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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 Pasumai Thaayagam Foundation, 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.

[01 February 2021]

* Issued as received, in the language(s) of submission only.



The Need for International Mechanisms for Accountability for Sri Lanka and International Engagement to assure other pillars of Transitional Justice called for in Human Rights Council Resolution 30/1 and Reaffirmed in Resolutions 34/1 and 40/1

We congratulate the member states of the Human Rights Council (HRC) and the Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR) for continuing to engage with critical issues of human rights under the constraints imposed by the pandemic. We look forward to meeting with you in easier circumstances in future sessions.

We request member states' assistance in assuring that a new and implementable resolution building on previous commitments made by the Government of Sri Lanka on post-war transitional justice, accountability and reform is passed in the upcoming 46th Human Rights Council session.

We strongly appreciate the statement of the Core Group to the Council on September 14, 2020 during the last session expressing skepticism about Sri Lanka's domestic processes and how "previous such processes have, regrettably, proved insufficient to tackle impunity and deliver real reconciliation".¹

We thank the High Commissioner for Human Rights for her report on Sri Lanka released on January 27. We welcome her sense of urgency, her strong call for 'preventative' measures, her insistence on 'alternative international options' and her detailed recommendations.

In the context of the failure of the domestic and hybrid transitional justice commitments made by the Government of Sri Lanka and its statement in March that it will not cooperate with the Council on those commitments, we endorsed² a common proposal along with fellow organizations representing Tamils inside and outside the island of Sri Lanka and Tamil parliamentarians. The proposal was sent to the High Commissioner and the Core Group on Sri Lanka on 05th January 2021. Accordingly, we request that a new resolution be submitted by the Core Group in March which:

1. Implements the process of bringing accountability and justice for the victims of atrocity crimes (war crimes, crimes against humanity, and genocide) in Sri Lanka by referring the case or creating an appropriate International Criminal Justice mechanism, i.e., referral to the International Criminal Court (ICC) or the creation of an ad hoc International Criminal Tribunal.
2. Establishes an International Independent Investigative Mechanism to assist in the investigation and prosecution of persons responsible for the atrocity crimes committed in Sri Lanka under International Law. The model could either be similar to the one established for Myanmar³ (Independent Investigative Mechanism for Myanmar - IIMM) through the UNHRC or to the one established for the Syrian Arab Republic, namely, the International, Impartial and Independent Mechanism (IIIM)⁴.

The mandate of the resolution needs to include processes:

- (a) To collect, consolidate, preserve, and analyze evidence of violations of international humanitarian law and human rights violations and abuses, including evidence previously collected by the UN and relevant human rights and other organizations;

¹ <https://www.gov.uk/government/speeches/un-human-rights-council-45-statement-on-behalf-of-the-sri-lanka-core-group>.

² https://www.britishtamilsforum.org/wp-content/uploads/2021/01/Letter_re_March_UNHRC_session_on_Sri-Lanka_by_Tamil_groups-_05_January_2021-1.1.pdf.

³ <https://www.ohchr.org/EN/HRBodies/HRC/IIMM/Pages/Index.aspx>.

⁴ <https://iiim.un.org/mandate/>.

(b) To prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;

(c) To monitor and report regularly with recommendations on the past and future occurrences of violations of international humanitarian law and human rights violations and abuses in Sri Lanka.

3. Creates mechanisms to find a lasting political solution, under the arbitration of the international community, in an expeditious manner, fulfilling the long-standing legitimate aspirations of the Tamil people in Sri Lanka, that would ensure their physical security and political authority to decide their own political, cultural, economic and social affairs, thus averting any recurrence of cycles of violence and civil strife, attaining sustainable peace and harmony, and establishing political and security stability in the region.

4. Establishes OHCHR field offices in the northern and eastern provinces to monitor and report the ongoing violations.

In addition to the UNHRC process, we call on Member States, as suggested by the High Commissioner, to support relevant proceedings in Member States with competent jurisdictions. We strongly feel one such process would be through the International Court of Justice for international crimes committed in Sri Lanka.

