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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 African Green Foundation International, 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.



OISL report 30/1, more precisely A/HRC/30/61, is seriously flawed

OISL report is seriously flawed as standard of proof adopted were well below the required for charges levied:

Introduction

On 9th February 2016, ex-UN Human Rights High Commissioner Zeid Al Hussein ended his official visit to Sri Lanka with a statement where he said *inter alia*:

“...the international community wants to Sri Lanka’s armed force to **face up to the stain on their reputation**, so that they can once again play a constructive role in international peace-keeping operations, and command the full respect that so many of their members deserve.”

So called “stain” has thrown from OISL report 30/1 that had been prepared based on Panel of Expert (POE) report which is a document had been prepared without an acceptable mandate. Ex-UNHRC challenged SL armed forces face up to the stain on reputation based on unsubstantiated and undisclosed evidence while he had tightened not only the armed forces’ but also the entire Sri Lankans’ hands by denying a fair trial. We, the Global Sri Lankan Forum (GSLF) are in the strong believed with facts that so called OISL report 30/1 is seriously flawed.

How it is being flawed?

The OISL report raised seven charges against the Government of Sri Lanka (GOSL). Three of those charges are under the International Humanitarian Law (IHL), and four are under International Human Rights Law (IHRL).

The OISL report is having contradictions, omissions, lies, obfuscations and half-truths, lacking in any consideration of exculpatory evidence, the cumulative effect and the report fails to establish its primary claim, namely, that the State is responsible for war crimes and other serious crimes allegedly committed during the relevant period.

Further, the standard of proof of the OISL report is “Reasonable grounds to believe”. In the law “Reasonable grounds to believe” is recognized as the lowest threshold of proof that one needs to adduce in order to establish any particular allegation... in spite of the claim... that it conducted only a human rights investigation and not a criminal investigation. However’ the conclusion is that criminal acts may have happened... and recommended that special courts be established to try Sri Lanka’s war time leaders for war crimes. Since the OISL’s charges are designed to underpin criminal trials, the Panel should have set itself a higher standard of proof at the outset, and the choice of the “Reasonable grounds to believe” standard renders the Panel’s conclusions null and void.

Then

On 23rd March 2017, GSLF sponsored and handed over comprehensive report called “A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations Against the Armed Forces” (the “Rebuttal”) to the Human Rights Officer, Asia-Pacific Section, Mr. Thomas Hunecke at the 34th Human Rights Council session negating all above allegations.

However, there is no any response from the UNHRC, especially from the outgoing UNHRHC, relating to our first submission (the “Rebuttal”) to clear the Sri Lankans from the alleged War Crimes.

Therefore,

We the GSLF, take with thank this opportunity to just brief you why and how we deny the allegations and established the truth referring to the Rebuttal and various exculpatory evidence.

How?

“It is important at the outset to stress that the OISL conducted a human rights investigation, not a criminal investigation...”

OISL report, p 5-6.

The standard of proof of the OISL report is “Reasonable grounds to believe”

OISL Terms of Reference, OISL report, Annexes, p. 255.

In the law “Reasonable grounds to believe” is recognized as the lowest threshold of proof that one needs to adduce in order to establish any particular allegation.

“Reasonable basis to believe is used to determine whether an investigation should be launched and if any persons should be charged as a result of this investigation ...there exists a sensible or reasonable justification for the allegations... and... the ‘reasonable basis to believe’ standard must be viewed in light of its purpose and the context in which it operates “to prevent the Court from proceeding with unwarranted, frivolous, or politically motivated investigations that could have a negative effect on its credibility”

Sir Geoffrey Nice QC and Rodney Dixon QC, Rebuttal to OISL report, para 40 [D].

Accordingly, does the OISL have sufficient reliable and verifiable evidence?

The clear and straight forward answer is **No**.

How?

