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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 Pasumai Thaayagam Foundation, 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.

[17 February 2014]

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

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The need for an Independent International Commission of Inquiry on Sri Lanka

United Nations High Commissioner for Human Rights' update to HRC on 24 September 2013 on implementation of Resolution 22/1 *Promoting reconciliation and accountability in Sri Lanka*, HCHR encouraged the Sri Lankan Government to use the time before March 2014 "to show a credible national process with tangible results, including successful prosecution of individual perpetrators, in absence of which ... international community will have a duty to establish its own inquiry mechanisms."

Pasumai Thaayagam Foundation believes it is high time to establish such an international independent inquiry mechanism. In lieu of this Pasumai Thaayagam Foundation endorses the following findings of the investigative report of the International Crimes Evidence Project (ICEP), of the Public Interest Advocacy Centre; Australia titled "Island of Impunity"¹.

The report presents an evidentiary platform for an international investigation into war crimes and crimes against humanity. Evidentiary material indicates that members of the Sri Lankan Security Forces (SFs) perpetrated the vast majority of alleged crimes during the investigation period and are responsible for serious violations of international humanitarian law (IHL) and international human rights law as these violations amount to war crimes.

Certain crimes committed during final stages of war involved flagrant and reckless disregard for laws of war, strongly suggesting that it was intentional. This is evidenced from the fact that with effective control of all land, sea, and air approaches, the disciplined, well-trained and well-armed Sri Lankan SFs conducted indiscriminate artillery bombardments of areas of Tamil civilian concentrations, also striking hospitals and humanitarian sites. Pasumai Thaayagam Foundation strongly believes that this amount to genocide.

Attacks in and around civilian areas: Between January and May 2009, Sri Lankan Army established three No Fire Zones (NFZs). After declaration of NFZs hundreds of thousands of Tamil civilians were displaced by intensifying hostilities, and the conflict zone contracted sharply. Army's 'guarantee' that NFZs would be protected from attack encouraged civilians to concentrate in those areas unaware that this increased the risk of heavy civilian casualties.

The SFs used indirect fire weapons, including artillery, mortars and multiple barrel rocket launchers, in densely-populated areas. The attacks analyzed reveal an intensified practice of indiscriminate artillery area bombardment since the attacks killed and wounded scores of Tamil civilians who were attempting to take shelter from sustained shelling, or trying to perform basic activities. Some of these attacks including, indiscriminate attacks on the villages of Karaiyamullivaikkal and Vellamullivaikkal, and the third NFZ generally, could be evidence of direct attack on civilians and could amount to war crime of attacking civilians.

Considering the SFs' ability of planning and executing military operations with advanced technology the patterns of incidents are results of deliberate planning and policy decisions. Killing of persons, when committed as part of widespread or systematic attack on civilian population, pursuant to, or in furtherance of State policy, amounts to the crime against humanity.

Denial of humanitarian assistance: Reasonable grounds exist to suspect that Sri Lankan Government deliberately understated the number of civilians in conflict zone and need for food and basic medical supplies. Amount of food

¹ 'Island of Impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war' -A report by International Crimes Evidence Project (ICEP), Public Interest Advocacy Centre Ltd, Sydney, Australia, 13 February 2014

provided was grossly inadequate and civilians starved to death. Sri Lankan Government restricted the humanitarian convoys even though senior Government doctors highlighted urgent need for additional drugs and medical supplies.

The International Committee of the Red Cross (ICRC) was given very limited access. Witness accounts also indicate that ICRC ships, which were trying to evacuate wounded civilians, were impeded by shelling directed either at or near them, raising the suspicion that Sri Lankan Government deliberately denied humanitarian assistance.

Pasumai Thaayagam Foundation notes that attacks on persons, transports or objects lawfully using distinctive ICRC emblem, ICRC personnel or vehicles, constitute war crimes and violation of International Human Rights and International Humanitarian Law.

