriate manner in which to deal with allegations of war crimes and crimes against humanity committed during the protracted civil war between the Government of Sri Lanka (GSL) and the Liberation Tigers of Tamil Eelam (LTTE), which left more than 40,000 dead and some 280,000 displaced. Information about our activities and our reports can be accessed at http://war-victims-map.org

In October 2015, pursuant to United Nations Human Rights Council (UNHRC) Resolution 30/1, Sri Lanka committed to a broad transitional-justice agenda made up of four distinct pillars, namely: an office on missing persons (OMP); an office on reparations; a truth and reconciliation commission; and a special criminal court. Notably, with respect to the last pillar, the Government of Sri Lanka (GSL) initially agreed to the participation of international judges and

[1] Members bios are found here http://war-victims-map.org/about/

prosecutors—something the MAP considers to be essential in helping to ensure a credible judicial process. However, since the passage of Resolution 30/1, Sri Lankan President Maithripala Sirisena's shaky coalition government appears to have reneged on many of the country's international commitments and legal obligations to victims.

As detailed in the MAP reports, the GSL has been proceeding in bad faith with respect to Resolution 30/1. The latest MAP report, dated 7 March 2018, emphasized the GSL's lack of meaningful progress to date; highlighted the government's continued obstruction; suggested alternative avenues for redress and accountability; and set out the MAP's renewed and additional recommendations going forward. (http://war-victims-map.org/wp-content/uploads/2018/03/MAP-Third-Spot-Report.pdf). The report calls attention to the fact that, while the GSL and international actors have dithered over the implementation of transitional justice mechanisms, serious violations of international law, including torture, have continued in Sri Lanka with impunity.

Based on the events of the last twelve months, the MAP concludes that:

(a) The GSL continues to act in bad faith with respect to its commitments under Resolution 30/1;
(b) International crimes and abuses continue to be committed in Sri Lanka with impunity;
(c) Key reforms to the country's justice and security sectors have failed to materialize; and
(d) The GSL's actions with respect to impunity and accountability is growing more disturbing. The GSL's excuses for failing to meet obligations under Resolution 30/1— cynical one year ago—are now contemptuous.

Based on these findings, the MAP makes the following recommendations to the US Government:

1. The US should urge the UNHRC to condemn in strident and detailed terms the failure of the GSL to fulfill: (i) its commitments under Resolution 30/1 and (ii) its legal obligations to victims;

2. The US (as well as the United Kingdom, India, and other concerned governments) should dispense with purely rhetorical pressure and exercise available diplomatic and economic pressure on the GSL to comply with its obligations under international law and the UNHRC Resolution;

3. The US should fund investigations into international crimes committed by the GSL and support the use of universal jurisdiction to prosecute them.

4. The US should lobby the UN Security Council to refer Sri Lanka to the International Criminal Court;

5. The US should provide funding only for non-military uses in Sri Lanka including social justice projects, health related projects, medical and psychosocial support for victims of international crimes.

Yours sincerely,

Richard J Rogers

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Questions for the Record—Rep. James F. Sensenbrenner
Human Rights Concerns in Sri Lanka
June 20, 2018
Answered by
Mr. J.S. Tissainayagam

QUESTION FOR THE RECORD

Representative F. James Sensenbrenner, Jr. formally submits the following question to the Subcommittee on Africa, Global Health, Global Human Rights, and international Organizations official record concerning its June 20, 2018 hearing titled: *Human Rights Concerns in Sri Lanka.* A response from the witnesses is requested.

1) To all witnesses present: "The government of Sri Lanka has disputed many of the recent reports published by non-governmental organizations (NGOs) detailing human rights abuses. They argue that they have not received sufficient notice of these alleged abuses, nor an opportunity to independently investigate the claims."
    a) Do you feel that the government has indeed been given an adequate opportunity to respond to these alleged offenses?

    Answer: Yes. It is not clear what you mean when you say "recent reports" without a specific date. The government has always the opportunity to "independently investigate" any claims made in NGO reports. It says a lot about the state of democracy in the country if a government investigates issues only when brought to its notice by NGOs!

        i. If so, what is the process that many of these NGOs take to formally inform the government of their findings?

    Answer: I do not know what practices individual NGOs adopt to formally inform the Sri Lanka government of their findings. But generally, NGOs, which have monitored and reported on human rights abuses from at least 1971, do not have a practice of presenting their findings to the government first and then making them public.

    The general view among NGOs in Sri Lanka is that in a democracy, NGOs are bodies that help citizens to govern themselves. In many instances – and certainly in Sri Lanka – they work in areas in which any responsible, democratically-elected government should be working, such as preventing abuses citizens' human rights, but is not doing so. Hence, as organizations active in civil society, NGOs feel their primary responsibility is to the people and citizens of Sri Lanka. Many NGO reports also address areas where citizens have either tried to find redress from the government, but since the government has disregarded the citizens' pleas, they have no other option but to highlight their plight through NGOs. Therefore, the usual practice is for an NGO investigating human rights violations to make public

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its findings and recommendations. The government has access to the contents once it's made public and can either act, on ignore the report.

