

His Excellency the High Commissioner of Human Rights and to the participants of the 34th Sessions of the UN Human Rights Council!

Open appeal by the representatives of the people of the North and East on the current status of the transitional justice process and reconciliation mechanisms

We present our pleas before H.E. the High Commissioner of Human Rights and to the participants of the 34th Sessions of the UN Human Rights Council as the duration of the Resolution 30/1 on Sri Lanka¹ (which was co-sponsored by Sri Lanka and passed on October 1, 2015 at the 30th Human Rights Council Session) is being considered for extension.

1. Challenges in the Transitional Justice mechanisms:

1.1 Politically influenced:

The State of Sri Lanka established the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) with Cabinet approval on 18 December 2015 as per its assurances to the international community that it would implement the recommendations of Resolution 30/1.² The Secretariat comes under the direct purview of the Prime Minister's Office. However, the Secretariat functions under the guidance of the Ministry of Foreign Affairs. Therefore, it is not clear as to which parliamentary body is responsible for the SCRM.

1.2. SCRM was not formed according to the international human rights standards.

The Coordinating Secretariat was not formed according to the International Human Rights Law and International Humanitarian Law which are the pillars of transitional justice.³

¹ Promoting reconciliation, accountability and human rights in Sri Lanka, 29 September 2015, UN Human Rights Council, Geneva, A/HRC/30/L.29,

<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/220/93/PDF/G1522093.pdf?OpenElement>

² <http://www.scrm.gov.lk/about>

³ Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, 23 August 2004, U N Security Council, S/2004/616, <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>

1.3. SCRM was not formed as a law passed by the Parliament:

Further, the Coordinating Secretariat was not formed under any law that was passed by the parliament and gazetted. Therefore, this structure has no authority to function on a long term basis as it does not have any legal entity. The SCRM cannot coordinate the proposed mechanisms—Office of the Missing Persons, Truth Seeking Commission and Office of Reparations effectively nor create justice mechanisms. Based on the above factors, **the reason for stagnation in the progress of the transitional justice process is the absence of a structure that is legal and independent with the authority to carry out the proposed work free of any political interferences.** We would like to point out that appropriate measures were not taken to implement the recommendations of the OISL (*OHCHR Investigation on Sri Lanka*) report which is part of the Resolution 30/1.

1.4. The Necessity for Transitional Justice Law:

It was said separate acts will be introduced for the above four mechanisms of transitional justice and if these four Mechanisms are to be handed over to four different Ministries, it wouldn't help to promote a comprehensive transitional justice process. It will become an ad-hoc activity. This type of approach will not help to achieve the objectives of the transitional justice. Therefore, we insist the Sri-Lankan government to create "Transitional Justice Law".

1.5. The Necessity for Ministry of Human Rights and Transitional Justice:

A Ministry is necessary to implement the Transitional Justice Law and through the Parliament the Ministry should take the responsibility to be answerable to the citizens of the country. Therefore, we insist the Sri-Lankan government to establish a "Ministry of Human Rights and Transitional Justice".

2. Consultation Task Force and National Consultation

2.1 The Report of the Consultation Task Force was not accepted by the State.

Despite the various challenges, the Consultation Task Force for Reconciliation Mechanisms was able to carry out its consultations with the cooperation of the civil society and affected communities. However, the final report which included people's suggestions was neither received by the President, Prime Minister, nor any responsible person in the government. The Consultation Task Force was compelled to hand over the report to the former President Chandrika Bandaranaike Kumaratunga who has no decision making

authority in terms of policy reform.⁴ Therefore, we consider that all doors to officially implement the recommendations of the Task Force are strictly closed.

2.2 Minister of Justice disregards the report of the Consultation Task Force

Following the tabling of the final report by the Consultation Task Force, the Minister of Justice Wijedasa Rajapakse claimed that he did not have any faith in the Task Force. He further added that the need to follow the recommendations of the consultation report does not exist.⁵ This goes on to prove that the State parties have failed to extend their support to the transitional justice process and continue to ignore accountability.