Killing: After defeat of the Liberation Tigers of Tamil Eelam (LTTE), negotiations brokered Sri Lankan Government officials, international officials, and others led to several senior LTTE leaders and members surrendering to the SFs, and other LTTE members being captured and held in SFs' custody. There are grounds to suspect that some of the surrendered and captured were subsequently killed unlawfully by SFs.

Analysis of ICEP documented cases of custodial deaths reveals that senior Government officials including the Sri Lankan President accepted terms of surrender of LTTE Political Wing leaders Nadesan and Pulidevan and guaranteed their safety. Multiple witnesses observed Nadesan and Pulidevan being personally taken into SFs' custody and shortly after, another witness saw their dead bodies in Wadduvakal.

ICEP relied on photographs and videos of LTTE Colonel Ramesh in SFs' custody and being interrogated by SFs. Photographs taken less than three hours later depict him dead.

ICEP relied primarily on photographs, video footage and witness account that locate the Tamil newsreader, Isaipriya, alive and unarmed in SFs' custody. Same day other photographs and footage show her lying dead.

ICEP relied on photographs and video footage showing 12 year old Balachandaran son of LTTE leader Prabhakaran in SFs custody. Less than two hours after being taken into custody evidentiary material shows Balachandaran dead, killed by five bullets shot at close range.

Rape and other forms of sexual violence: The Sri Lankan Government has denied credible allegations of rape and sexual violence committed by SFs members. Second-hand witness accounts obtained by ICEP are consistent with cases reported by Human Rights Watch and the UN Expert Panel. These indicate that SFs members committed rape and sexual violence during Sri Lankan Army's screening process, in IDP camps, during interrogations and at Government hospitals.

Torture and other forms of cruel treatment: ICEP's evidentiary material points to commission of war crimes during interrogations at internally displaced person (IDP) camps, screening sites and in Police custody. ICEP analyzed in detail the civilian witness who reports being tortured while in the custody of Sri Lankan Police's Terrorist Investigation Department. There are reasonable grounds that these acts constitute war crime and crime against humanity of torture or cruel treatment.

Enforced disappearance of persons: Tamil civilians were targeted for enforced disappearances by SFs, at screening sites and IDP camps. Practice of enforced disappearance is coupled to other violations such as torture and other forms of cruel treatment, murder and extra-judicial executions. ICEP has considered the case of Father Francis Joseph who, according to multiple witnesses, surrendered to the SFs and has subsequently disappeared. There are reasonable grounds that the disappearances are a violation of international human rights law and IHL.

Post-conflict violations: ICEP has received reports of post-conflict violations relating to perpetration by SFs of rape and sexual violence, torture and cruel treatment and in relation to those who have disappeared.

A witness who was detained by the Sri Lankan Police's Criminal Investigations Department reported being subjected to torture, sexual violence and repeated rape and while in detention she heard other men and women crying and screaming.

ICEP obtained witness testimony that SF members destroyed forensic evidence in post-conflict period. Human remains from mass burial sites in the conflict zone were exhumed and covertly destroyed. These warrant the urgent need for an internationally mandated investigation.

Conclusion

Sri Lankan government continues to deny the violations outright without adequate investigation of crimes under international law committed by its forces during Sri Lanka's armed conflict and after war. Sri Lanka has still not taken genuine, substantial measures to meet important human rights obligations. Sri Lanka is not willing to hold accountable all those responsible for human rights violations. Torture in police custody persists with impunity. It has done little to end impunity; serious human rights violations remain ubiquitous. The government's increasing intolerance of dissent and continued failure to ensure justice make it clear that there is insufficient action to end impunity and promote human rights.

The Sri Lankan Government has not complied with the UN Human Rights Council's resolutions on reconciliation and accountability. There is strong concern about the independence of Sri Lanka's judiciary and the inadequacy of other checks on executive and military power. Accordingly, there remains serious doubt that the Sri Lankan Government will establish a credible investigation into allegations of war crimes, crimes against humanity and breaches of international human rights law and IHL.

Pasumai Thaayagam Foundation endorses these factual statements and urges the HRC to establish an independent, international commission of inquiry to investigate Sri Lanka's past and present war crimes, crimes against humanity and genocide against Tamils.
