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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by the Association Bharathi Centre Culturel Franco-Tamoul, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Justice delayed is justice denied*

**– A revisit into Human Rights violations in Sri Lanka.
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“Justice Delayed is Justice Denied”. This adage which is deemed a cliché has become a reality, in the instance of Sri Lanka.

During the height of the genocidal war, in March 2009, the Human Rights Organisations all over the world, particularly People's Union for Civil Liberties (PUCL), headed by Mr. K.Kannabiran, the then President of PUCL, urged the international community, through UNHCR, to invoke the provision of R2P, the Right to Protect. Mr. Kannabiran met Ms.Navaneetham Pillai, the then Commissioner of UNHRC, during her visit to New Delhi and urged that the above provision be invoked as the Sri Lankan State, instead of protecting the life and property of the people have indulged in destroying the life and resources of its own people by launching a genocidal war against its own people. The war crimes and crimes against humanity perpetrated by the Sri Lankan forces, with genocidal intent, was visibly available and was evident to the world, from the unbiased reporting of the international media and through social media from the known quarters. If the international community had intervened in the matter and prevailed upon the Sri Lankan governments it would have saved the Sri Lankan Tamils from the catastrophe. Whereas, the powers that matter joined hands with the Sri Lankan forces to decimate the innocent civilians, in the guise of countering terrorism!

The genocidal war rendered more than 146,000 people “disappear” in the last phase of the infamous Eelam War IV. The war also rendered more than 89,000 as war widows; over 250,000 as Internally Displaced persons (IDPs), without basic amenities, about 11,000 suspected LTTE militants in continued incarceration without any review or trials; Several thousands incapacitated with permanent disabilities etc. The life and resources, particularly cultivable lands, were seized by the Sinhala Army. (No Sri Lankan Tamil was ever entertained into its Defence, thus exposing the Genocidal intent of the Sri Lankan governments). In fact, it was reported by the Sri Lankan Government, and vouched by no less than a person like the then External Affairs Minister of India, Shri Pranab Mukherjee, that there were only 70,000 IDPs, while, in fact, there were more than 350,000 people loitering in the Camps. If not for the intervention of the Human Rights loving Sinhala Journalists and PUCL, Tamil Nadu, several thousands further would have been decimated in the name of countering terrorism.

Whereas, the dispassionate Reports submitted by various Human Rights Forums, including Amnesty International, Human Rights Watch, etc and the Reports of the commissions and various Special Rapporteurs and working groups appointed by UNHRC exposed the genocidal intent and the brutal war Crimes and Crimes against the humanity committed by the Sri Lankan forces.

Similarly the independent People's Tribunal on Sri Lanka held in Dublin, in Jan 2010, held that Sri Lanka committed crimes against humanity and war crimes during the last phase of the war in 2009 and concluded that further investigation was necessary with regard to the genocide committed against the Tamils. Later, the second session of the People's tribunal held in Dec 2013 at Bremen, under the auspices of International Human Rights Association, Bremen, Germany. The Tribunal of 11 eminent judges, found that the crime of genocide has been and is being committed against the Eelam Tamils as a national groups.

It was in this backdrop the issue of Justice and Accountability was discussed in the UNHRC. Initially, the governments which served as an accomplice in the war tried their best to protect the Sri Lankan government, eulogising its role in containing terrorism! This only exposed the geo political vested interest of these governments. Nonetheless, UNHRC resolved in Nov 2011 for “Promoting reconciliation, Accountability, and human rights in Sri Lanka” and urged Sri Lanka to evolve an internal domestic mechanism for the same.

Whereas the periodical reviews proved that the Sri Lankan government continued with its structural genocide. Forceful Sinhalisation and militarisation of Tamil Homeland continued unabated.

Except for constituting a toothless LLRC, nothing else was done to render justice. It became yet another Commission of Inquiry launched by the Sri Lankan Government designed to deflect criticisms and not as an effective mechanism to enable accountability. It is observed the Sri Lanka constituted 32 Commissions of Inquiry between 1948 and 2011 and none of the alleged perpetrators were persecuted.

