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Agenda item 2

**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.

[10 February 2019]

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



The Need to Ensure Sri Lanka Remains on the UN Agenda until it meets its human rights, accountability and reconciliation commitments made in Human Rights Council Resolution 30/1 and Reaffirmed in Resolution 34/1

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 systematic commission of mass 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 official statistics, 146,679 people remain unaccounted for during the last few months of fighting. Subsequently, two UN reports have estimated that 40–70,000 Tamil civilians were killed in the final months, with 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.

Though the UN and its member states gravely failed to protect civilians during this period, we commend the postwar actions taken by then-Secretary-General Ban Ki-moon for both bringing out the true scale of the brutality (Panel of Experts on Accountability in Sri Lanka – 2011) and pinpointing the failure of various UN agencies to fulfill their responsibilities at the most critical time of the war (Internal Review Panel on United Nations Action in Sri Lanka – 2012). Strong leadership shown by the past two High Commissioners for Human Rights (Navi Pillay and Zeid Raad Al Hussein) was instrumental in keeping Sri Lanka's human rights record under the spotlight. Especially notable was the 2015 Office of the High Commissioner for Human Rights Report on Sri Lanka (OISL Report) that detailed the seriousness of the atrocity crimes committed and noted their systemic nature.

Six resolutions have been adopted on Sri Lanka since the end of the war (2009, 2012, 2013, 2014, 2015 and 2017). Sri Lanka itself co-sponsored the last two resolutions, 30/1 (2015) and 34/1 (2017), committing to implement transitional justice measures, including those related to truth, justice, reform and reparations.

Despite Sri Lanka's public pledge and professed cooperation with the HRC, the government's commitment and conviction to faithfully implement the resolutions have been lacking from the start. The little progress by Sri Lanka has been accomplished because of immense international pressure. Every baby step has been taken in the lead-up to an HRC session in which Sri Lanka is on the agenda, which demonstrates the need for continued and sustained engagement on transitional justice by the HRC and its member states. There is some hope that Sri Lanka will take a few small steps ahead of this current session. Crucially, the political will to move forward on recovering from a conflict that has its roots in ethnic conflict remains weak and requires bilateral and multilateral attention.

Crucially, Sri Lanka has made little substantive progress on its commitments in the past two years since Res. 34/1.¹ Of the 25 commitments that Sri Lanka made in 2015 and reaffirmed in 2017, only two (2) have been satisfactorily achieved,² and neither has had any direct impact on the affected, primarily Tamil population.

Nine (9) commitments have been partially achieved, notably a consultation process that has not yet been embraced by the government and the establishment of the Office of Missing Persons (OMP) three years after Res. 30/1. The OMP has not yet delivered anything new or concrete beyond what previous commissions on Sri Lanka's disappearance scourge have done, i.e. collect information without investigation or prosecution. Will it take another three

¹ Amnesty International, 'Flickering Hope: Truth, Justice, Reparations & Guarantees of Non-Recurrence in Sri Lanka, Jan. 2019
<https://www.amnesty.org/download/Documents/ASA3797152019ENGLISH.PDF>, Sri Lanka Campaign for Peace & Justice, London, March 2018, <https://www.srilankacampaign.org/take-action/keep-the-promise/>

² *ibid.*

years to operationalize an Office of Reparations that was legislated last fall without firm funding or independence? Again it is notable how little has been achieved that directly provides tangible benefits to victims.

Of the remaining fourteen (14) commitments Sri Lanka made in 2015 and reaffirmed in 2017, none have been even partially achieved, including the critical pillars of transitional justice of truth-telling, and institutional reform.

Regarding the crucial aspect of criminal accountability, three and a half years after sponsoring Resolution 30/1 and almost ten years after the end of the war, Sri Lanka has made no progress. The government has neither incorporated international crimes into domestic law nor set up the promised special court. To date, no one has been charged, let alone brought to justice. Instead, Sri Lanka has done the absolute minimum to keep the international community at bay until international focus fades away. It has done so without suffering serious consequences.

