

We call upon His Excellency High Commissioner of Human Rights and the Representatives of the Member States of the Human Rights Council, 32nd Session, June, 2016

OBLIGATIONS OF THE GOVERNMENT OF SRI LANKA AND THE UNITED NATIONS IN SRI LANKA'S TRANSITIONAL JUSTICE PROCESS.

1. Sri Lanka Government commitment to consultation:

A) 16th paragraph of the Resolution (A/HRC/30/L.29) adopted at the 30th Human Rights Council Session and the 30th paragraph of the OISL Report stresses the important need for a 'National Consultation'. Accordingly, on October 29, 2015 a preliminary discussion on 'National Consultation for Transitional Justice' presided by the Minister of Foreign Affairs was organized for the civil society. The participants pointed out to the Minister that militarization and military surveillance does not encourage the people to organize/participate in meetings and express their views freely and they felt it was one of the main challenges in holding a national consultation.

B) Thereafter, the government formed an eleven member Task Force for National Consultation where Ms. Manouri Muttetuwegama was appointed Chairperson and Dr. Pakiyasothy Saravanamuttu was appointed Secretary.

C) Without holding a consultation to receive comments and suggestions from the affected communities, the government went ahead and proposed 04 structures as part of the reconciliation mechanism:

- Office of Missing Persons,
- Truth, Justice, Reconciliation and Non-Recurrence Commission
- Judicial Mechanism with a Special Counsel
- Office of Reparations

D) A discussion took place at the Ministry of Foreign Affairs on May 16, 2016 between the members of the taskforce and the civil society representatives. When questions were raised concerning the legal framework indicated in the pamphlet put out by the government on the Office of Missing Persons, the task force members responded by stating that the government takes decisions prior to informing the task force.

Importantly the task force members were not informed of outlining the legal framework for the above 04 structures.

E) Before the people or the civil society were informed of the above 04 structures and prior to the national consultation the government received approval from the cabinet of ministers to establish the Missing Persons office on May 19, 2016. Upon the instructions of the Prime Minister, the draft bill of the Office of Missing Persons was published by the Government Press and was gazetted on May 27, 2016. Concerns and petitions of the people were not included in the Bill and the people are not aware of the mechanism. This is a contradictory approach in working towards reconciliation.

F) The government has not taken any measures that indicate they are working towards reconciliation nor have they taken any effort to implement the transitional justice process.

G) Seven years have passed since the war ended. However, we are yet see any slight changes in militarization nor Sinhala Buddhist expansions.

2. Sri Lanka Government Commitment to military noninterference in civilian activities

A) In Operative paragraph 10 of the Resolution 30/1 the Sri Lanka government has committed to end military interference in civilian activities. Unfortunately little has been done in this regard and military interference in civil and economic activities continue unabated to date.

- For example: A total of 340 civilians are employed in preschools run by military civil administration in the Kilinochchi district. Each of them are paid 32,000 Sri Lankan Rupees per month by the military civil administration. At the same time, a total of 185 civilians are employed in preschools run by the civilian government education department. They are paid 4000 Sri Lankan Rupees per month. The military employees are paid 8 times more than civilian government employees. Similarly, there are 10 farms run by the military in the Kilinochchi district. A total of 1300 people are employed (majority of them are ex-combatants). They are involved in various jobs. Average monthly salary of each employee is 33,000 Sri Lankan Rupees. Every week the employees of the military run preschools and farms are expected to attend meetings held at specific army camps.

- There are 17 economic centres run by the army and navy in the Mannar district (see annexure 2)
- B) Ex-cadres continue to face intimidation like rearrests, monitoring and surveillance. When they visit other districts, they are called for inquiries upon their return. Their bank accounts are being monitored. It is important to note that intelligence officers often visit the homes of former female cadres and demand payment.
- C) Activities of civil society at village level are being monitored by intelligence officers and the military. These officers force NGOs to provide information of their employees, projects and donors. Interference of military personnel or intelligence officers during meetings and discussions is a common occurrence.

All activities of the Sri Lankan government contradicts the Resolution adopted at the 30th Human Rights Council Session and the recommendations of the Report of the OHCHR Investigation on Sri Lanka. Therefore, any move by the government in terms of reconciliation and transitional justice is deemed as less effective in finding solutions to the fundamental problems faced by the Tamil people in Sri Lanka.