It was found that Sri Lankan criminal justice system is incapable of pursuing an independent and credible investigation to hold accountable those responsible for human rights violations. Hence it was resolved by UNHRC to pursue a “comprehensive approach to transitional justice incorporating the full range of judicial and non judicial measures”.

It was in this backdrop, UNHRC instituted an Investigation on Sri Lanka (OISL) as per the resolution A/HRC/25/1 adopted in Mar 2014 with the objective of comprehensive investigation into human rights violations and related crimes that occurred between 2002 and 2011.

The OISL thus formed, submitted its report in Sept 2015. The investigation found that as “tens of thousands have lost their lives” during the period “perpetration of international crimes” is evident. More than 250,000 people, deprived of their liberty, were confined in “military run IDP internment camps described as ‘welfare villages’ by the government”. Further, the investigation found that “extensive and endemic patterns of extra judicial killings, enforced disappearances, abductions, unlawful arrests, arbitrary detention, torture and sexual violence committed with impunity by the Government forces over many years”. This includes “secret execution” of LTTE cadres.

OISL also “believes that there must be profound institutional changes to end the decades of repressive and persecutory attitudes, practices and structures to prevent their recurrence.” The report also records that “Reconciliation and addressing root causes of systematic human rights abuses and entrenched impunity are critical for an independent, effective witness protection system”. Although the Sri Lankan Government has passed a Witness Protection Act of 2015, according to OISL it requires to be amended to be in tune with international standards and practices.

With these observations, the vital conclusions and recommendations of OISL report could be summed up as under:

- Develop a comprehensive transitional justice policy for addressing the human rights violations of the past 30 years and preventing their recurrence.
- Adopt specific legislation establishing an ad-hoc hybrid special court, integrating international judges, prosecution, lawyers and investigations mandated to try war crimes and crimes against humanity, including sexual crimes.
- Enact legislation to criminalise war crimes, crimes against humanity, genocide and enforced disappearances without state of limitation.
- Demilitarisation, disarming the political groups, repeal of Prevention of Terrorism Act and Public Security Ordinance Act.
- Review the Victim and Witness Protection Act with a view to incorporating better safeguards for the independence and effectiveness of the witness protection programme.
- Ratify the International Convention protection of All Persons from Enforced Disappearances.
- Review of all the cases of 11000 persons, known to be linked to LTTE.
- Review of all detained under PTA.

Whereas, the Sri Lankan government has been resisting to concede even to this, in the guise of the change in the ruling government in Sri Lanka.

Despite the change of guard, since Jan 2015, there isn't any significant change in the structural genocide perpetrated by the Sri Lankan governments. The continuing militarisation and Sinhalisation of the Tamil Homeland has decimated the self determination of the Tamils in Sri Lanka. Instead of rendering justice, ensuring accountability and move towards effective devolution of political power, the successive governments in Sri Lanka have been denying the same. It's a shame that General Fonseka, who should have been under the trial for heading the genocidal war, has been honoured and elevated as Field Marshal!

It is more than sixteen months since OISL report was submitted. There is hardly any concrete move towards, constitutional reforms, steps towards reconciliation, restitution, compensation, and rehabilitation. Reparation for victims form an integral part of transitional justice, accountability and healing process. When the ruling government is not inclined to concede to the above, the people have no choice but to assert for their self determination with or without the intervention of the international community.

As the HRC is unable to prevail upon the Sri Lankan government towards justice and accountability, the issue has to be referred to the General Assembly for its resolution. Perhaps the ensuing Human Rights Council meeting should explore the possibility of urging the SL government through the General Assembly and invoke the intervention of the International Court of Justice, eventually, if need be.

In the meanwhile, the people of Tamil Nadu ought to mobilise itself, beyond political affiliations, for the cause of Tamils, and perhaps reinvigorate the recently concluded Tamil Spring, this time for the Eelam Tamils and urge for India's positive intervention to clinch justice for Eelam Tamils.

*People's Union for Civil Liberties, Tamil Nadu, NGOs without consultative status, also share the views expressed in this statement.