



General Assembly

Distr.: General
21 February 2017

English only

Human Rights Council

Thirty-fourth session

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 the 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.

[13 February 2017]

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

GE.17-02759(E)



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Sri Lanka: Justice delayed is justice denied

In 2009, when the Sri Lankan Government, giving scant respect to war ethics, was systematically massacred Tens of thousands of Tamil civilians under the guise of curbing long-running civil war. The United Nations failed to prevent the terrible systematic massacres, genocide, war crimes, rapes, and executions. By its failure to prevent these crimes, the international community failed to uphold fundamental principle of the UN, ‘when a state manifestly fails to protect its own people against crimes such as these, the international community has a responsibility to protect the population’. This has led the international community with a new challenge to ensure that a genuine process of truth recovery, justice, and reparations is initiated to achieve genuine reconciliation that serves the needs of all victims and all the communities of Sri Lanka.

In March 2014 the UN Human Rights Council (HRC) established an international investigation into allegations of crimes committed during and since the war – known as the Office of the High Commissioner’s Investigation on Sri Lanka (OISL). The OISL report released in September 2015 (HRC/30/CRP.2) clearly mentioned that many of the violations would amount to war crimes and crimes against humanity if established in a court of law. It also made a number of recommendations as to how Sri Lanka might begin to address these, and other abuses, in order to start laying the foundations for a sustainable peace.

In October 2015, the UN Human Rights Council adopted a consensus resolution in which Sri Lanka pledged to undertake many human rights reforms, including resolving the many transitional justice demands arising out of the civil war.

Under the resolution, Sri Lanka promised to establish four transitional justice mechanisms, including a special court “integrating international judges, prosecutors, lawyers and investigators” with an independent investigative and prosecuting body. This resolution called for an office on missing and disappeared persons, a truth-telling mechanism, and a mechanism designed to guarantee non-recurrence and reparations. However, the Sri Lankan Government has failed to live up to its promise. The High Commissioner has indicated that the Sri Lankan Government has been hesitant and slow.¹

The analysis on the progress made in the month of February 2017, by the Sri Lankan campaign² brings out a grim picture: None of the four key mechanisms (four transitional justice mechanisms) that were pledged by the Sri Lankan Government has been established. And recent reports detailing serious ongoing human rights violations, including widespread torture, suggest that Sri Lanka’s culture of impunity has not been addressed. This bears testimony that the Sri Lankan State is unwilling to deal with the past crimes and to restore genuine justice.

Sri Lanka pulls out from its responsibility

The Sri Lankan State has been denying the genuine accountability and backtracks on its promise given to UNHRC.

¹ In June 2016, UN High Commissioner for Human Rights in his oral update to the council, on Resolution 30/1 stated that the overall progress in setting up structures that would allow for the design and establishment of the different transitional justice components has been hesitant and slow. On 26 January 2017, UN High Commissioner for Human Rights expressed his concern at the slow progress in a number of areas, especially those relating to accountability, and he informed the Prime Minister that this and other issues of concern would be reflected in the report he would be presenting to the Human Rights Council in March 2017

² A global non-partisan movement that aims to achieve genuine reconciliation based on accountability for violations of international law, build respect for human rights and the rule of law and support efforts within Sri Lankan civil society to promote a just and lasting peace

The victims have been praying for an international criminal tribunal. But the OISL and the High Commissioner recommended for a hybrid judicial mechanism³. However in agreement with the Sri Lankan Government, the UNHRC adopted a resolution calling for a domestic judicial mechanism which requires for inclusion of foreign judges, prosecutors, investigators and lawyers.

The 2015 UNHRC resolution warrants for inclusion of foreign judges, prosecutors, investigators and lawyers in the judicial mechanism⁴.

Even after the adaptation of the resolution, the High Commissioner in his oral update voiced for the international participation in the accountability mechanisms, indicating the need for inclusion of foreign judges⁵. This was further reiterated and recommended by Sri Lanka's own Consultation Taskforce.⁶

Ignoring these mandates the Sri Lankan Government is very adamant in not including foreign judges in the accountability mechanism.

Disrespecting the UN resolution, the Sri Lankan State continues to violate the obligations with the hidden agenda of diluting the process. The top rulers of the country have been repeatedly indicating that the Judicial mechanism will not have foreign judges.

Call for international accountability

The UNHRC gave 18 months time for implementing the HRC Resolution 30/1, whereas the Sri Lankan Government has miserably and deliberately giving scant respect to the HRC Resolution thereby disrespecting the international community. Now the Sri Lankan Government with the hidden agenda of, avoiding scrutiny and diluting the process is trying to seek more time as delay tactics.

The Sri Lankan government is renegeing and now calling for a domestic internal investigation, deliberately to undermine the OISL report and the UNHRC resolution 30/1, to further delay justice and accountability.

The UNHRC has given sufficient time and space to the government of Sri Lanka, but now the Council shall seriously consider further international action to ensure accountability for international crimes as stated by the High Commissioner in 2015. In the comprehensive report of the OHCHR on Sri Lanka (HRC/30/61), it is specifically stated that if insufficient progress is made, the Council should consider further international action to ensure accountability for international crimes.

³ The OISL report of 2015 (HRC/30/CRP.2), recommends for an *ad hoc* hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity. In the report (HRC/30/61) to UNHRC the High Commissioner also stressed that for accountability to be achieved in Sri Lanka, it will require more than a domestic mechanism.

⁴ The 2015 UNHRC Resolution (30/1) specifically indicated the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defense lawyers and authorized prosecutors and investigators.

⁵ In 2016, in his oral update on Resolution (30/1), the High Commissioner stated that the High Commissioner remained convinced that international participation in the accountability mechanisms would be a necessary guarantee for the independence and impartiality of the process in the eyes of victims, as Sri Lanka's judicial institutions currently lack the credibility needed to gain their trust.

⁶ . In 2016 the Sri Lankan Government appointed Consultation Task Force (CTF) to seek the views and comments of the public on the proposed mechanisms for transitional justice and reconciliation, as per the October 2015 UN Human Rights Council resolution on Sri Lanka. The CTF published a detailed report with important recommendations on 3rd January 2017. Key among the task force's recommendations is the creation of a war crimes court comprised of both international and national judges and other officials, with no time limit on its jurisdiction.

On March 22nd members of the Human Rights Council will sit to deliberate on Sri Lanka's progress on Resolution 30/1 and, in light of the 'expiry date' on the text, consider the further courses of action available to it. During when the international community must not shy away from the frank and robust appraisal that the analysis suggests is needed. And it must not let the government of Sri Lanka's promises slip by the way-side.

To that end the Pasumai Thaayagam Foundation is calling on members of the council to:

Renews, without any dilution, the terms of Resolution 30/1, with a request to the government of Sri Lanka to produce a clear timetable for implementation of the outstanding commitments.

Requests the Office of the High Commissioner for Human Rights to continue to monitor the implementation of the resolution (including further reporting to the Council on its progress at agreed intervals).

Requests for referring Sri Lanka to UN Security Council for enabling ways to establish an international criminal tribunal on Sri Lanka's international human right law violations and international humanitarian law violations including war crimes, crimes against humanity and genocide.

Requests for referring Sri Lanka to the UN General Assembly for an immediate action plan to resolve the long drawn ethnic issues.
