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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 Association Bharathi Centre Culturel Franco-Tamoul, 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.

[14 February 2017]

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

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Arbitrary detention of Eelam Tamils in Sri Lanka*

In 1983, at the outbreak of the civil war in Sri Lanka, the International Commission of Jurists concluded that Sri Lanka's abuses of prisoners constituted a "systematic" and "almost universal" practice; that year, for example, 53 Tamil inmates were killed by Sinhalese guards at the Welikada high security prison. Thirty five years later, the system remains unchanged and the systematic abuse of prisoners continues to be the norm; in November 2012 it was reported that 27 inmates were killed at Welikada prison. Continuing abuses highlight the unchanging nature of Sri Lanka's detention policy and the associated violations of human rights that have resulted in over 20,000 internments since the end of the civil war in May 2009.

While States have acknowledged the on-going violations committed by the Government of Sri Lanka, the Government has failed to address these concerns. This intransigence with respect to human rights and the rule of law is evidenced by the recent Universal Periodic Review (UPR), wherein the Sri Lankan government rejected 100 of 210 recommendations, the largest number of outright rejections in the UPR's history in 2012.

The systematic practice of arbitrary detention utilised by the Government of Sri Lanka in the repression of civilians requires immediate and sustained attention from the Human Rights Council and the Working Group on Arbitrary Detention.

Sri Lanka's international obligations

Sri Lanka is a party to the International Covenant on Civil and Political Rights, which contains stringent regulations, intended to safeguard against abuse in detention. Article 9 prohibits arbitrary detention – including in the context of a legitimate derogation under a state of emergency – while establishing further protections with respect to an individual's right to a fair trial within a reasonable timeframe, and the right to be informed of any charges.

The civil war: emergency regulations & prevention of terrorism act (PTA)

During the civil war, tens of thousands of individuals were detained under the Prevention of Terrorism Act and the Emergency Regulations. While the majority of these individuals were ethnic Tamils suspected of association with the Liberation Tigers of Tamil Eelam (LTTE), and subject to ill treatment. Most of those Tamils never made any complain because of Threat on them and on their Family members by the occupied Sri Lankan Military.

For example, Amnesty International reports that two Sinhalese political activists detained on suspicion of assisting the LTTE were subject to particularly severe treatment, coupled with intense media coverage intended to vilify the individuals. While detention-related abuses disproportionately affect the Eelam Tamils, Sri Lanka's detention policies and practices have serious consequences for the entire population.

Post-civil war: The 'emergency' is lifted, but the PTA continues

In August 2011, Sri Lanka lifted the declared state of emergency. However, the Government of Sri Lanka has continued to keep the Prevention of Terrorism Act in force, elements of which violate international obligations under Article 9 of the International Covenant on Civil and Political Rights, as discussed below. The Government has also introduced supplementary provisions in order to detain LTTE suspects without charge or trial, some of which have been deemed unconstitutional by leading Sri Lankan constitutional lawyers.

Detention without charge

Under Section 9(1) of the Prevention of Terrorism Act, individuals may be arrested without charge and detained for up to 18 months by a detention order. While detainees must be brought before a magistrate within 72 hours of their arrest, the magistrate "shall order the remand of [the individual] until the conclusion of the trial". This order cannot be challenged in court. As an example of this practice, it is reported that as of December 2011, 42 of the 65 Tamil detainees held in Anuradhapura prison have yet to be charged, after two to six years in prison. Evidence also indicates that where protections are afforded, such as an individual's right to be informed of the reasons for their arrest, such protections have been consistently violated in practice.

Arbitrary detention

The Working Group on Arbitrary Detention considers a deprivation of liberty to be arbitrary when “the total or partial non-observance of the international norms relating to the right to a fair trial... is of such gravity as to give the deprivation of liberty an arbitrary character”. The length of detention in waiting for a trial can last years, often without charges ever being brought; these policies suggest that the Government of Sri Lanka is systematically carrying out arbitrary detention. Individuals being held without these protections amounts to a violation of the right to be informed of charges against an individual as well as the right to trial within a reasonable timeframe, guaranteed under Articles 9(2) and 9(3) of the International Covenant on Civil and Political Rights.

