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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 African Green Foundation International, 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.

[12 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. There was no Violations related to deprivations of liberty (arbitrary arrests, and so on)

Introduction

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?

- a. The allegation is that during the relevant period (2002-2011) there were innumerable arbitrary arrests and other unjustified deprivations of liberty of civilians especially Tamils perpetrated by the security forces and related paramilitary groups, so called “white van” cases, and that these acts were done with the knowledge and approval of the command structure of the security forces including the relevant civilian leader.

OISL report, para 328, 347, 350, 351, 353

- b. “...According to the information gathered by OISL, the different branches of the Sri Lankan security forces worked together in perpetrating unlawful and arbitrary arrests, demonstrating a high degree of coordination, joint intelligence and information sharing, as well as joint planning, which continued throughout the period of detention, interrogation, torture and release or transfer prison...”

OISL report, para 353

- c. The Panel has footnoted above portion as: “See interviews with police officials in Business Today, April 2009, where they describe the close coordination, weekly meetings and the Secretary of Defence to plan counter-terrorism investigations and operations.”

Footnote 279 of the OISL report

- d. The defects with the Panel’s argument about purported “deprivations of liberty” can be discussed under three heads:
 - (i) **Relying on witnesses whose statements are not available to the public for scrutiny;**
 1. *The International Criminal Court (ICC), the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Court of Justice (ICJ) refused to consider such reports based on the fact that they were second-hand accounts which were uncorroborated and potentially biased.*

Review of Jasmin Sooka Report, Sir Geoffrey Nice and Rodney Dixon, para 10 to 15

2. ICC has held that “Heavy reliance upon anonymous hearsay, as it often the basis of information contained in reports of nongovernmental organizations and press articles, is problematic... In such cases, the Chamber is unable to assess the trustworthiness of the source, making it all but impossible to determine what probative value to attribute to the information”

et al, para 10

3. “ICTY found that reports created by non-parties “are hearsay in nature” and lack the reliability of the primary source material”

et al, para 11

4. The ICTY found in respect of NGOs that... the information contained in the eventual report, not the reliability of the material contents for the purposes of use in criminal proceedings”

et al, para 13

5. “The ICC has highlighted that... there are inherent difficulties in ascertaining the truthfulness and authenticity of such information”

et al, para 14

6. “It is also a general principle that evidence from anonymous witnesses is of extremely limited value and... puts the Defence in a difficult position because it is not able to investigate and challenge the trustworthiness of the source(s) of the information”

et al, para 15

7. The testimony of the victim quoted does not contain a single detail that can be independently verified or collaborated... never mentions whether they made a complaint to the police about the incident... no mention of any medical report of his injuries... any details about his surroundings or of his tormentors from which it would be possible to connect either the location where he was held or the alleged torturers to the security forces.

(ii) Senior officials in the security forces meet frequently to conduct unlawful matters?

1. The Panel has ignored the Business Week publication period related to the interviews with senior officials regarding so called *frequently meeting*. It is during April 2009 which is the high period of the operation in Vanni.
2. The Panel has ignored that the senior officials in the security forces need to *meet frequently* in order to improve the coordination and cooperation between the different branches for counterterrorism operations.
3. The evidence cited by the Panel clearly indicates that the meetings referred to in the articles in *Business Week* were meetings to coordinate *lawful* activities.
4. It is impossible to suppose that police officers would give interviews to *Business Week* about coordinating *unlawful* activities.
5. The Panel’s argument appears to be just an insinuation that the key officials in the security forces met frequently means they were planning unlawful activities.
6. This is a clear indication that OISL report has not even meet the stated standard of proof, i.e. “Reasonable grounds to believe”.

