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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 Commonwealth Human Rights Initiative, 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.



Human rights violations in Sri Lanka: Need to ensure accountability for the past, assess the present, and prevent repetitions in the future

Overview

At the 46th Session of the United Nations (UN) Human Rights Council (HRC/Council) and reiterating the concerns raised in the report of the Office of the UN High Commissioner for Human Rights (OHCHR), the Commonwealth Human Rights Initiative (CHRI) would like to draw the Council's attention to the unnerving indicators of impunity for past human rights violations in Sri Lanka, erasure of the steps taken towards ensuring justice, and the mounding challenges to upholding the rule of law and meaningful international engagement.

After a prolonged period marred by conflict and grave human rights abuses, Sri Lanka appeared to be turning towards reconciliation and accountability, including by constructively engaging with the international community. In 2015, the Government of Sri Lanka co-sponsored the HRC Resolution 30/1 — adopted by consensus — as well as the subsequent resolutions, whereby it made broad commitments to establish hybrid accountability mechanism with foreign judges and lawyers to bring perpetrators to justice. Although several key commitments remained unfulfilled, Sri Lanka did make limited progress on strengthening democracy and institutional reforms.

However, recent developments have inched towards undoing this progress; after the 2019 election, President Gotabaya Rajapaksa and Prime Minister (PM) Mahindra Rajapaksa had staunchly opposed any international involvement in the national reconciliation process as well as the commitments under Resolution 30/1. Finally, on 26 February 2020, the Rajapaksa Government officially communicated its withdrawal from the co-sponsorship of the resolution as well as the follow-up resolutions. This has underlined the concerns of deepening impunity, rise of ethno-nationalist rhetoric, shrinking civic space, and other human rights abuses on the one hand and foreseeable dilution of any international oversight or investigation on the other.

Barriers to Transitional Justice and Accountability

The unilateral repudiation of their international commitments in February 2020 is only a recent overt barrier to accountability for the abuses committed during the conflict. The deep-rooted barriers are, however, linked to both the inability and the unwillingness on part of the successive Governments. Among the transitional justice mechanisms envisaged, only the Office of Missing Persons and the Office of Reparations have been established, but their future seems to be uncertain. The 'judicial mechanism with a special counsel' and the 'Commission for Truth, Justice, Reconciliation and Non-recurrence' have not been established.

There have been reports of continuous deterioration of human rights and militarisation in the former conflict zones. A rise in the ethno-nationalist rhetoric, especially in election campaigns and media, has further marginalised the minorities. Assertion of majoritarian dominance has also taken forms of construction of "victory" monuments and destruction of cultural-religious symbols, especially of Tamils. The recent widely condemned demolition of the Mullivaikal memorial in the Jaffna University campus is symbolic of this marginalisation of the Tamil ethnic identity and their 'right to memory'. Although the memorial is set to be rebuilt, it shows the unaddressed issue of ethnic reconciliation and accountability.

Some recent policies hint at wilful obstruction to accountability. In February 2020, the President announced that the 20,000 people, mostly Tamils, missing from the civil war were dead and death certificates would be issued to their kin. However, the families of the victims are thus deprived of their right to know the truth. PM Rajapaksa publicly stated that

the UNHRC resolutions amounted to “humiliation” and “injustice” towards the armed forces. During his campaign, President Rajapaksa had promised to release “war heroes” jailed on “baseless offences”. This manifested when the President pardoned a soldier sentenced to death for brutally killing eight civilians, including children, during the conflict. The Government has made it clear that it will pursue reconciliation and transitional justice on its own terms by withdrawing from Resolution 30/1 and appointing its own Commission of Inquiry in January 2021 to look into human rights and international humanitarian law violations. Further, the Presidential Commission of Inquiry to investigate “political victimisation” subvert police and judicial investigations into cases of human rights violations and has further entrenched impunity.

However, the centripetal policies of the Government, coupled with the history of failures of the previous domestic processes, raise questions over its independence and impartiality and to meaningfully establish accountability for past crimes. This is notwithstanding that the current President and Prime Minister are both accused of war crimes and human rights abuses. In light of these obstacles, the national and international civil society seek continued oversight and investigation by the international community through a renewed HRC resolution.

Some Other Human Rights Concerns

Other incidents of discrimination against Tamils, there have also been concerns over the rising Islamophobia, especially after the Easter Sunday terror attacks in 2019. Social media has been used to propagate hate speech, including demands to ban halal products and hijabs, calls to boycott Muslim-owned businesses, and incidents of organised violence. The Government’s apathy to address the issue has allegedly emboldened such discrimination.

There has been a wave of condemnation over the Government’s policy to forcibly cremate the Muslim patients who have succumbed to COVID-19 against their families’ wishes and despite calls to respect religious sensitivities. Although the World Health Organization guidelines indicated that burial of COVID-19 victims posed no danger to public health, the Sri Lankan Supreme Court dismissed the petitions against forced cremations, which essentially violates the right to die in dignity and the right to a traditional burial.

Various UN human rights experts and reports have addressed patterns of intimidation and reprisals against civil society in the country. The reports of the Assistant Secretary-General and the High Commissioner noted that non-governmental organizations (NGO) participants were questioned before and after travelling to Geneva for the 43rd session of the HRC in March 2020. Many NGOs also reported incidents of surveillance during the HRC session, though the Sri Lankan Government has denied it. In addition to harassment and reprisals, journalists, critics, artists and lawyers have also been targeted for their legitimate work contributing to the shrinking civic space. The pandemic has been used as a pretext to further curtail free expression and suppress dissent. There were reports that security agencies have allegedly threatened and intensified surveillance of the families of the victims of enforced disappearances and activists for their demand for accountability and justice.

The 20th Constitutional Amendment passed in October 2020 has expanded the powers of the President and virtually diminished the checks and balances in governance. These unrestricted powers including to make key appointments; dissolve the Parliament any time after completing a half of the five-year term; hold ministries; sack ministers; have authority over formerly independent commissions; and submit a bill rejected by the Parliament to the general population for referendum. NGOs and activists have considered this as a “blow to the rule of law”.

Recommendations

In light of the above as well as other UN and international reports in the same vein, we call on the Council to:

1. Take serious account of the grave concerns raised and the recommendations made in the High Commissioner's report of January 2021 and other stakeholders on the situation in Sri Lanka;
2. Remind the Government of Sri Lanka of its obligations towards the victims and their families as well as the international community and reconsider its position on unilaterally breaking the consensus in the Council bearing in mind the progress achieved through Resolution 30/1 and successive resolutions;
3. Reiterate and strengthen its commitment in Resolution 30/1 and establish a principled position on reconciliation and transitional justice in Sri Lanka in the form of a renewed resolution that is centred on establishing accountability for the past abuses and preventing their recurrence;
4. Meaningfully fulfil its mandate in furtherance on operative paragraphs 3 and 5f of the UN General Assembly Resolution 60/25 to prevent human rights violations before they have occurred and to identify the early warning signs and patterns of such violations in the context of Sri Lanka.
