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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.

[01 February 2021]

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



Justice and Accountability for Atrocity Crimes in Sri Lanka

Within a week of the end of the armed ethnic conflict in Sri Lanka, a joint communiqué by the Government of Sri Lanka and the United Nations (UN) was issued at the conclusion of UN Secretary-General's visit to Sri Lanka on May 23, 2009 with the following:

“Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances”.

Upon Sri Lanka failing to take meaningful steps to address the above commitments, the UN Secretary-General appointed on June 22, 2010, a three-member panel to look into human rights and accountability issues during the final stages of the armed ethnic conflict in Sri Lanka. This report of the Panel of Experts (POE) was handed over to the Secretary-General in March 2011.

Subsequently, the Secretary-General referred the POE to the President of the UN Human Rights Council (HRC) and the UN High Commissioner for Human Rights in September 2011. Thereafter, the UNHRC adopted Resolution 19/2 “Promoting Reconciliation and Accountability in Sri Lanka” in March 2012 and since then has been seized of the matter with several resolutions in March 2013 and March 2014. Subsequently, the Government of Sri Lanka co-sponsored Resolutions 30/1 (October 2015), 34/1 (March 2017) and 40/1 (March 2019).

Leaders across the political spectrum in Sri Lanka including from both the major political parties have categorically and without exception stated that they will protect the Sri Lankan armed forces from prosecutions. It is now time for Member States to acknowledge that there is no scope for a domestic process that can genuinely deal with accountability in Sri Lanka.

The continuing and intensifying oppression against the Tamils including militarization, indefinite detention of political prisoners, land grab in the name of archaeological explorations, the denial of traditional, collective land rights like cattle grazing rights, intensifying surveillance of political and civil society activists, the denial of burial rights during COVID19 to the Muslim brethren and the denial of the right to memory underscore the urgency of addressing the deteriorating situation.

As the UNHRC meets in February and March 2021 to evaluate the Sri Lankan Government's commitments under Resolution 40/1 and plan further action, we urge that member states categorically come to this conclusion by way of a final Resolution. The Resolution must correctly declare that Sri Lanka has failed in its obligations to investigate allegations of violations committed during the armed ethnic conflict and atrocity crimes including genocide, crimes against humanity and war crimes. In such a context the Resolution must acknowledge that there is no prospect for accountability in Sri Lanka by way of its own domestic mechanisms or through hybrid mechanisms. Failure of Sri Lanka to deliver on any of the promises it made during the past ten years proves it is incapable and unwilling to honour its commitments.

In the context of the failure of the domestic and hybrid transitional justice commitments made by the Government of Sri Lanka and its statement in March that it will not cooperate with the Council on those commitments, we request that a new resolution be submitted by the Core Group in March 2021 which:

1. Implements the process of bringing accountability and justice to the victims of war crimes, crimes against humanity, and genocide in Sri Lanka by referring the case or creating an appropriate International Independent Criminal Justice mechanism, i.e., referral to the International Criminal Court (ICC) or the creation of an ad hoc International Criminal Tribunal.

2. Establishes an International Independent Investigative Mechanism to assist in the investigation and prosecution of persons responsible for the war crimes, crimes against humanity, and genocide committed in Sri Lanka under International Law. The model could either be similar to the one established for Myanmar (Independent Investigative Mechanism for Myanmar - IIMM) through the UNHRC or to the one established for the Syrian Arab Republic, namely, the International, Impartial and Independent Mechanism (IIIM). The mandate of the resolution needs to include processes.

(a) To collect, consolidate, preserve, and analyze evidence of violations of international humanitarian law and human rights violations and abuses, including evidence previously collected by the UN and relevant human rights and other organizations;

(b) To prepare files to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;

(c) To monitor and report regularly with recommendations on the past and future occurrences of violations of international humanitarian law and human rights violations and abuses in Sri Lanka.

3. Creates mechanisms to find a lasting political solution, under the arbitration of the international community, in an expeditious manner, fulfilling the long-standing legitimate aspirations of the Tamil nation in Sri Lanka, that would ensure their physical security and political authority to decide their own political, cultural, economic and social affairs, thus averting any recurrence of cycles of violence and civil strife, attaining sustainable peace and harmony, and establishing political and security stability in the region.

4. Establishes field offices of the Office of the UN High Commissioner for Human Rights in the northern and eastern provinces to monitor and report the ongoing violations.

In addition to the UNHRC process, we call on UN Member states to participate in bringing a legal suit against Sri Lanka to the International Court of Justice (ICJ), entailing Sri Lankan state responsibility for grave crimes of genocide committed against the Tamil nation.

We look forward to your continued support that delivers real justice to the victims who have been searching for their loved ones for over ten years.

International Council of Eelam Tamils, an NGO without consultative status, also shares the views expressed in this statement.