(iii) **The Panel fails to consider the possibility that the witnesses may be lying in order to obtain asylum or some other benefit from the OISL.**

1. “When Gunaratnam disappeared along with another activist, Ms. Dimuthu Attygalle, the FSP accused intelligence services of holding him at a secret detention facility. But when he suddenly emerged without a scratch Australian High Commissioner in Colombo, Robyn Mudie, produced Gunaratnam’s passport issued courtesy the government of Australia bearing the name Noel Mudalige. Australian diplomat could not prove Gunaratnam’s arrival in Sri Lanka as Australian passport holder. After returning to Australia, Gunaratnam/Mudalige alleged that he was handcuffed, blindfolded and physically and sexually tortured during the three-day detention. The Australian never made such allegation when the police recorded his statement in the presence of Australian diplomatic staff at the CCD headquarters at Dematagoda”.

“Sri Lanka: The war on terror revisited” Shamindra Ferdinando, 29th April 2014

2. “The Indian Newspapers* reported that ten Sri Lankan Tamils, including five children, illegally landed at Arichamunai, Dhanushkodi, Tamil Nadu, in the early hours of Monday, May 5, 2014....One of the refugees was Kathiravel Thayayapararaja, said to have been tortured and killed by the Sri Lankan Security Forces on September 13, 2009, a story confirmed by the respected University Teachers for Human Rights Jaffna (UTHR – J) in their special report. His supposed death was also mentioned in the 2010 report by the Australian Government Refugee Review Tribunal”

Shenali Waduge, the freelance writer and nationalist activist, in the Daily News

3. “...We are aware of media allegations that returnees are being abused. All have been investigated by the high commission, and no evidence has been found to substantiate any of them”

Alistair Burt, Minister in charge of Sri Lanka at the Foreign and Commonwealth office,
Hansard Records, 22nd February 2012

4. “In order to be successful, the refugee claimants have to be able to make the case that they fled their countries of origin because it was not safe to remain there. Yet in one year along, 8,600 Sri Lankans with refugee claims pending in Canada applied to the Sri Lankan High Commission in Ottawa for travel documents so they could go back to Sri Lanka for visits”

Martin Collocott, former Canadian High Commissioner to Sri Lanka, Hansard Records

5. “Internal government documents show 70% of Tamils who claimed refugee status in Canada continue to take holidays in Sri Lanka, a country which they claim is genocidal towards Tamils”

Barry O’Regan, Canadian journalist, “Tamil Refugees Still Going Home for Holidays”,
www.examiner.com, 25th October 2010

6. “...two research packages prepared by the Immigration and Refugee Board, which summarized reports from news, academic and other sources on the treatment of Tamils in Sri Lanka, contained evidence that the harassment and government surveillance of Tamils had decreased since 2009”

Justice Moldaver, Canadian Supreme Court, *Kanthisamy v. Canada* 2015 SCC 61 (2015) 3
SCR 909, 16th April 2015, www.csc.lexum.com

7. “...In summary it is held that according to far reaching agreeing reports, overall the situation since the end of the military conflict

between the Sri Lankan Army and the LTTE in May 2009, has improved considerably”

Swiss Immigration Appeals Tribunal (BFM), Translation of Swiss ruling on categories of threat, Tamils Against Genocide Legal Team, 25 February 2012 (Original in German is available at www.unhcr.org), Verdict of 27th October 2011, para 7.6

Even if one supposes that the members of the Panel were unaware of some of the aforesaid matters it is impossible to suppose that they would have been unaware of all of them. One must presume that officials who are entrusted with investigating a country and reaching conclusions based on which the OHCHR as well as the UNHRC can take action... approach their task with a certain background knowledge about current events... *and* therefore, the panel should have been doubly cautious about basing its allegations of purported deprivations of liberty in Sri Lanka purely on the testimony of witnesses, testimony that the Panel knew that members of the public were never going to be able to examine.

- e. Under the Rome Statute of the ICC Article 8.3; a legitimate government is allowed and is a duty to protect the territorial integrity and take necessary action to protect it and re-establish law and order.
 - f. Therefore, the OISL allegations are not been proved even up to the level of “Reasonable grounds to believe” and the SLA and the command had been even protected by the Rome Statute of ICC.
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