2.3. Need of continuous consultations:

Many thousands in the North and East who have been affected directly by violence and various other forms of violations lack awareness of the activities of the Consultation Task Force and the transitional justice process. It is important to expose the State suppression faced by them. The transitional justice initiatives must include their voices as well. National consultation must be continued. This recommendation is also included in the final report of the Task Force.⁶

3. Office of Missing Persons (OMP) and Government's stand on the victims of enforced disappearances.

3.1. Justice and investigations does not exist and non-recurrence is not guaranteed

One of the reconciliation mechanisms—Office of Missing Persons (OMP) which was approved by the Cabinet and gazetted under the direction of the Prime Minister. Later it was passed in parliament. OMP lacked genuine consultation with affected communities, human rights activists and civil society. This is an ideal example of government's lack of transparency and noninvolvement in the national consultation. However, the OMP has not come into force as the government has failed to handover the office to a Ministry could also be deemed as reason. If it has been handed over, then the

⁴ Consultation Task Force on Reconciliation handed over final report, Lanka Business Online, 5 January 2017, <http://www.lankabusinessonline.com/consultation-task-force-on-reconciliation-handed-over-final-report/>

⁵ I Have No Confidence in the CTF, 6 January 2017, Daily Mirror, <http://www.dailymirror.lk/article/i-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html>

⁶ Final Report of the Consultation Task force on Reconciliation Mechanisms, Executive Summary and Recommendations, 17 November 2016, P-85 <http://www.scrm.gov.lk/documents-reports>

Minister of the certain Ministry is responsible to inform officially the implementation of the Office through a gazette notification.

The OMP does not consist of a judicial mechanism and it lacks authority to carry out investigations. Right to Information Act will not be applicable when it comes to OMP and therefore, the reason for the formation of such a weak office is to ensure protection of the security forces. This has been clearly stated in the FAQs on OMP of the SCRM official website.⁷ The civil society and the affected communities are left in the dark not knowing what action the government would take, since the government had failed to take any action even after establishing OMP.

The government became a signatory on December 10, 2015 to the International Convention for the Protection of All Persons from Enforced Disappearances and ratified the Convention on May 25, 2016. The Convention was proposed as a draft legislation by the government and the Bill was gazetted on February 9, 2017.⁸ However, it is yet to be made a law by the parliament.

3.2. Lack of witness protection

So far, the government has not provided any official information regarding the status of the missing to their family members. Witness Victim Protection Act has been passed and a national authority has been established in this regard.⁹ Nevertheless, surveillance, inquiry and intimidation directed at the families of the disappeared is continuing to this day.

Therefore, we see the only way to ensure justice, information, reparation for the families of the disappeared is to implement the recommendations¹⁰ of the report of the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID) which was released at the end of their visit to Sri Lanka.

⁷ OMP: the Facts, <http://www.scrm.gov.lk/faq-omp>

⁸ International Convention for the Protection of All Persons from Enforced Disappearances, The Gazette of the Democratic Socialist Republic of Sri-Lanka, 9 February 2017, Department of Government Printing, Sri Lanka, http://documents.gov.lk/files/bill/2017/2/01-2017_E.pdf

⁹ National Authority for Victim and Witness Protection: The Public's Right to Safety, Kaviratne, I.Y., 6 November 2016, <http://www.sundayobserver.lk/2016/11/06/depth/national-authority-victim-and-witness-protection-public%E2%80%99s-right-safety>

¹⁰ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 8 July 2016, Human Rights Council, A/HRC/33/51/Add.2, <http://reliefweb.int/sites/reliefweb.int/files/resources/G1614663.pdf>

4. Prevention of Terrorism Act

Prevention of Terrorism Act (PTA) includes Arbitrary and illegal arrest and detention, lengthy detention without trial, and torture. Basically it violates the International Convention on Civil and Political Rights (ICCPR). To this day there have been arrests, detention and inquiry under the PTA. Human rights activists and affected communities in the North and East have been calling for the repeal of the Act. Sri Lanka Human Rights Commission too has laid down general directives in this regard.¹¹ However, the Government is taking steps to repeal PTA and replace it with the Counter Terrorism Act (CTA).¹² Therefore, it is important to note that the PTA must be reviewed and reformed according to international human rights standards. The need for new law does not exist.

5. Political prisoners

Although many assurances were given to release political prisoners who have been languishing in prisons for a lengthy period of time, the government had showed very little concern regarding their release and wellbeing. Presently, there 191 political detainees detained under the PTA; they include 121 (02 women) political prisoners in detention and nearly 70 detainees released on strict bail conditions (their trials are continuing).¹³ Considering the Press Communique released by the Sri Lanka Human Rights Commission highlighting to the Attorney General of the ill effects of long term detention and the human rights violations¹⁴ as well as the international human rights law, measures must be taken to urge the Sri Lankan government to release the remaining political detainees.