1. How do they file reports of abuse with the government?
    a. What is the time frame from discovery of alleged abuse to report to government?

    Answer: As in the above answer, NGOs do not "file" reports of abuse by the Sri Lanka government to the Sri Lanka government. They publicly reveal the contents of their reports and then send it to the government and may or may not invite government members to be present when they make public their report. The government can respond or choose to ignore it.

    Government-appointed commissions do report back to the government. In recent years, the government appointed a Consultation Task Force for Reconciliation Mechanisms to consult the public on engaging and dealing with human rights abuses of the past. The Task Force was not an NGO, but many individuals working for Sri Lankan NGOs were appointed to it. Before the report was made public it was to be presented to Sri Lanka government's president and prime minister. Although a formal ceremony was organized to present the document, the president nor the prime minister were present to receive it! Nor did the Government officially endorse it subsequently [please see OHCHR Report March 2018, paragraph 12].

2. How much time is the government given (on average) to respond or investigate prior to an NGO publishing a full report for the international community?

    Answer: As I said above the government has ample time to investigate abuses and it is because it does not, that NGOs have to report them. In fact even then the government does not feel an obligation to respond to human rights violations. For example, on May 3, 2018, a Tamil woman travelling in the train to Jaffna was abused by a Sinhala government official. When others on the train had saved her from further harm he had said he could do what he wanted with her because of her ethnicity. This was only highlighted because somebody videoed the incident and there happened to be a journalist on the train at the time of the incident.

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The journalist and the woman had proceeded to the nearest police station to make a complaint about the official. To their surprise, the police informed them that there had been three previous complaints against this government official but they had taken no action to investigate or charge him. It is because the video went viral and NGOs got involved that a government minister directed the police to even record the complaint. So the question is, why did the government respond to police inaction only when NGOs highlight it through the media? And in this particular case, after the initial pressure on the police to record a complaint there was no further government response. The accused official was charged and granted bail. But there was no action to bring redress to the injured party.

ii. If not, do you think it would be wise for NGOs to advise the government on alleged abuses prior to publishing formal reports?

Answer: It will not be wise for NGOs in Sri Lanka to advise the government prior to publishing its report. Other than the fact in a democracy an NGO should be primarily responsible to the public, there are also grave practical issues that forbid such a practice. Successive Sri Lankan governments have a record of disappearing, attacking and intimidating human rights defenders (HRDs). In his report in March 2018, UN High Commissioner Human Rights Zaid Al-Hussein drew attention to very recent incidents on targeting HRDs [paragraph 43]. One of the main reasons for this is because governments fear facts detrimental to them uncovered in an NGO investigation becoming public. Therefore, if an NGO were to submit to the government whatever it has uncovered before making it public, it will come under enormous pressure to prevent it from doing so. Hence, NGOs investigating human rights abuses should make the findings public before asking the government to respond to it.

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Answered by
Michael Jerryson, Ph.D.

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1) To all witnesses present: "The government of Sri Lanka has disputed many of the recent reports published by non-governmental organizations (NGOs) detailing human rights abuses. They argue that they have not received sufficient notice of these alleged abuses, nor an opportunity to independently investigate the claims."
    a) Do you feel that the government has indeed been given an adequate opportunity to respond to these alleged offenses?

        Answer: It has been over nine years since the end of the 26-year civil war (1983-2009). There were numerous notifications from human rights organizations (and countries, such as Norway and Switzerland), which collectively provided more than enough "opportunity to respond" to the offenses.

        The Rajapaksa administration had adequate time to respond to offenses, six years (2005-2015). The Sirisena administration has had three years (2015-2018).

    i. If so, what is the process that many of these NGOs take to formally inform the government of their findings?

        Answer: As a scholar of religion and violence, I believe it is important to yield to David Crane, a legal scholar, and John Sifton on this question (and its components below), with his position at Human Rights Watch, who are better equipped to answer them.

        1. How do they file reports of abuse with the government?
            a. What is the time frame from discovery of alleged abuse to report to government?
        2. How much time is the government given (on average) to respond or investigate prior to an NGO publishing a full report for the international community?

    ii. If not, do you think it would be wise for NGOs to advise the government on alleged abuses prior to publishing formal reports?

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Answered by Mr. David M. Crane

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    a) Do you feel that the government has indeed been given an adequate opportunity to respond to these alleged offenses?
    Answer: Yes
        i. If so, what is the process that many of these NGOs take to formally inform the government of their findings?
        Answer: Provide copies of their reports
            1. How do they file reports of abuse with the government?
            Answer: Through the Attorney General
                a. What is the time frame from discovery of alleged abuse to report to government?
                Answer: It varies but an exact time frame is unknown.
            2. How much time is the government given (on average) to respond or investigate prior to an NGO publishing a full report for the international community?
            Answer: I do not know. Each NGO has their own policy and procedures.
        ii. If not, do you think it would be wise for NGOs to advise the government on alleged abuses prior to publishing formal reports?
        Answer: Of course.

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Answered by
Mr. John Sifton

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        ii. If not, do you think it would be wise for NGOs to advise the government on alleged abuses prior to publishing formal reports?

Note: No responses to the above questions were received from this witness.

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