We commend the common letter to the UNHRC sent by leaders of Tamil national political parties, members of the Tamil victim communities and Tamil civil society organizations in Sri Lanka on January 15 calling for decisive action on Sri Lanka.⁵ Along with requesting the OHCHR continue to monitor the situation in Sri Lanka and that an evidence collection mechanism be established, the signatories also requested “Member States to urge in the new resolution that other organs of the United Nations including the UN Security Council and the UN General Assembly take up the matter and take suitable action by reference to the International Criminal Court and any other appropriate and effective international accountability mechanisms to inquire into the crime of genocide, war crimes and crimes against humanity and that the President of the UNHRC refer matters on accountability in Sri Lanka back to the UN Secretary General for action.”

We look forward to working with member states to assure that there is a resolution passed on Sri Lanka in March to keep Sri Lanka’s need for reform and justice after a long war on the international agenda and moving forward.

The final phase of the war in Sri Lanka which ended in May 2009 is considered one of the most brutal in recent history, with the systemic commission of atrocity crimes by the government forces against the Tamil population. Shortly after the end of war, Tamil church leaders and civil society raised grave concern that, based on regional statistics, 146,679 people remain unaccounted for during the last few months of fighting. Subsequently, two UN reports have estimated that 40,000–70,000 Tamil civilians may have been killed in the final months, including -- but not limited to -- through a blockade of essential goods including food and medicine, shelling of civilian areas including hospitals, and the enforced disappearance of thousands of civilians and combatants who surrendered to the Sri Lankan armed forces.

Recent human rights abuses in Sri Lanka we are concerned about, in addition to those highlighted by the High Commissioner’s report, include:

1. Destruction of the Mullivaikkal Memorial Monument at University of Jaffna

On January 8th 2021, the Mullivaikkal Memorial Monument on the campus of the University of Jaffna was bulldozed by Sri Lankan authorities. This monument was built by the Tamil students to remember the hundreds of thousands of Tamil civilians who were massacred in 2009 by the Sri Lankan Army. This act of destroying a memorial monument

⁵ <https://sangam.org/wp-content/uploads/2021/01/UNHRC-Final-Letter.pdf>.

is to erase the memory of the Mullivaikkal genocide and to eradicate evidence of wrongdoing by the Sri Lankan Government.

2. Military Occupation, Ongoing Harassment and Human Rights Violations committed by the Terrorist Investigation Department (TID), Criminal Investigation Division (CID)

Most of the divisions of the Sri Lankan army remain stationed in Tamil-populated areas of the North East. There are rising cases of intimidation, surveillance and harassment of political opponents, human rights activists, journalists and families of the victims of enforced disappearances by the various arms of the Police and security forces.

3. Ongoing Land Grabs and Religious Aggression: Archaeological Task Force

President Rajapaksa set up an Archaeological Task Force with the Buddhist Maha Sanga in May led by Defence Secretary Kamal Gunaratne, a retired Major General accused of war crimes and crimes against humanity.

This Task Force has raised concerns over Sinhalisation as Buddhist temples are being built in 'areas of historical habitation of Sri Lankan Tamil speaking peoples'⁶ without the consent of residents. There are concerns over the exploitation of archaeology to expropriate Tamil-owned land. Sinhala settlements across the North East often start with the construction of a small Buddha statue initially inside a military camp, which is then expanded into a full temple. Sinhala settlers are finally moved in with the support of the state.

The Australian Tamil Congress, British Tamils Forum, Canadian Tamil Congress, Irish Tamils Forum, International Council of Eelam Tamils, National Council of New Zealand Tamils, South African Solidarity Group for Peace and Justice, Transnational Government of Tamil Eelam and the US Tamil Action Group, NGO(s) without consultative status, also share the views expressed in this statement.

⁶ https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20LK_870729_Indo-Lanka%20Accord.pdf.