6. Gender based violence and sexual crimes

There has been a significant increase in violence against women and children in war affected areas in the North and East. School children, especially female children are unable to return home safely without facing various forms of sexual harassments. According to the Police Report released in 2015, a total of 135 female children under the age of 16 were sexually abused

¹¹ Directives issued by the Human Rights Commission of Sri-Lanka on arrests and detention under the Prevention of Terrorism (Temporary Provision) Act No 48 of 1979, Human Rights Commission of Sri-Lanka, 18 May 2016, Colombo, <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>

¹² New counter-terror law triggers old fears in Sri Lanka: The Hindu, 27 October 2016, Daily News, <http://dailynews.lk/2016/10/27/local/97288>

¹³ Center for Human Rights and Development, Colombo

¹⁴ Press Communique, Human Rights Commission of Sri-Lanka, 27 November 2015, HRC Release of prisoners <http://hrctl.lk/english/wp-content/uploads/2015/11/HRCSL-Press-release-on-27-November-2015.pdf>

in the North and East.¹⁵ Incidents of women being attacked and murdered are increasing. An expecting young mother of seven months was raped and murdered in the Jaffna district at beginning of this year.¹⁶ Reasons for such increase in sexual crimes is the absence of law and order, failure by the police to take action to produce the perpetrator before the court and lack of protection for victims and witnesses. In addition, unavailability of State sponsored safe houses for women in the in the North and East and lack of documentation and data on incidents of gender based violence and sexual crimes in order to raise wider awareness are also contributing factors for such increase. Although Sri Lanka has ratified CEDAW, no action has been taken to propose a draft legislation in line with its international obligations. Therefore, the State must draft a legislation comprising CEDAW General Recommendation 19 and Resolution 1325 in order to eliminate violence against women.

7. Development bill to reduce powers of the provincial councils

The development bill which has been gazetted by the Sri Lankan government to ensure rapid economic development will limit the economic and development activities of the provincial council.¹⁷ Section 12 of the Bill states that the relevant Minister holds the authority to obtain a preferred land through the Chief Minister of the Provincial Council for the purpose of tourism, high-tech agricultural activities and fisheries. Accordingly development activities of the province which is under the control of the provincial council will be transferred to development agencies and thus come into the power of the central government. Therefore, this Bill is a stumbling block to devolution of power in terms of politics and development to the provinces. Basically this Bill is disadvantageous in terms of the aspirations of the minorities in the North and East who have been calling for political, economic and administrative independence since inception.

8. Resettlement is not carried out fully in the North and East and Military occupation

Resettlement has not taken place fully in military occupied areas. Areas such as Keppapilavu, Mullikulam is fully occupied by the military and the people of the said areas have been resettled in so called development villages in forest areas. Movements of security forces and intelligence

¹⁵ Distribution of Grave Crime Abstract for the Year (2015) by police Division, Sri-Lanka Police, http://www.police.lk/images/others/crime_trends/2015/distribution_of_grave_crime_abstract_for_the_year_2015.pdf (the total was calculated by the reporters)

¹⁶ Pregnant woman found dead in Kayts, Times Online, 24 January 2017, <http://www.sundaytimes.lk/article/1015698/pregnant-woman-found-dead-in-kayts>

¹⁷ Development (Special Provisions) Bill, The Gazette of the Democratic Socialist Republic of Sri-Lanka, 25 November 2016, Department of Government Printing, http://documents.gov.lk/files/bill/2016/11/141-2016_E.pdf

have increased in the said areas. Similarly, the people who were resettled in areas like Valavai and Mavittapuram of the Vallikamam North are living amidst military camps. Nearly 100 families who were living in temporary shelters in Jaffna were resettled in a different area called Nallinakapuram (Reconciliation Village) created by the military. There's heavy military presence in the area.¹⁸ A total of 4835 persons of 1224 families are living in temporary camps in the Jaffna district. A further total of 28,492 persons of 7123 families are living with friends and relatives. The Navy refused permission for 184 families of Iranatheevu Island in Kilinochchi to resettle in their land. Apart from the above there are hundreds of acres of private and public land which is under the control of the military. The military has taken over 39 acres of private land belonging to 23 persons in Neduntheevu. Further, in the same area they have taken over 05 acres of land belonging to government departments and public and also occupied 20 building belonging to government organizations and public. There are 12 fresh water wells in the Sarapiddu area and the Navy alone is utilizing these wells. 72,000 liters of water is being used for their consumption as they draw water 6 times per day in a bowser that holds 12,000 liters.

The residential and agricultural lands must be returned to their rightful owners without any further delay and compensation must be paid to the people who have suffered long. Security forces utilizing water resources that belong to the public too must be stopped immediately.

