



Dansk Sammenslutning af Tamilske Foreninger  
தென் இந்திய அமைப்புகளின் ஒன்றியம்  
Danish Federation of Tamil Associations

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**ADVOCACY NOTE ON SRI LANKA**

**1) Introduction/purpose of this document**

Sri Lanka will again be the subject of scrutiny at the UN Human Rights Council 34<sup>th</sup> Session held in Geneva from 27 February to 24 March 2017.

We seek your support in ensuring that the upcoming consideration of Sri Lanka's progress toward implementing its commitments under United Nations Human Rights Council resolution 30/1 accurately and substantively reflects the situation within the country. This includes both progress to date and the significant challenges remaining. We have below outlined some of the key issues we would like you to consider.

**2) OHCHR Investigation on Sri Lanka (OISL) 2015**

In its resolution A/HRC/25/1 adopted in March 2014 on "Promoting reconciliation, accountability and human rights in Sri Lanka", the United Nations Human Rights Council requested the UN High Commissioner for Human Rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC), and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders".

**Findings**

- OISL says the Sri Lankan security forces and paramilitary groups linked to them were implicated in the unlawful killing of civilians, conducted "in a widespread manner". Some of these could amount to war crimes, and / or crimes against humanity.
- OISL documented "long-standing patterns of arbitrary arrest and detention" by Government security forces, as well as abductions by paramilitary groups linked to them.
- OISL found there was "widespread, systematic and particularly brutal" use of torture by Government security forces at the end of the war and after the war.
- OISL said the prevalence of often extremely brutal sexual violence was one of its most shocking findings.

**The UN High Commissioner for Human Rights** when presenting the OISL report to the Human Rights Council said:

- The sheer number of allegations, their gravity and recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all point to system crimes. These he said cannot be treated as ordinary crimes, but as crimes under international law.

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- Sri Lanka's criminal justice system is not currently equipped to conduct an independent and credible investigation into allegations of this breadth and magnitude, or to hold accountable those responsible for such violations.

### 3) HRC resolution

Following the OISL report, the Human Rights Council passed the fourth resolution on Sri Lanka since 2012. The resolution called for wide-ranging reforms and a domestic accountability mechanism with international involvement. The consensus resolution was co-sponsored by the Government of Sri Lanka. After adoption of the resolution, Sri Lanka told the council that it was pleased to join as a co-sponsor "as a further manifestation of Sri Lanka's commitment to implement the provisions of the resolution, in a manner that its objectives are shared by the people and all stakeholders in the country, for their benefit."

However, in January 2016 President Sirisena announced that he would never agree to participation of foreign judges. Since then government officials, including the president and cabinet members, have been increasingly unwilling to consider significant international involvement in the justice mechanism. As noted recently by Human Rights Watch and others, this directly contravenes the call by the UN High Commissioner for Human Rights for a 'hybrid' justice mechanism given the shortcomings of domestic institutions to ensure impartial investigations and witness protection, and the Sri Lankan government's failure to take meaningful accountability measures since Sri Lanka's civil war ended in May 2009. Resolution 30/1 affirms the importance of participation in a justice mechanism of "Commonwealth and other foreign judges ... and authorized prosecutors and investigators."

### 4) Developments since 2015 against commitments made in the resolution

The overwhelming majority of the commitments made in the 2015 HRC Resolution remain mostly or wholly unimplemented. On only a handful has the government lived up to its word. None of the four key mechanisms that were pledged have yet been established. And recent reports detailing serious ongoing human rights violations, including widespread torture, suggest that Sri Lanka's culture of impunity has not been addressed. Plainly, the government still has a long way to go in bringing about a process of accountability and reconciliation that deals, meaningfully and effectively, the country's recent past. Of the 25 commitments made, the Sri Lankan government has only fully implemented three, five are partially implemented and a staggering 17 remain completely unachieved.<sup>1</sup>

<sup>1</sup> By distilling the resolution into 25 key commitments and analysing the progress to date on each Sri Lanka Campaign is monitoring progress of implementation of the HRC Resolution. See more <https://www.srilankacampaign.org/take-action/keep-the-promise/>

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## 5) Current situation in North and East

Human rights violations in the North-East continue to date in post-war Sri Lanka, including violence and harassment by members of the security forces, occupation of traditional Tamil lands acquired illegally, abduction, unlawful detention, torture and sexual violence of Tamils, and the continued detention of Tamils under the Prevention of Terrorism Act (PTA).

Based on 41 ITJP interviews of victims alleging torture and ill-treatment after January 2015, the security forces regularly visit and question Tamil activists about their political and humanitarian activities. Tamil activists in a broad sense include students, and other young people engaged in political and social activist activities, women's activists, journalists and people just are expressing political opinions through their support for the families of the disappeared, support to Tamil politicians, attendance of LTTE and war commemorative events, etc. Many former LTTE cadres are still required to regularly report to a local Sri Lanka Army camp or to the local CID office and, in several cases, failure to do so has resulted in assault, abduction, unlawful detention, ill-treatment and torture.

Former LTTE cadres are shunned from their communities due to the continuing surveillance and fear of punishment if they support other former LTTE cadres. The absence of a Disarmament, Demobilisation and Rehabilitation process following international standards has led to former LTTE cadres living in dire conditions in the North and the East. Unable to access safe, impartial and professional services many are in a desperate situation.

