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Technical assistance and capacity-building

Written statement* submitted by Liberation, a non-governmental organization on the roster

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

[8 February 2013]

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

Sri Lanka: Reconciliation and accountability

Liberation warmly welcomed the United Nations Human Rights Council (UNHRC) resolution A/HRC/RES/19/2, on March 22nd 2012, ‘Promoting Reconciliation and Accountability in Sri Lanka’. International action was imperative, given the lack of progress the Government of Sri Lanka has made to implement any satisfactory measures to investigate the serious allegations of wartime abuses, arising from the final months of the country’s armed conflict in 2008/2009. The Council’s resolution was vital also, due to the lack of reconciliation between communities on the island, in the years following the war’s conclusion.

As prescribed in A/HRC/RES/19/2, this 22nd Session of the UNHRC provides an opportunity to reflect on the accountability and reconciliation processes in Sri Lanka. However, in the year following the adoption of the resolution and in the, almost, four years since the defeat of the Liberation Tigers of Tamil Eelam (LTTE), Liberation is increasingly concerned that the Government is undermining the prospects for truth, justice and lasting peace.

Following the Council’s March 2012 decision, Minister Samarasinghe, the Special Envoy to the President on Human Rights, gave an interview claiming that the resolution “was unwarranted in the backdrop of so much progress”¹ since the end of the war. If progress was manifest, a resolution expressing serious concern with the situation in Sri Lanka would not have been adopted by the UNHRC.

The publication, in July 2012, of the Government’s ‘National Action Plan (NAP) to Implement the Recommendations of the Lessons Learnt and Reconciliation Commission (LLRC)’², technically fulfils one of the requirements of the UNHRC resolution; to provide an action plan for the implementation of LLRC. However, it is not a credible mechanism. The NAP covers around only 50% of the LLRC’s recommendations and there has been no explanation from the Government as to why half of the Commission’s proposals are not included. This, and the other shortcomings of the NAP listed below, suggests that it was devised as a means to mislead the Council and reduce international scrutiny of the country’s ground realities.

As well as calling on the Government to address alleged violations of international law, the UNHRC’s resolution named specific recommendations from the LLRC that required implementation, including:

“the need to credibly investigate widespread allegations of extrajudicial killings and enforced disappearances, demilitarize the north of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all and enact rule of law reforms”³.

¹ Sunday Observer, ‘US resolution in Geneva, a David and Goliath fight – Minister Samarasinghe’, April 2012 <http://www.sundayobserver.lk/2012/04/22/fea01.asp>.

² ‘National Plan of Action to Implement the Recommendations of the LLRC’, July 2012, http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm.

³ Resolution A/HRC/RES/19/2, ‘Promoting Accountability and Reconciliation in Sri Lanka’, March 2012, <http://daccess-ddsny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement>.

The NAP states that only a handful of investigations, and those too be held under the auspices of the military, are taking place into the alleged abuses by State security forces during the conflict. This is despite the UN Secretary-General's Panel of Experts on Sri Lanka stating that "tens of thousands lost their lives from January to May 2009"⁴ and that "the conduct of the war represented a grave assault on the entire regime of international law".⁵ The 'Secretary-General's Internal Review into UN Actions in Sri Lanka', published in November 2012, provides further evidence that Government forces obstructed the provision of aid and assistance to civilians, did not guarantee protection of humanitarian workers and was largely to blame for the shelling of heavily populated areas and the deaths of civilians.

In addition, this January, the Sri Lankan army released a report regarding the implementation of the LLRC recommendations. Their observations reinforce the fact that a credible accountability process will not be forthcoming from within Sri Lanka. The army maintains that there was no deliberate shelling of civilians, and has called for the formulation of Sri Lanka's own rules to deal with internal conflict situations, despite its international humanitarian and human rights law obligations.⁶

The LLRC recommendation to appoint an 'Independent Advisory Committee' to monitor and examine detention will not be implemented under the NAP. Draconian anti-terror legislation used to detain people without charge for lengthy periods has not been repealed and in January 2013, the Sri Lankan Parliament passed a law doubling separate police detention powers from 24 to 48 hours.

Extrajudicial killings and enforced disappearances are commonplace in Sri Lanka even today. The UN Working Group on Enforced and Involuntary Disappearances has over 5,000 cases under review in the country. The military and police have been implicated in their perpetration. The UN Committee Against Torture report of 2011 implicated the police and military in cases of disappearances and torture.⁷ However, the NAP suggests that these forces should continue to play a key role in the investigation of alleged abuses, and the LLRC's calls for the creation of a 'Special Commissioner of Investigation' has still not been fulfilled.

When the NAP was released, it stated that it would take 12 months to "take appropriate action to ensure media freedom" in Sri Lanka. Yet media freedom is on a downward trend in Sri Lanka. In 2005, Sri Lanka ranked number 51 on the World Press Freedom Index, in 2011-2012 the country ranked 163rd. In September 2012, a UN report named Sri Lanka as one of 16 countries of concern in relation to government retaliations against political opponents. This is not a country where freedom of expression is being protected or promoted.

