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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 the International Movement Against All Forms of Discrimination and Racism (IMADR), 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).

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Sri Lanka's slow progress in transitional justice

Until May 2009, Sri Lanka went through a 27-year internal conflict that was between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE). The conflict was ended with a grave number of casualties including 40,000 civilians estimated to have been killed. Since the end of the conflict, the country went through a difficult time and civilians, even till this day, continue to face various challenges including but not limited to continuing impunity for human rights violations committed during and after the conflict.

With the State change in 2015, the GoSL demonstrated its willingness to engage with the civil society and the international community to address the unresolved issues related to the conflict. Following the UN Human Rights Council resolution “*Promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/30/1)*”, co-sponsored by the GoSL, the Prime Minister of Sri Lanka set up the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) on 18 December 2015. The SCRM is responsible for designing and implementation of transitional justice mechanisms. In order to carry out its duties, the Consultation Task Force on Reconciliation Mechanisms (CTF) was established in January 2016 which is composed of 11 civil society members. The CTF's role is to actively engage with the public and gather recommendations and comments. Its consultations encompass four mechanisms: Office on Missing Persons (OMP), Office of Reparations, a Truth, Justice, Reconciliation and Non-Recurrence Commissions (TJRNR), and a Judicial Mechanism (a Special Court and Office of a Special Counsel). Taking progressive steps in combatting chronic impunity in Sri Lanka is a considerable improvement from the Government. However, as of February 2017, there has been a worrying delay to fulfilling the promises made by the GoSL in the HRC resolution 30/1. Concerns are growing among victims and their families for the Government's commitments on transitional justice.¹

Confidence-building

The civil society especially victims and their families in Sri Lanka are concerned with the Government's failure to address human rights violations in the past, particularly in the North and the East of the country. The continuing surveillance culture in the regions remains as an impediment to promote civil society mobilization and empowerment activities. We note with concern the lackadaisical attitude of the political leaders to take concrete measures in order to create an environment where victims and their families can place confidence in the Government's commitments to establish and implement credible truth-seeking and accountability mechanisms.

For instance, the Prevention of Terrorism Act of 1978 (PTA) must be repealed immediately.² The PTA grants more power to the police in order to search, arrest, and detain suspects. Consequentially, this Act has made a disproportionate impact against ethnic and ethno-religious minorities like the Tamils, who have been targeted for arbitrary arrest, abduction and detention. No due process has been taken into account and detentions have been prolonged. In his recent visit in April to May 2016, the UN Special Rapporteur on torture found at least 89 individuals were detained under the Act.³ Under this Act, it is reported that torture and arbitrary arrests continue even till this day.⁴ In late 2016, the Government proposed the draft Counter Terrorism Act (CTA) to replace the PTA, which was prepared by a committee mainly occupied by military and police personnel. The draft has been widely criticized as worse than the PTA, because

¹ “Promoting Reconciliation, Accountability and Human Rights in Sri Lanka (A/HRC/32/CRP.4),” Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (June 28, 2016).

² Ibid.

³ “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment - Mission to Sri Lanka (A/HRC/34/54/Add.2),” (22 December 2016), paragraph 34.

⁴ Ibid, paragraph 22.

it will still retain PTA's "most draconian procedural provisions."⁵ This has raised the civil society's concern on the confidence in the Government.

One of the essential steps to counter the lack of confidence is to make substantial progresses in emblematic cases such as the Trincomalee 5⁶, ACF⁷, Prageeth Ekneligoda⁸ and Lasantha Wickramatunga⁹ cases. Yet, the Trincomalee 5 and ACF cases are still waiting for further evidences to be available.¹⁰ Although the investigations into the Ekneligoda case were concluded, two main suspects, an army lieutenant colonel and a sergeant major, were released on bail despite the Attorney General's objections.¹¹ Similarly, the military is blamed for hindering Wickramatunga's case as it has refused to cooperate for investigations.¹² It is necessary for the GoSL to ensure the proper handling of the emblematic cases in order to demonstrate its commitment to address past atrocities and tackle the culture of impunity. In doing so, it is essential that the command authority is investigated and those responsible are held accountable.

Promised transitional justice mechanisms

Following the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) and the adoption of the policy on the issuance of certificates of absence, the GoSL enacted a bill to establish an Office of Missing Persons (OMP), one of the proposed four mechanisms, in August 2016. While those were positive steps, concerns were raised by families of the disappeared regarding the lack of public consultation in designing of the bill. As of the submission date of this statement, the Government has not established the OMP.¹³ Furthermore, a series of necessary measures to ensure the rights of victims remain to be done, despite the recommendations repeatedly made by several UN human rights bodies. These measures include: strengthening the Assistance to and Protection of Victims of Crime and Witnesses Act (No. 4 of 2015) in order to allow victims and witnesses to cooperate with investigations without fear of reprisals; criminalizing enforced disappearances; and incorporating international crimes into domestic law.