3) People's needs:

As the government of Sri Lanka has been unwilling to consult the people on their needs, the North East Coordinating Committee (NECC) conducted discussions in eight districts of the North and East. A total of 14 discussions were conducted. While discussions were held separately with family members of the disappeared, war affected women, IDPs living in welfare centers after losing their lands and fisher folks of the Northern province; there were also discussions targeting civil society representatives. The participants at these discussions comprised victims directly affected by the war and Prevention of Terrorism Act (PTA), representatives of Women's Rural Development Societies (WRDS), Rural Development Societies (RDS), farmers' associations, youth clubs, NGOs and university students. A total of 479 people participated in the discussions including 309 women.

There was huge distrust in initiatives carried out by the Sri Lankan government. The people consulted, felt that in order for the problems faced by the Tamil people to be resolved and there to true reconciliation a) the right to self-determination must be recognized; b) there must be power sharing amongst the Tamil people in the North and East c) there needs to be investigations and prosecutions on war crimes based on planned

genocide; d) the government of Sri Lanka needs to transparently investigate and reveal the whereabouts of the disappeared as well reveal who is responsible for the disappearance. The women stressed that there should be no pardon for crimes such as sexual abuse and torture committed during the war period.

3. Obligation of the UN:

As the people consulted did not trust the government initiatives they wanted the UN to be more involved. Below is some of the concerns and ideas of the what the people consulted by the NECC wanted from the UN.

Comparing with the above petition by the people, UN's stand on Sri Lankan Tamils is defined within the framework of war crimes investigations. This will be an obstacle for the UN to fully implement universal human rights principles on behalf of the people of its member countries but also for UN itself to promote human rights law.

Therefore:

a) UN must be directly involved in Sri Lanka's transitional justice process in order to find a sustainable solution to the fundamental problems faced by the minority Tamil community in Sri Lanka.

b) At present, the Sri Lankan government is not being transparent, as a result it is unable to independently take forward the transitional justice process. In the current context, Sri Lanka cannot lay the foundation for reconciliation and a political solution. Although the present government may seem to be initiating many activities towards transitional justice, if the UN and other likeminded countries fail to play a direct and extensive role in the process, genuine progress cannot be guaranteed.

On the other hand, there are no representatives with equal political power to speak and bargain with the present government or any other future governments on behalf of the Tamil speaking communities. The provincial council too does not enjoy equal power and therefore, the Northern provincial council is functioning as a shell and is unable to represent its people. Although Tamil National Alliance (TNA) functions as the Opposition in the Parliament, they do not have any powers to make necessary changes on behalf the Tamil people. Fundamentally, the Tamil people of the North and East are left without any strong representatives who could guarantee their rights. Therefore, there is no party that could raise concerns strongly on behalf of the Tamil people in the transitional justice process. Considering these drawbacks, we call on the UN to come forward and participate in the transitional justice process representing the concerns of the Tamil people. Therefore, UN must

insist upon the Sri Lankan government to agree on a memorandum of understanding in order to effectively implement the transitional justice process.

c) This must be seen as a 'UN and Sri Lanka joint mechanism for Sri Lanka's transitional justice process.' The structures must be headed by legal and political experts appointed by the UN, to which Sri Lankan experts too will be included. This agreement must be legally binding.

Such mechanisms alone can ensure a meaningful transitional justice process, which would bring about reconciliation, lasting peace and a political solution acceptable to the Tamil communities.

d) The UN Secretary General must also take responsibility in ensuring effective measures of implementation of mechanisms, since the Secretary General will be approving 10 to 15 million US dollars under the UN Peace fund, which is provided for reconciliation activities in Sri Lanka. The funds must be approved on the basis that UN is made a partner in order to ensure effective implementation of the transitional justice process which will pave the way for lasting peace in Sri Lanka.

e) The following structures must comprise UN-Sri Lanka joint mechanisms. All structures must be headed by international experts and include Sri Lankan experts:

1. Committee promoting political rights of Tamils in the North and East and finding solutions for power sharing issues.
2. Hybrid Tribunal for war crimes inquiries
3. Special office for the disappeared persons under the Prevention of Terrorism Act.
4. Monitoring office ensuring North and East returns to normalcy:
 - Resettlement and guarantee of land
 - Security of the people
 - Demilitarization and ending activities of paramilitary groups
 - Efficient police and civil administration
 - Preventing land expansion and land acquisition for Sinhalaization and Buddhization

5. Office to rebuild the economy of the North and East:

- Canceling debts/loans received by war affected poor families (from State, non-State and private institutions that provide loans/credit facilities) and release them from debts.
- End exploitation of natural resources in the North and East by both local and international forces.
- Majority of the inhabitants of North and East live in villages. Therefore intensive urbanization projects and urbanized development and economical activities will further affect the lives of these people. Therefore, considering the climate justice, it is important to develop the village economic structure in order to lay the foundation for sustainable economic development.

North East Coordinating Committee (NECC) , Sri Lanka
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