



General Assembly

Distr.: General
22 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 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).

GE.17-02890(E)



* 1 7 0 2 8 9 0 *

Please recycle



Sri Lanka : truth, justice and reparation and guarantee of non-recurrence*

In October 2015, the Sri Lankan Government made historic commitments to the people of Sri Lanka and to the Human Rights Council (HRC) “to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures” aimed at delivering truth, justice, reparation and guarantees of non-recurrence. These four pillars are essential to end impunity for violations and abuses.

Sri Lanka’s legacy of impunity stretches back decades. Alleged human rights violations and abuses by all parties during, and following, the conflict have still not been effectively investigated. Torture in police custody continues.

On year after there is no any change toward Eelam Tamils in the Island, peoples are still living under military occupation. Accountability cannot be achieved without sustained political commitment to a properly resourced judicial mechanism that operates in accordance with international standards. While the current SLG has expressed a commitment to true accountability, the recent statements made by President Sirisena that he will “never agree to international involvement” and that Sri Lanka “ha[s] more than enough specialists, experts and knowledgeable people in our country to solve our internal issues” have left many unconvinced. The President’s statement goes against both the word and spirit of Resolution 30/L.29. It is also patently incorrect—as clearly outlined in successive reports by independent UN experts, the Sri Lankan justice system does not have the requisite independence, impartiality or expertise to administer fair and effective war crimes prosecutions.

The SLG must not breach its international obligations or use technical legal excuses to block full international judicial and prosecutorial participation. Rather, the SLG should demonstrate its commitment by adopting legislative reforms that incorporate international crimes and modes of liability into domestic law and by supporting the appointment of international judges and prosecutors to work alongside local counterparts.

Sri Lankan domestic law is not equipped “to deal with international crimes of this magnitude”. Crimes against humanity and war crimes are not criminalised under existing penal provisions. To investigate and prosecute properly the alleged “system-crimes”, legislation will have to be enacted to establish the requisite international crimes, forms of liability, and other jurisdictional powers of the special war crimes chamber.

All tamil civil society from Eelam Tamil and around the world are concern by this Resolution, totally ignore to protect Tamils living in Sri Lanka.

We want to share with you our concern on Sri Lanka Domestic procedure on Accountability will never work, and as Tamil victim of War crimes and crime against humanity, and Genocide committed by the successive government of Sri Lanka, Tamils will never give their Testimony to Domestic procedure mandated by Sri Lankan Government under military occupation. They use it for have more information on peoples in the ground on the way to treat them and kill people who will give witness.

The striking parallels that could be drawn from the discourse that transpired was the need for fundamental, meaningful, substantial, significant and far reaching changes on a range of issues pertaining to the delivery of transitional justice in Sri Lanka.

Among the concerns identified in these in-depth, high calibre panel discussions, Tamil civil society, and Tamil Diasporas civil societies, which made transitional justice impossible, now in Sri Lanka is:

- The Sri Lankan military’s fierce grip on the Tamil people of the North and East in the island of Sri Lanka including its civilian and “institutionalised extortion” activities – akin to a “sophisticated” form of control over them
- The Sinhala Buddhist nationalist nature of the state
- The ways in which the Sri Lankan government has obfuscated the issue of accountability both internationally and domestically when speaking to the Sinhala population

- The large discrepancy between what the Sri Lankan government is telling the international community it's doing on accountability and rule of law initiatives and what is actually taking place on the ground
- Government's lack of transparency and sincerity to enact reforms – to enable trust and build confidence
- The still ongoing human rights violations and surveillance operations in the North East
- The absence of necessary measures for genuine reconciliation vis-a-vis the Sri Lankan government's failure to return private lands, abolish the Prevention of Terrorism Act, review the Victims and Witness Protection Act and honour its promise to release political prisoners still languishing without charge
- The fact that torture and sexual violence against Tamils still continue
- The absence of answers for the families of the disappeared
- The occupation of public land and the army's involvement in civilian activities, such as running shops, farms, hotels and even pre-schools
- The military's continued distribution of goods to school children and other civilians widely regarded as its attempt to normalise its presence in the North East
- The continued harassment and intimidation of civil society and human rights activists, of families of the disappeared and former members of the LTTE as well as other Tamils
- The fact that testifying before any judicial mechanism would be difficult when the security forces are living next door
- The Sri Lankan government's lack of honesty as evidenced by its statements post resolution, inconsistent with its obligations it was committed to carry out -for international involvement in any 'credible judicial process'
- The fact that the Sri Lankan government has so far not demonstrated the political will to ensure an independent, impartial, victim centred accountability mechanism
- That many people in Sri Lanka have been victimised horribly – and if impunity for those crimes continue they're going to be victimised further

If Sri Lanka has genuine intention of cooperating with the UN, and genuinely interested in accountability, justice, non-recurrence and permanent political solution, it must show willingness and progress to the International Community and to the UN on all fronts. The Tamil people hope that the UN and the International Community obtain unambiguous commitment from Sri Lanka to fulfill these.

Consultation

Eelam Tamil will never give any consultation to the Sri Lankan National mechanism; peoples don't have any faith on it. And many victims and their families are still unclear how to make their views known. Taking into account the delays so far, a realistic timeline for the consultation should be developed to allow for full public participation. Without international involvement Eelam Tamil will never give their testimony.

Justice

The justice mechanism's mandate will be central to its credibility and effectiveness. In devising its form, composition, scope and timeframe, The Council have to be ambitious and seek to deliver justice to as many victims as possible. Eelam Tamils don't have any faith Sri Lankan Judicial system.

We support at minimum the OHCHR's proposal for a hybrid special court, but the court must do more than investigate a handful of cases and must form part of a broader initiative to strengthen the national justice system so that national courts can ultimately prosecute other cases and address future human rights violations effectively.

Engagement of international judges, prosecutors, defence lawyers, forensic experts, and victim and witness protection experts will be of the utmost importance to maintain the credibility, independence and effectiveness of the process. Effective witness protection is also vital and must be independent of any security or law enforcement body that is suspected of involvement in human rights violations.

Truth

More than 100 civil societies from Ground already expressed their concern about the Independent of the Office of Missing Persons. The commission must be independent, impartial and made up of highly qualified commissioners with expertise, including on human rights, sexual and gender based violence, and violence against children. It must be granted the powers and authority to gather all information it considers relevant. It must not have the power to grant amnesties for crimes under international law.

In a smart piece, Colombo-based journalist Kusal Perera notes that there were serious problems with the way in which the OMP was created. Many others, including HRW, had previously raised concerns about the lack of proper public consultations related to the OMP's establishment. These are valid worries and important things to keep in mind as Colombo goes forward with its transitional justice agenda.

Reparation

Victims should be provided with full reparation to address the harm they have suffered and to help them rebuild their lives. A reparation program should be established to provide comprehensive measures including restitution, rehabilitation, compensation and satisfaction, as well as measures that would prevent repetition of past violations (see below) and improve the lives of marginalized groups, including women.

Non-recurrence

Justice, truth and reparation can be important mechanisms to ensure that past human rights violations and abuses will never be repeated.

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