In order for the Government to take accountability of the healing process in a post-conflict situation, it must provide victims with effective remedies.¹⁴ Although the Government exhibited its commitment to establish a reparation program in the HRC resolution 30/1, it has not implemented a national reparations policy that is accessible and applicable to all victims of human rights violations, especially women and children. As forms of reparations, restitution, compensation, rehabilitation and psychosocial support need to be available without difficulties for those affected.

⁵ "A Cure Far Worse than the Disease": Sri Lanka's New Draft Counter Terrorism Law," *Sri Lanka Campaign for Peace and Justice*, October 17, 2016, <https://www.srilankacampaign.org/cure-far-worse-disease-sri-lankas-new-draft-counter-terrorism-law/>.

⁶ Five ethnic Tamil students were killed at Trincomalee beachfront in January 2006. Based on the information collected by OISL, many evidences believed to be the security force personnel, including STF personnel, who killed the five students.

⁷ 17 humanitarian workers from an NGO, Action Contre la Faim, that were killed in Mutur in August 2006. OISL reports state that the threats were made by the security forces.

⁸ He went missing in 2010. Criminal Investigation Department reported that there has been adequate evidence to file murder charges against the eight army intelligence officers.

⁹ On 8 January 2009, 8 men in helmet on four motorcycles stopped his car in a street outside Colombo. The founding editor of the Sunday Leader was beaten by them with iron bars and wooden poles. He died in a local hospital later on the same day.

¹⁰ "Written Additional Information submitted by the Government of Sri Lanka on the 5th Periodic Report to the UN Committee Against Torture (CAT)," (November 2016).

¹¹ "PRAGEETH ABDUCTION CASE: BAIL GIVEN TO ACCUSED IGNORING AG'S ADVICE", Sri Lanka Brief (October 27, 2016), <http://srilankabrief.org/2016/10/prageeth-abduction-case-bail-given-to-accused-ignoring-ags-advice/>

¹² "LASANTHA MURDER INVESTIGATION RUNS IN TO OBSTACLES FROM ABOVE", Sri Lanka Brief (October 30, 2016), <http://srilankabrief.org/2016/10/lasantha-murder-investigation-runs-in-to-obstacles-from-above/>

¹³ 13 February, 2017.

¹⁴ "Report of the Working Group on Enforced Disappearances on Its Mission to Sri Lanka (A/HRC/33/51/Add.2)," (July 8, 2016).

Above all, reconciliation and non-recurrence cannot be achieved without delivery of justice. Despite its promise made in the HRC resolution 30/1, there have been statements by high-rank government officials including the President and ministers which rejected the possibility of including international experts into a special court. However, the series of failed national mechanisms and the domestic justice system's lack of expertise in dealing with war crimes and crimes against humanity demonstrate the dire need for international participation. Moreover, victims and their families have a little trust in a purely domestic mechanism due to the history of manipulation of national institutions. The civil society has stressed that without a credible special court with international experts, other pillars of the transitional justice mechanisms will not achieve their promises but undermine criminal justice. The CTF's final report presented on 5 January 2017 also recommends the Government to include international experts to overcome technical shortcomings and the lack of trust from those affected. Yet, the failure of the President and Prime Minister to attend the presentation of the CTF report raised a serious question for their commitments to implement wide-range recommendations from the CTF.

Public consultations and transparency

Besides the slow pace of progress, another key point from the civil society is the public participation to ensure transparency. The decision-making process regarding transitional justice has been often accused of the lack of accessibility. Even though such instances are much fewer compared to the time of previous administration, there have been reports of surveillance and intimidations to the victims and their families who attended a CTF consultation. Furthermore, the Government's lack of public campaigning on transitional justice has invited the feelings of anxiety and distrust among the population. The transitional justice process should involve the whole population of the island as well as diaspora communities. Therefore, efforts have to be made by the Government to ensure that everyone concerned can participate in the process without obstacles. In order to ensure the successful implementation of the HRC resolution 30/1, public consultations and dialogue with those affected by the conflict and the civil society are necessary, accompanied by a nation-wide public campaign to promote the ownership by people.

Civil society actors such as victims and their families, and human rights defenders are working with inexhaustible effort to achieve truth, justice, reparations and reconciliation. Their efforts have been supported by the UN human rights system in the recent country visits by special procedures and examination by treaty bodies. It is the time for the Government of Sri Lanka to fully adhere to its promises and listen to the civil society through active dialogue in order to achieve success in building a lasting peace.

Recommendations

We call upon the Government of Sri Lanka to implement the recommendations in the report of the Consultation Task Force on Reconciliation Mechanisms (CTF). In this course, the Government of Sri Lanka should pay a particular attention to the recent recommendations in the following UN human rights bodies' reports:

- Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/34/54/Add.2):
- Concluding observations of the Committee against Torture (CAT/C/LKA/CO/5):
- Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/33/51/Add.2); and
- Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/LKA/CO/10-17).

The Government is further urged to incorporate forthcoming recommendations from the Special Rapporteur on minority issues and the Committee on the Elimination of Discrimination against Women (CEDAW).

Finally, we call upon the Human Rights Council to extend the mandate of the Office of the High Commissioner for Human Rights (OHCHR) to continue monitoring the implementation of the resolution 30/1.