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Human Rights Council

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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 the Association des étudiants tamouls de France, 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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Transitional justice' Challenge in Sri Lanka*

We request you to understand that the Tamils have been short changed, cheated, fooled again and again by successive states in the past 66 years, in The Island of Sri Lanka. Promises were never delivered, and now the national government for good governance are still refusing access to Freedom for Tamil peoples in the Island and they also had refused access for all UN mandated Reporters, UN Panel of Expert, OISL team to go and see the war zone area, and to gather further information on the ground from the victims.

We Tamils believe that war crimes, crimes against humanity and genocide took place and the structural genocide is continuing under the jackboot of the army with New Government.

We believe, as stated in the OISL report that due to the horrific level of violations and abuses, patterns of serious and grave international crimes, the High Commission should refer the OISL report to the International Criminal Court. We believe that the Local mechanism will not be effective in ensuring accountability.

The manner in which the system of accountability is created will be the test of the credibility of the UNHRC system, the international community and the GoSL.

However, we welcomed some fact finding of the OISL report for a "Hybrid Special Court", with international judges and prosecutors, with all the 23 recommendations to the GoSL and more importantly the 5 recommendations to the UNHRC.

We stressed that the victims are hopeful and want to hear a clear strong positive message from the Council.

We urged the GoSL to engage with all stakeholders, including the key Tamil Diaspora groups, to sit with the international community, to resolve the ethnic issues with a permanent political solution through a referendum.

We want to share with you our concern on OISL report and on the Resolution on Sri Lanka.

- The resolution should clarify the criminal investigation mechanism: for example it must entail the **appointment of independent and competent personnel by the UN to constitute a significant majority in key positions – prosecutors, judges, and investigators, and jurisdiction** to investigate and prosecute the alleged atrocities committed by The Sri Lankan military.
- Sri Lankan constitution or laws do not recognise **war crimes, crimes against humanity or the crime of Genocide**. In order to setup a Court, these crimes must be included retroactively in the legal system with immediate effect.
- Sri Lanka to ratify of the **Rome Statute of the International Criminal Court (ICC)**, and also urge Sri Lanka to submit a declaration voluntarily providing **retroactive jurisdiction** to the International Criminal Court.
- OHCHR to report to the council with an interim update during the **32nd session and a full report at the 33rd session with periodic reports / updates during the period of the court where appropriate**.
- A timetable to agree an international **treaty between United Nations and the State of Sri Lanka** to set the mandate of hybrid mechanism.
- Call to lift Sri Lankan government's **illicit ban on Tamil political and human rights organisations**.
- Witness protection – assurances for victims abroad to give evidence – procedures to be spelt – they should not be discredited – mechanisms established where local witnesses feel security assured.
- In North East of Sri Lanka there are **180 000 Singalais Military occupied** Tamils land of Northern Province, there are 1 military for every 6 Tamil civils, and its important to demilitarize the occupied Lands of Tamils.
- Dissemination of information: people need to be well informed before consultation processes begin – the OISL report in Tamil – SL Govt proposal of the mechanism (Should Discussion be on Govt proposal or Discussion first and proposal evolves as a result)

- Confidence building mechanism to be identified and implemented at the earliest (eg. Repeal PTA and release persons; surveillance removed completely; resettlement process; changing the modus operandi of the Missing persons commission and putting a new mechanism that will build confidence – this is a good testing on Govt of SL)
- Mechanism: Hybrid as called for – clearly to be spelt in the resolution
- OHCHR office in Colombo to facilitate processes and report on progress (this is a must)
- Please Note the The Chief Minister of Northern Provincial Council, Chief Justice Mr Wigneswaran passed a Résolution for ask to the OHCHR to have a international investigation.
- Please note The Tamil Nadu Parliament urges OHCHR to seek an international probe into “war crimes” in Sri Lanka.
- Chief Minister Jayalithaa urged the Centre to move a resolution along with United States and other countries at the UNHRC for the international probe against all the perpetrators of the human rights violations and those responsible for the genocide.

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, I will never give my Testimony to Domestic procedure mandated by Sri Lankan Government under military occupation. They use it for have more information on peoples in the ground.

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

we request:

1. The judicial process must purely be of international and under the control of the UN, and we request you to recommend the referral to the International Criminal Court or special tribunal for Sri Lanka, and do not support any domestic or hybrid mechanism under the control of Sri Lanka.
2. We request you to take measures to judicially address the Genocide against the Tamil people as called upon by the unanimous resolution adopted by the Northern Provincial Council of Sri Lanka in February 2015.
3. We request you to press Sri Lanka to become signatory and ratify the Rome Statute of the International Criminal Court so that reoccurrence of similar atrocities can be minimized and the ethnic Tamil population can be protected in the future.

*Swiss Council of Eelam Tamils (SCET), NGO without consultative status, also shares the views expressed in this statement.