The latest NAP monitoring report states that all security forces in the North of Sri Lanka have been withdrawn from civilian duties.⁸ However ground reports suggest an increasing military grip on the civil administration. In September 2012, India's "Hindu" newspaper reported an "overwhelming presence" of the military, with the Sri Lankan army "deploying

⁴ 'Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka', March 2011, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf, page 6.

⁵ Ibid., page ii.

⁶ Defence Ministry Sri Lanka, 'Full Report of the Army Board on LLRC Observations Released', January 2013, http://www.defence.lk/news/pdf/LLRC_20130124.pdf, page 22.

⁷ CAT/C/LKA/CO/3-4, 'Concluding Observations of the Committee Against Torture', November 2011, http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf.

⁸ Government of Sri Lanka, LLRC NAP Monitoring Report, January 2013, http://www.priu.gov.lk/news_update/LLRC%20news/LLRC%20NAP%20Monitoring%20Report3.pdf, page 6.

16 out of its 19 divisions in the Tamil-dominated regions”.⁹ In addition, Sri Lankan security forces attacked a peaceful demonstration by Jaffna University students in the North of Sri Lanka in November 2012, resulting in some of the worst political disturbances in the country since 2009. The incident highlights the oppression of the civilian population by the military. The State security apparatus’ all-pervasive presence means that the implementation of impartial land dispute mechanisms is seriously undermined, too.

Formerly independent civil institutions have not been strengthened, either. The NAP proclaims that an independent Public Service Commission and Police Commission have been created. However, they are not independent, as amendments to the Sri Lankan constitution allow for the President to appoint the members to these bodies. The recent impeachment and dismissal of Chief Justice Bandaranayke has heightened tensions between the judiciary and Parliament and reinforced the fact that the independence of key institutions is being curtailed. The UN High Commissioner for Human Rights, the UN Special Rapporteur on the independence of judges and many others have all condemned this action as an assault on democracy and the rule of law.

The concentration of executive power has also had a significant and negative impact on the hopes of delivering a substantive political settlement. The NAP gives no indication that these Presidential powers will be rescinded.

Sustainable peace can only be achieved through an inclusive political settlement that addresses the underlying cause of the conflict - the systematic marginalisation of the Tamil people. This continuing marginalisation is underlined today with the increased militarisation and state aided Sinhala colonisation of Tamil lands. The bilateral discussions, begun in January 2011 between the Government and the Tamil National Alliance – the democratically elected representative voice of Tamils on the island, have gone nowhere. The Government has failed to engage constructively with the TNA on the devolution of powers and walked out of negotiations in January 2012. Significantly, President Rajapaksa, in February 2013, rejected the idea for greater autonomy for Tamils in the North, by stating that “it is not practical for this country to have different administrations based on ethnicity”.¹⁰

Liberation understands that it takes time and great effort to ensure accountability, foster reconciliation and build lasting peace, following the end of armed conflict. However, it is not unreasonable to suggest that, almost 4 years on from the demise of the LLTE, all communities on the island, as well as members of the international community, would at least have confidence that Sri Lanka is on the path to a better future with equal rights and opportunities for its people. This is, unfortunately, not the case. If the Government of Sri Lanka is not prepared to do what is necessary, then it is incumbent upon member states of the UN, through auspices such as the UNHRC, to hold Sri Lanka to account. In the words of the TNA, “appropriate action at the [22nd Session of the] UNHRC is absolutely necessary [...] and we hope stern action will be taken to promote justice, accountability and reconciliation.”¹¹

⁹ The Hindu, ‘Sri Lankan Army still has vast presence in North & East’, September 2012, <http://www.thehindu.com/news/sri-lankan-army-still-has-vast-presence-in-north-east/article3915391.ece>.

¹⁰ Department of Government Information Sri Lanka, ‘Respect UN Charter provisions against threats to political independence of member states – President’, February 2013, <http://news.lk/news/sri-lanka/4248-respect-un-charter-provisions-against-threats-to-political-independence-of-member-states-president>.

¹¹ Colombo Telegraph, ‘Stern Action Will Be Taken By UNHRC – TNA’, February 2013, <http://www.colombotelegraph.com/index.php/stern-action-will-be-taken-by-unhrc-tna/comment-page-1/>.

Liberation urges the UNHRC to:

- Remain seized of the situation in Sri Lanka and adopt a new resolution, which builds on A/HRC/RES/19/2, and lays down specific benchmarks for Sri Lanka to fulfil on justice, accountability, reconciliation and human rights.
 - Establish an ‘International Monitoring Committee’ to evaluate Sri Lanka’s implementation of the LLRC recommendations and its adherence to the UNHRC resolution.
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