9. Militarization

Military presence can be seen and felt in the people's daily lives in the North and East. The military interference in economic activities, educational activities, cultural events, family events has become a common occurrence.¹⁹ The military runs a total of 22 business centres in the Mannar district. The State contracts for infrastructure work in the North and East are being taken by the forces and they involved such construction work. As a result local construction workers, contractors and the local governments too are affected. A total of 588 preschool teachers are receiving their salaries from the Civil Security Forces under the Military. Militarization not only affects daily lives of the people but also it's a hindrance to their independence. Therefore, we emphasize the importance of demilitarization.

10. Military utilizes UN Peace Building Fund

A portion of UN Peace Building Fund has been granted to Sri-Lankan government for the resettlement of IDPs in lands released by the Government from former High Security Zones. The

¹⁸ Civil Military Coordination Jaffna, http://www.cimicjaffna.com/Cimicnews_2017_03_12.php

¹⁹ Civil Military Coordination Jaffna, <http://www.cimicjaffna.com/cimicnewsmenuMain.php>

Ministry of Resettlement is responsible for this.²⁰ But military is responsible to construct the houses for the IDPs of Valikamam North.²¹ Nallinakkapuram model village houses were constructed by the military and photographs of the military have been hung in all those houses.

11. Threats and intimidation to human rights defenders

The military and State intelligence officers continue monitor and carry out inquiries of human rights activists and representatives of civil society organizations in the North and East. They force the people to provide information regarding their activities. They have also formed informants amongst the public in order to obtain information on activities carried out by civil society activists. Military surveillance behind women human rights defenders working at civil society organizations and inquiry regarding their work is also taking place. Journalists are threatened and forced provide information. Such activities are violations against human rights.

12. Discrimination in justice mechanisms

Justice is imperative for reconciliation. However, the Sri Lanka judiciary acts in a biased manner. In the past, perpetrators went scot free and victims of war crimes and extra judicial killings were denied justice due to our justice system. Kumarapuram massacre²² and the killing of parliamentary member Raviraj²³ went on to prove that although there were credible witnesses, the perpetrators went scot free due to jury trials. The victims of human rights violations continue call for international investigations into war crimes due to the fact that the Sri Lankan justice system has time and again failed them.

Based on the present position of the government and the past political experience, people of the North and East have lost faith in the government and strongly emphasize the need for international intervention and support. This is well evident in the report of the Consultation Task Force.²⁴ Accordingly we present the following demands to ensure coordination in the transitional justice process and sustainable reconciliation:

²⁰ Immediate Response Facility, United Nations Sri Lanka, <http://lk.one.un.org/our-work/peacebuilding/immediate-response-facility/>

²¹ Civil Military Coordination Jaffna, http://www.cimicjaffna.com/Cimicnews_2017_03_12.php

²² Kumarapuram Survivors called to Stop Impunity, 1 August 2016, Ground Views, <https://www.facebook.com/notes/groundviews/kumarapuram-survivors-call-to-stop-impunity/10157204280430641/>

²³ Raviraj Murder: All accused released, Lakmal Sooriyagoda, 24 December 2016, Daily News, <http://dailynews.lk/2016/12/26/law-order/102914>

²⁴ Final Report of the Consultation Task Force on Reconciliation Mechanisms, <http://www.scrm.gov.lk/documents-reports>

1. A Memorandum of Understanding must be signed with the Sri Lankan government in order that the UN may become joint partners in the transitional justice process.
2. We demand for a justice mechanism with international judges
3. We insist the Sri-Lankan government to create “Transitional Justice Law”
4. We insist the Sri-Lankan government to establish a “Ministry of Human Rights and Transitional Justice”
5. The recommendations of the UN Working Group on Enforced and Involuntary Disappearances must be documented in order that the Sri Lankan government may fully implement the recommendations.
6. The Directives of the Sri Lanka Human Rights Commission on the release of political detainees and review and reforming the Prevention of Terrorism Act must be taken into consideration while implementing according international standards.
7. Inquires against human rights defenders and civil society activists must be stopped immediately.
8. Private and public land which are under the control of the military must be released and returned to the people and militarization must be stopped.
9. Resolution 30/1 and recommendations of the OISL report must be implemented without any further delay.
10. The government of Sri Lanka must draft a legislation comprising CEDAW General Recommendation 19 and Resolution 1325 which stress on the elimination of violence against women.

North East Coordinating Committee

Sri Lanka

16 March 2017

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