OISL’s witness identity will not be published for 30 years!!! Further, OISL have ignored following exculpatory evidence:

- Eye-witness testimony:
 - Reporters working in the conflict zone
 - Doctors working in the conflict zone
 - Mr. Sathasivam Kanagaratnam, a former TNA Member of Parliament represented the Vanni electoral district from April 2004 to April 2010
 - Published work of key persons stayed at war zone:
 - Gordon Weiss, UN Spokesman in Colombo during the relevant times, *The Cage*.
 - Thamilini Jayakumaran, Head of the Women’s Wing of the LTTE’s Political Affairs Office, *Under the Shade of a Sharp-Edged Sword*.
- Documentary evidence:
 - ICRC reports
 - UN reports
 - The reports of the international experts retained by the Paranagama Commission
 - LLRC report
 - Minutes of the Consultative Commission on Humanitarian Assistance
- Miscellaneous sources:
 - WikiLeaks
 - Relevant asylum applications

Rebuttal to OISL report, para 17.

Our findings on allegations:

Following are the findings with respect to the seven charges:

1. Impact of hostilities on civilians and civilian objects:

a) Indiscriminate shelling:

It was found that the best available estimates of the number of civilians that died during the last phase of the war, coupled with testimony of outsiders including foreign journalists present at or near the conflict zone during the relevant times, negate the charge. Even Lord Nesaby disclosed the evidence in October 2017 at the Parliament of United Kingdom. Even pro LTTE website TamilNet reported numbers of deaths are 8186 out of which circa 25% shall be LTTE carders. Further, as witnessed by TNA Member of Parliament Mr. Sathasivam Kanagarathnam; this includes large numbers of Tamil civilians who killed by LTTE as stray dogs to prevent them fleeing from LTTE held areas.

b) Shelling of hospitals:

It was found that, the OISL Panel has among other things deliberately attempted to mislead the OHCHR with respect to the above charge, and this negates the charge. Dr. Veerakathipillai Shanmugarajah who worked in so called attacked hospitals under the oath produced an affidavit confirming there were no such incidents taken places.

2. Denial of humanitarian assistance to civilians in the conflict-zone:

It was found that, the Panel has completely neglected to interview crucial witnesses who had first-hand knowledge including documents as to exactly how much food and medicine was in the Vanni at the relevant times, therefore this negates the charge. Mr. Neil Buhne, the UN Resident and Humanitarian Coordinator in Sri Lanka applauded and noted that Sri Lanka should be given a gold medal for the work done.

3. Unlawful Killings:

Four allegations of unlawful killings were analysed, and it was found that, one, either the OISL Panel itself says that it doesn't have enough evidence to come to a definite conclusion as to who was responsible for those incidents, or, the Panel's evidence lends itself to interpretations that lead to conclusions other than the ones the Panel has drawn. Thus, the charge is negated.

4. Violations related to deprivations of liberty (arbitrary arrests, and so on):

It was found that, the Panel's chief source of evidence for the above charge is anonymous witnesses, whose statements are not available to the public. The Panel compounds this problem in various other ways also, which tend to further negate the charge.

5. Enforced Disappearance:

It was found that, the Panel engages in an obfuscation with respect to the number of complaints of purported enforced disappearances, and compounds this problem by certain other ways also, the combined effect of which is to render the charge inconsequential.

6. Torture:

It was found that, as with the charge of deprivations of liberty, the Panel's chief source of evidence for the charge of torture was also witnesses whose statements are not available to the public. The Panel compounds this problem in certain ways also, the combined effect of which is to render the charge inconsequential.

7. Sexual and gender-based violence:

Just as with the charges of deprivations of liberty and torture, the Panel's chief source of evidence for the charge of sexual and gender-based violence is also anonymous witnesses, witnesses whose statements are kept secret. The Panel compounds this problem in certain ways also, the combined effect of which is to negate the charge entirely.

Accordingly, GSLF wish to request UNHRC to withdraw OISL war crimes allegations against then SLGO and arrange to praise for the Humanitarian Operation conducted to get release nearly 300,000 civilians' hostages by LTTE as a human shield.

Global Srilankan Forum Exco. NGO(s) without consultative status, also share the views expressed in this statement.