The High Commissioner in his 2018 update to the HRC called on UN member states “to exercise universal jurisdiction when required” in the absence of substantive action by Sri Lanka to prosecute those who have committed atrocity crimes. Even more action needs to be taken since what were committed are considered international crimes.

Accountability, along with political, legal and security sector reform is imperative to assure that the root causes of the war and its consequences are addressed. Unfortunately, the accountability process in Sri Lanka has been thoroughly politicized and is unlikely to satisfy international standards. The attempted political coup in October 2018 to replace the incumbent prime minister amply demonstrates that Sri Lanka's political system cannot be truly reformed without concerted and impactful international involvement.

The ethno-centric nature of the Sri Lankan state controlled by a Sinhala Buddhist nationalist ideology is incapable of providing the plural and inclusive state institutions required for permanent peace without fundamental reform. The important role the judiciary played in the recent political crisis shows the strength of Sri Lanka's institutions when it comes to protect what is important to the majority. The failure of these same institutions to act when it comes to the issues concerning the Tamil people betrays the institutional racism that permeates state structures. For sustainable change, there must be a fundamental reconsideration of the ethos of the Sri Lankan state and who it serves.

It is in this background that Sri Lanka's progress – or lack thereof – over the last three and a half years in implementing UNHRC Resolutions 30/1 and 34/1 is going to be assessed in March this year. Undoubtedly, apart from certain limited cooperation with the UNHRC, any objective assessment of Sri Lanka's record will conclude disappointment and failure on nearly all key measures. Only formal UN scrutiny can assure that Sri Lanka not abandon its commitments to accountability and transitional justice. Abandonment of its commitments will alienate the Tamil community by failing to address longstanding grievances related to impunity and reform, effectively extinguishing the prospect of reconciliation. It is important that the HRC continue the processes designed to mitigate past UN failures and convey the message that reform and accountability commitments for international crimes must be fulfilled.

At this critical juncture when Sri Lanka continues to squander a unique opportunity to address its tragic past, our plea to the member states of the HRC on behalf of PASUMAI THAAYAGAM Foundation and our associated organizations from the Sri Lankan Tamil diaspora in the United States of America, the United Kingdom of Great Britain and Northern Ireland, Canada and Australia is:

1. Ensure that Sri Lanka firmly remains on the UNHRC agenda until all aspects of resolutions 30/1 and 34/1 are fully implemented, including the establishment of a special court, integrating international judges, prosecutors, lawyers and investigators. Any new resolution must also include all aspects of the past resolutions, further strengthened by well-defined timelines, more rigorous monitoring, and consequences if Sri Lanka fails to comply within the established timeline;
2. Mandate a Special Rapporteur on Sri Lanka.

3. Establish a full-fledged OHCHR presence in Sri Lanka as recommended in the OISL Report, including in the North and East.
4. Encourage UN Member States to exercise universal jurisdiction as applicable, particularly in the absence of the promised special court;
5. Encourage UN Member States to adopt effective bilateral measures – such as vetting procedures that would deny travel privileges to those credibly accused of international crimes, asset freezes, targeted economic and military restrictions (including prohibitions against the deployment of Sri Lankan soldiers in UN peacekeeping operations) – to impress upon Sri Lanka the consequences for not meeting its international commitments; and
6. Adopt alternate UN processes involving multiple UN organs if required to establish criminal accountability should Sri Lanka continue failing to implement its commitments to the HRC.

We strongly urge that Sri Lanka remain under the HRC Agenda Item 2 past the upcoming 40th HRC session. We hope and trust that Member States, along with the key UN officials, including High Commissioner for Human Rights Michelle Bachelet, will take all necessary initiatives to ensure such an outcome.

The Australian Tamil Congress (ATC), the British Tamil Forum (BTF), the Canadian Tamil Congress (CTC) and the US Tamil Political Action Council (USTPAC) NGO(s) without consultative status, also share the views expressed in this statement.