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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 Association Bharathi Centre Culturel Franco-Tamoul, 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.

[25 August 2019]

* Issued as received, in the language(s) of submission only.



Impunity in Sri Lanka

This statement is submitted in partnership with The International Truth and Justice Project, a non-governmental organization

Failure by the Government of Sri Lanka to establish an accountability Mechanism

Following an OHCHR investigation into Sri Lanka in 2015, the High Commissioner for Human Rights recommended to the Human Rights Council that an ad hoc hybrid special court be set up to investigate what he called “systems crimes” during and after the civil war in Sri Lanka. The country’s justice system, he said, had been distorted and corrupted by decades of impunity. The hope was new accountability mechanisms would be established with international support.

In UN Resolution 30/1, which Sri Lanka co-sponsored in 2015, the country did agree to a wide-ranging transitional justice programme including a Hybrid Court, a Truth Commission, an Office of Missing Persons and a reparations body. Four years later only one of those four entities is operational but with no mechanism to hold accountable those responsible for massive cases of enforced disappearance. The Hybrid Court was ruled out by Sri Lanka almost as soon as the ink dried on the resolution, the Truth Commission hasn’t been established, nor has any credible independent investigation unit been established.

Vetting and screening

In 2015 the High Commissioner had recommended a full-fledged vetting process to remove from office those officials suspected of involvement in human rights violations.¹ Vetting and screening did not require constitutional and legal reforms and could have been the easy first step for a government that said it was committed to accountability. Four years later, notwithstanding the government’s commitments, a vast array of alleged perpetrators has been rewarded and promoted in the country’s navy, army, air force and its anti-terror police.² This submission highlights some of those vetting failures.

The Army

Most shocking was the recent promotion to Army Chief of one of Sri Lanka’s most notorious alleged war criminals, Lt. General Shavendra Silva.³ As early as 2012, former High Commissioner Navi Pillay said there was the appearance of a case for Silva to answer for international crimes. That didn’t stop his rise to Adjutant General, Chief of Army Staff and now the top post in the Sri Lankan army. The allegations that his 58 Division targeted civilians in the 2009 war have been well documented by the UN and others and won’t be repeated here. Suffice it to say that regiments who served under his 58 Division at the end of the war in Sri Lanka, are considered ineligible for peacekeeping duty by the UN given allegations of war crimes.

It would be a mistake to focus all the attention on one man alone; every year the government hands out gallantry awards and promotions to officers who commanded units present in areas where war crimes allegedly took place in 2009. Silva has been replaced as Chief of Army Staff by a Major General named by the UN as commanding a unit involved in frontline combat in 2009.⁴ There is a reasonable probability that both he and men under his command were involved in the commission of alleged war crimes and crimes against

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E>

² <http://www.itjpsl.com/assets/press/final-joint-ITJP-JDS-press-release-7-feb-2018.pdf><http://www.itjpsl.com/assets/press/final-STF-press-release.pdf>

³ <http://www.itjpsl.com/reports/shavendra-silva><http://www.itjpsl.com/assets/press/29-Jan-2019-Shavendra-Silva-press-release.pdf>

⁴ <https://www.army.lk/news/major-general-sathyapriya-liyanage-new-chief-staff-army>

humanity and pending a criminal investigation, he should have been vetted and screened before being appointed to any position.

The Navy

Less well known are the allegations against Sri Lanka's Chief of Defence Staff, a former navy commander. He was arrested in Sri Lanka in 2018 for allegedly hiding a suspect wanted by police in one of a handful of "emblematic cases" being monitored by OHCHR – the abduction for ransom and disappearance of 11 people in navy custody. The Chief of Defence Staff is alleged to have protected a naval intelligence officer at the heart of a black-ops special unit, hiding him in naval headquarters from the police, supplying him a bag of cash and allegedly attempting to abduct another naval officer who informed the police about this. The naval witness fled the country and the investigating police officer in the case received threats to his life. The Chief of Defence Staff had his contract renewed beyond the usual two years.⁵ While being a named suspect, the naval intelligence officer continued to receive gallantry awards from the new government. Another key suspect in the case, the war-time naval commander, was recently promoted in retirement to Admiral of the Fleet.⁶

The victims' families have been waiting a decade for justice. Their children and husbands were transported from the naval headquarters in Colombo to illegal underground cells in the heart of the country's largest and most secure naval base on the east coast – with perimeter cameras, vehicle logs, and elaborate security provisions. The presence of this secret torture site, which ran for many years, was common knowledge in the officers' mess on the Trincomalee base; the entire naval command must have known of its existence. There are also Tamil ex-combatants who remain alive who can identify their guards and torturers in the same underground site but they have been left out of the police investigation, even though their existence as "national security detainees" is referenced in court documents.