The use of emergency laws and the Prevention of Terrorism Act in Sri Lanka has resulted in a culture of impunity wherein arbitrary detentions and widespread torture and ill treatment has become the norm. Further, the UN Committee against Torture recently stated that it was “seriously concerned” regarding the “widespread use of torture... in police custody.” Between 1998 and 2011, the Asian Human Rights Commission documented 1,500 cases of police torture in Sri Lanka, which indicates a pattern of arbitrary detention resulting in an environment whereby detainees are more susceptible to torture and other forms of ill treatment.

UN Special Rapporteur on torture Mr Juan E. Méndez on April 2016 said that detainees in Sri Lanka are still experiencing torture as a tactic used by criminal and terrorism investigators seven years after the country’s civil war ended.

In October 2015 that police forces in Sri Lanka regularly torture and mistreat criminal suspects in custody. HRW Asia director Brad Adams said, “the Sri Lankan police treat the use of torture as an ordinary way of obtaining confessions.” HRW compiled allegations of police torture which took place in Sri Lanka between 2014-15 and included beatings, electric shocks, use of stress positions, and failure to provide needed medical treatment among others. The rights group called on the Sri Lankan government to create an independent oversight authority to monitor the police actions and bring an end to the police abuse.

Detention for political beliefs

The Government of Sri Lanka claims that there are 318 political prisoners currently incarcerated. However, documentation by Sri Lankan activists indicates that up to 3000 detainees are currently in detention for their political beliefs, many of whom have been awaiting charge for at least five years.

Transfers and access to information regarding detainees

Several prisoners’ families interviewed by the Sri Lanka Campaign for Peace and Justice in late 2012 stated that their relatives have been transferred between at least three prisons during their detention – often to delay their release – without any prior information or reasons for transfers given. According to Section 7(3) of the Prevention of Terrorism Act, police have the power to transfer a detainee without judicial permission or supervision. With no central registry in place, these unsupervised transfers can result in an individual effectively becoming lost in the system, with a substantial risk for abuses of this policy, such as torture and disappearances.

Thousands of families have also had limited access to their relatives, and are often denied all access. This issue is exacerbated because families typically received little to no information from the authorities regarding the whereabouts or health of detainees, implicating the right to respect for family life.

The notorious ‘Terrorist’ Investigation Division (TID) of occupying Colombo has detained at least 23 Eezham Tamils from North and East at various prisons since 29 March 2016. The arrests have taken place in white-van abduction style and through hostage-taking of family members. One of the victims is a woman, who is detained at Vavuniyaa. Two males are being interrogated at the so-called 4th Floor torture chamber in Colombo, while the remaining 20 are being detained at Boosa prison in Galle district in the South. All the ‘arrests’ have been carried out under the Prevention of Terrorism Act (PTA), with judicial evidence standards for arrest lower than even “reason to believe.”

Recommendations

Prisoners are being held in captivity for extended periods of time without charge or trial. We therefore call upon the Government of Sri Lanka:

- To immediately end all forms of arbitrary detention;

- To immediately release all political prisoners or to bring charges against them by a specified date, while complying with the requirements of international human rights law;
- To allow an independent investigation into prison riots;
- To provide clear justification for the transfer of prisoners with adequate notification to families;
- To make public the list of detainees by the Government of Sri Lanka during the 2009-2016.
- To demilitarize occupied land of Eelam Tamils
- To Repeal the Prevention of Terrorism Act (PTA)
- To Make a Referendum on Tamil's Rights to self-Determination

*Collectif La Paix au Sri Lanka, Swiss Council of Eelam Tamil (SCET), NGOs without consultative status, also share the views expressed in this statement.