The military continues to occupy vast swathes of private and public land, leaving more than 40,000 Tamils still in camps for Internally Displaced Persons (IDP), nearly eight years after the end of the armed conflict.<sup>2</sup>

The military reduced its visibility – for example, dismantling parts of the network of checkpoints – but according to news sources, Sri Lanka still maintains more than 150,000 troops in the North.<sup>3</sup> The limited changes to the war time deployment of troops prompted a dramatic increase in protests demanding accountability for alleged war crimes and crimes against humanity, the release of political prisoners, answers on the fate of those who 'disappeared' in government custody, and the return of land forcibly appropriated by the military.

As independent observers have noted, the Sri Lankan government has despite its reconciliatory rhetoric not demonstrated this is spirit. The Committee against Torture recently expressed serious concern that the Sri Lankan government has failed to carry out and institutional reform of the security sector.<sup>4</sup> Indeed, the government has promoted high ranking military officers in charge of military operations at the end of the

<sup>2</sup>[http://resettlementmin.gov.lk/site/index.php?option=com\\_content&view=article&id=5&Itemid=7&lang=en](http://resettlementmin.gov.lk/site/index.php?option=com_content&view=article&id=5&Itemid=7&lang=en)

<sup>3</sup> <http://www.ceylonews.com/2016/12/sri-lanka-says-no-withdrawal-of-troops-as-it-still-risks-threats-from-ex-tigers-video/>

<sup>4</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT\\_CAT\\_COC\\_LKA\\_25983\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_COC_LKA_25983_E.pdf) Para 13

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war and under whose watch the OISL concluded there were reasonable grounds to believe war crimes and crimes against humanity had been committed. The arrogance and disregard of Tamil victims of torture, and other serious violations of international law were demonstrated during the November 2016 UN Committee against Torture session on Sri Lanka held in Geneva. The Committee was alarmed that the Sri Lankan delegation included the former Deputy Inspector General of the CID, Mr. Sisira Mendis, who is known to have overseen and been fully aware of torture being practiced in his own headquarters.<sup>5</sup>

The UN Special Rapporteur on torture, Mr. Juan Mendez, concluded in his most recent report among other things that

The issue of torture and other cruel, inhuman or degrading treatment or punishment is part of the legacy of the country's armed conflict, and one of the reasons why the citizens of Sri Lanka continue to live without minimal guarantees of protection against the power of the State, in particular its security forces.

Torture and ill-treatment, including of a sexual nature, still occur, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases for those who are perceived to be involved in terrorism or offences against national security. The police resort to forceful extraction of information or coerced confessions rather than carrying out thorough investigations using scientific methods.

## 6) Recommendations

The OISL report, released in August 2015, is the most rigorous and authoritative investigation to date on recent human rights violations in Sri Lanka. Its recommendations are wide-ranging and many of them are echoed in Resolution 30/1. There are a number of key recommendations in the report which do not feature explicitly elsewhere in the resolution. Progress on these has been disappointingly mixed. For example the OISL recommends the government of Sri Lanka to:

- "...order an end to all surveillance, harassment and reprisals against human rights defenders". There is no evidence of any such action being taken.
- "Review all cases of detainees held under the Prevention of Terrorism Act and either release them or immediately bring them to trial". This has not happened.
- "Invite OHCHR to establish a full-fledged country presence to monitor the situation of human rights". No progress has been made on this. The OHCHR office in Colombo has expanded to include several staff to advise the Secretariat for the Coordination for Reconciliation Mechanisms. However, several voices within civil society have criticised the current OHCHR presence for its perceived closeness to the government's agenda and in particular its approach to the sequencing of truth and justice mechanisms. Furthermore, it is far from a country presence with the mandate to monitor and establish field offices in the North and East.

<sup>5</sup> Ibid.

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- “Dispense with the current Presidential Commission on Missing Persons and transfer its cases to a credible and independent institution developed in consultation with families of the disappeared”. Following intense criticism, including from the Sri Lanka Campaign, the Paranagama Commission’s mandate came to an end (and was not renewed) in July 2016. Its cases are yet to be transferred to the forthcoming Office for Missing Persons.

The international community must demand from the Government of Sri Lanka that it follows OISL recommendations and live up to its HRC resolution commitments by taking immediate and effective steps to do so. There is no precedence that any government of the past in Sri Lanka has heeded any recommendations made by the UN or any other international organization.

We are calling on members of the UN Human Rights Council to pass a follow-up resolution which:

- Renews the exact terms of Resolution 30/1, with a request to the government of Sri Lanka to produce a clear timetable for implementation of the outstanding commitments
- Establish an international justice mechanism/hybrid court with participation of foreign investigators, lawyers and judges
- Establish a witness protection mechanism in compliance with international standards
- Requests the Office of the High Commissioner for Human Rights to establish a full-fledged country presence with the mandate to establish field offices in the North and in the East to monitor the implementation of the resolution
- Acknowledges the prevailing ground situation in the North and East (including persistent patterns of serious human rights violations, militarization, surveillance and intimidation) and the barrier that it poses to lasting reconciliation

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