Alleged perpetrators overseeing witness protection

Impunity has been reinforced by the current government's failure to establish a credible witness protection system in Sri Lanka. The ITJP pointed out in 2017 that the national authority for witness protection contains a policeman named a decade ago by a UN Special Rapporteur on Torture as an alleged perpetrator, as well as two other individuals about whom there are concerns.⁷ Nothing was done.⁸ Instead the secretary to the oversight body, the National Police Commission, was recently himself arrested. While witnesses flee for their lives, suspects either seek anticipatory bail to prevent their arrest or reportedly flee the country after being informed of their imminent arrest.

The Police

Policemen the ITJP has been tracking in the Terrorism Investigation Division who have decades-long histories of being personally involved in systematic torture are continuing to climb the career ladder despite the regime changes. Another police officer the UN said was in charge of one of the most notorious torture sites at the end of the war actually came to Geneva in 2016 as part of the Government of Sri Lanka's delegation to the UN Committee Against Torture.⁹ He went home and instead of being investigated, he had his contract as intelligence chief extended and the Government failed to answer follow up questions from UNCAT.

⁵ http://defence.lk/new.asp?fname=CDS_term_extended_till_31st_Dec_2019_20190823_05

⁶ <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/908-top-military-ranks-to-sri-lanka-ex-commanders-illegal-and-undemocratic>

⁷ <http://www.itjpsl.com/reports/witness-protection>

⁸ <http://www.itjpsl.com/assets/press/Press-release-24-July-2017-on-Sisira-Mendis-2.pdf>

⁹ <http://www.itjpsl.com/assets/press/The-case-against-Sisira-Mendis-final.pdf>

The risks from lack of accountability

After the Easter Sunday bombings, the focus of the international community has been on enhancing engagement with Sri Lanka's security establishment. In the aftermath of the attacks thousands of troops were deployed to police the affected areas, commanded by officers with a poor track record of accountability.¹⁰ Most had either served in frontline command positions in the final phase of the war when international humanitarian law was violated on a large scale, or they had commanded Sri Lankan peacekeepers in Haiti during the years when the UN found systematic sexual exploitation of Haitian children by men in the contingents. Despite 134 peacekeepers being repatriated after a UN investigation, not one soldier was jailed in Sri Lanka for raping children.¹¹ The contingent commanders from those years in Haiti rose up the chain of command – one was later arrested in connection with the abduction and torture of a well-known journalist, who still lives in exile.¹²

This is far more serious than the Government dishing out gallantry awards, promotions and diplomatic postings to alleged war criminals – all of which continues to happen irrespective of which government is in power. Now Sri Lankan police officials, whose main mode of investigation is torture, are involved in an investigation into Islamic State influenced groups. The Police claim to have caught the culprits but past history with Tamil detainees shows suspects were routinely forced to sign false confessions and admit to things they hadn't done to make the officers look successful. The impunity for torture now poses a global security risk, as well as damaging the lives of individual victims.

The last four years of international capacity building and engagement – extensive training of the Sri Lankan police and joint operations with the Navy – have not led to a radical change of culture. Despite wishful thinking to the contrary, the Sri Lankan security forces continue to engage in abduction, torture, rape and ransom-seeking targeting Tamils, as evidenced by a recent OHCHR investigation.¹³ Vetting of well-known violators of human rights has not even been attempted – quite the reverse, they are being promoted – and that sends a very clear message of impunity.

The International Truth and Justice Project NGO(s) without consultative status, also share the views expressed in this statement.

¹⁰ http://www.itjpsl.com/assets/press/2019_may_the_men_-now_patrolling_sri_lanka_itjp__jds.pdf

¹¹ <http://www.itjpsl.com/assets/press/haiti-FINAL.pdf><http://www.itjpsl.com/assets/press/Press-Statement-haiti-f.pdf>

¹² <http://www.dailynews.lk/2018/06/14/local/153951/major-general-rtd-amal-karunasekera-further-remanded>

¹³ Paragraph 56, A/HRC/40/23. March 2019.