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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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Transitional Justice in Sri Lanka*

We request you to understand that the Tamils have been short changed, cheated, fooled again and again by successive governments in the past 67 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.

The present Government's commitments included setting up an Office of Missing Persons (OMP), a Commission for Truth, Justice, and Guarantees of Non-reoccurrence, a judicial mechanism with Special Counsel, which Tamil peoples don't have any faith and most people won't participate under military occupation

The Government also continue to increase the military's role in civilian affairs, and military continue to occupied the Tamils livelihoods, and the Prevention of Terrorism Act (PTA) is still present on different way, there is no any Justice for disappearances, even the Sri Lankan government ratify the Enforced Disappearance Convention, the victim and witness protection is totally violated and Tamil peoples victims of military and security forces abductions will never believe on Sri Lankan domestic process. A consultation is under military control and Sri Lankan play an piece during the international mechanism presence then they change the altitude toward Tamil peoples.

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.

The acquittal of five persons charged with the murder of a Raviraj Tamil legislator in Sri Lanka has renewed scepticism over the credibility of the country's justice system, particularly in cases involving extra-judicial killings implicating the armed forces.

Following an all-Sinhalese jury's verdict, a Sri Lankan court acquitted five men, including three Navy intelligence officers, accused of assassinating Nadaraja Raviraj in 2006. A Tamil National Alliance (TNA) parliamentarian and lawyer, Raviraj had actively sought to engage the Sinhalese on the Tamil national question, addressing them in Sinhala. On 10 November 2006, he and his bodyguard were shot dead on a busy road in Colombo.

According to TNA parliamentarian and senior human rights lawyer M.A. Sumanthiran, Sri Lanka's Criminal Investigation Department (CID) and Attorney-General's Department found evidence pointing to the involvement of the State Intelligence Service (SIS) in Mr. Raviraj's assassination. Additionally, the public prosecutor's indictment accused some "persons unknown to the prosecution" of being involved in the murder.

"So it was obvious that a few junior-level naval officers had not done this on their own. They are as responsible for carrying out someone's orders, but it is only one small part of the puzzle. This happened ten years ago and we are still waiting to find out who gave the orders," Mr. Sumanthiran told *The Hindu*.

Giving evidence during the investigation, a former police constable who turned state witness, claimed that former Defence Secretary Gotabhaya Rajapaksa "had arranged a payment of Rs. 50 million to the Karuna faction to murder the MP", according to the state-run *Daily News*. Karuna Amman, or Vinayagamorthy Muralitharan, broke away from the LTTE and was later appointed as Minister during Mahinda Rajapaksa's presidency.

The Failure of R2P in Sri Lanka

With the exception of Sri Lankan state denials, there is now near full acceptance that Sri Lanka was responsible for the commission of atrocities particularly in the final months of the war. The UN Panel of Experts report from March 2012 puts the civilian death toll at a minimum of 40,000. The November 2012 Internal Review Panel Report, the 'Petrie'

report, references 'credible reports' that civilian casualties were as many as 70,000. According Sri Lankan Government agent and Catholic Bishop Rayappu there were about 147,000 are missing.

The International Community has recognized its own failures in 2009: the Petrie report detailed both the extent of knowledge of the crimes perpetrated by the Sri Lankan state against its citizens and the lack of international action in the face of such knowledge. It was not a war without witness, but a war where a decision was made not to bear witness. More recently, Madeleine K. Albright and Richard S. Williamson, in their capacity as co-chairs of the Working group on the R2P, observed, "Tens of thousands of Tamil civilians died at the end of the Sri Lankan civil war with little international outcry or effective UN response". Sri Lanka is thus an example of R2P "double manifest failure": a failure to protect on the part of both the state and the international community.

Almost total lack of justice from Sri Lankan state institutions, Tamils firmly believe that for justice for the war crimes and crimes against humanity committed during and after the recent war to be at all credible, Sri Lanka must fulfill commitments made by the current government to the UN Human Rights Council in Oct. 2015 through Resolution 30/1.

In that Resolution Sri Lanka pledged to ensure that 'Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators' would be involved in the judicial process it is setting up to bring about justice for the serious crimes committed. Tamil Civil organizations don't have any faith on Sri Lankan domestic process and ask for an international investigation.

The Sri Lanka Government must comply with its legal obligations to victims, including the right to an effective remedy and the right to participate in proceedings.

All past efforts by SLGs to establish accountability for wartime violations have fallen dramatically short of international standards. Accountability cannot be achieved without sustained political commitment to a properly resourced judicial mechanism that operates in accordance with *international standards*. The SLG should not use technical legal excuses to block full international judicial and prosecutorial participation. Rather, the Sri Lanka Government should demonstrate its commitment by adopting legislative reforms that incorporate international crimes and modes of liability, and by facilitating the appointment of international judges, prosecutors, and lawyers to work alongside local counterparts.

The Sri Lankan judicial system "remains particularly vulnerable to interference and influence by powerful political, security and military actors". Further, the Sri Lankan judiciary does not have the necessary experience to deal effectively with complex international crimes. These shortcomings are not new to post-conflict situations. The correct response is to facilitate the full participation of international judges, prosecutors, and lawyers. This participation must be significant; the foreign actors must have real decision-making powers.

If the national judges remain in the majority, the court will remain open to political interference. The "supermajority" voting system has been ineffective. Therefore, each of the judicial chambers should be composed of a majority of international judges. The Constitution does not require Sri Lankan citizenship to be appointed.

A special war-crimes chamber should permit experienced international lawyers within each defence team. There is no proscription that prevents foreign lawyers from participating.

The Assistance to and Protection of Victims and Witnesses Act ("WPA") was an important step forward in ensuring that victims are not deprived of their remedies, including reparations. However, it falls short of the truth-seeking and accountability mandate on which the "healing and reconciliation" is premised.

The OHCHR highlighted "the absence of any reliable system for victim and witness protection, particularly in a context where the threat of reprisals is very high". The current situation in Sri Lanka is perhaps more extreme than any yet faced by a domestic war-crimes court; witness interference in Sri Lanka continues to be rife. Tamils will rightly be fearful of participating unless a rigorous witness protection system is established.

Recommendations

The SLG should undertake wide-ranging consultations with all relevant stakeholders. Victims should be adequately informed of the options for justice, including a special war-crimes chamber of hybrid nature.

The SLG should protect the rights of victims outlined in the Basic Principles.

To satisfy the right to effective criminal justice, the SLG should establish a special war-crimes chamber comprised of the following attributes:

- a. Trial and Appellate Chambers with a **majority of international judges** sitting alongside national counterparts.
- b. **Co-prosecutors** with equal decision-making powers, one international and one national. Or a lead international prosecutor.
- c. A **rigorous witness protection** system based on the UN's Model Witness Protection Bill, including:
 - a. An overseeing mechanism, autonomous from the SLG, with unequivocal functions and responsibilities.
 - b. Clear legal criteria for granting protective measures.
 - c. A list of the available physical and psychological protective measures.
- d. **Victims with rights to meaningful participation** in the proceedings. The right to free choice of counsel, including international counsel.
- e. Suspects and accused to have free choice of counsel, including **international counsel** with full rights of audience.
- f. **Legal aid** for indigent victims, suspects, and accused.
- g. The application of **substantive customary international law** as well as recognized forms of criminal liability, applying ICC definitions.
- h. The application of Sri Lankan procedural law modified for consistency with the **ICCPR protections**.

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