

To the attention of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of non-recurrence Mr. Pablo de Greiff !

UN's Participation is Necessary in the Implementation of Transitional Justice Mechanisms in Sri-Lanka

We North East Coordination Committee (NECC) bring the current situation of the transitional justice initiatives of Sri-Lanka to your attention¹.

The Government of Sri-Lanka has only fulfilled the national consultation according to the Resolution 30/1² which was co-sponsored by the government on 1st October 2015. Even though two years have passed since the Resolution 30/1 was adopted and even after the Resolution 34/1³ has been adopted in March 2017, the proposed transitional justice institutions such as Office of the Missing Persons, justice mechanism, office for reparation and mechanisms that guarantees of non-recurrence have not yet come in to effect. Basically, there is no evidence that the government has policy plans to implement these mechanisms comprehensively. The government is engaging in ad-hoc activities to satisfy the international community.

When the transitional justice mechanisms are implemented in a comprehensive manner and to strengthen the functions of each other, then that institutions could ensure the rights of the people on long term basis and it would lead to reconciliation. Therefore, we hereby place our policy stance which covers the immediate actions need to be taken:

1. To promote transitional justice process in a comprehensive manner, Sri-Lankan government to establish a “Ministry of Transitional Justice”:

Ministry of Transitional Justice is a necessity for the comprehensive and independent function of the following structures, Office of the Missing Persons, justice mechanism, truth commission, Office for Reparations and Mechanisms that guarantees of non-recurrence. Further such Ministry is important to implement the financial and

¹ A coalition of 12 grass root human rights organizations and women's organizations that function in the Northern and Eastern provinces of Sri Lanka

² Promoting reconciliation, accountability and human rights in Sri Lanka, UNHRC Resolution 30/1, 1 October 2015, Human Rights Council, http://www.mfa.gov.lk/images/stories/pdfs/docs/FINAL_published_-_thirty_slash_one.pdf

³ Promoting reconciliation, accountability and human rights in Sri Lanka, UNHRC Resolution 30/4, 23 March 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/082/56/PDF/G1708256.pdf?OpenElement>

administrative affairs of these structures, to maintain coordination between the transitional justice mechanisms and the other governmental administrative bodies, to receive continuous international assistance and advices for its better function. Therefore, Transitional Justice Law need to be enacted to establish such a Ministry. By this, a legal foundation would be given to promote transitional justice mechanisms and any government that comes to power in future will be legally bound to continue the transitional justice process. It is also necessary to get the scholarly advices and assistance from the OHCHR and from relevant Special Rapporteurs to create the law.

2. Justice for enforced disappeared persons and their families:

Enforced disappearances is a burning issue in North and East areas of the country. The families of disappeared persons engage in continuous protests to find out the truth about their disappeared beloved ones. Especially the old mothers engage in protests for more than 07 months, who are sitting under the hot sun and heavy rain for day and night, neglecting their physical health conditions and demanding from the government to give their beloved ones back. But the government maintains silence. The government has the obligation to become an ally in the process of finding the truth about the status of the disappeared persons.

Enforced disappearances should be criminalized in Sri-Lanka. This law should be enacted in accordance with the Observations of the Human Rights Commission of Sri Lanka on the International Convention for the Protection of All Persons from Enforced Disappearance Bill August 2017 ⁴. The demands enshrined in the open appeal to the Un Secretary General which was made by the NECC along with the families of disappeared persons on the International Day of Enforced Disappearances 30th August 2017 also need to be considered⁵.

3. Guarantees of non-recurrences:

The political issue of Sri-Lanka has been formatted on the ground of the explicit oppressions and violence of Sinhala Buddhist majoritarianism against the minority communities - North East Tamils, Malayaha Tamils and the Muslims - politically,

⁴ Observations of the Human Rights Commission of Sri Lanka on the International Convention for the Protection of All Persons from Enforced Disappearance Bill August 2017, 28 September 2017, <http://hrcls.lk/english/wp-content/uploads/2017/10/Letter-to-President-Protection-from-Enforced-Disapp-Bill-English.pdf>

⁵ Open Letter to UNSG Antonio Guterres from War Affected North and East of Sri Lanka, 30 August 2017, <http://srilankabrief.org/2017/08/open-letter-to-unsg-antonio-guterres-from-war-affected-north-east-of-sri-lanka/>

economically and culturally for over a century and by the oppressive state laws and administrative systems. As an extension of these oppressions lead to the denial of the political demands of the Tamils of North and East and the war declared against them. Even though eight years have been passed since the war came to an end in 2009, still the ethnic discriminations, oppressions and violence against minorities are continuing. In Sri-Lankan context, eliminating ethnic discrimination, ensuring language rights and political resolution are primary aspects in guarantees of non-recurrences. Further, reforming and vetting the government administrative structures, police, military and punishing the persons who are responsible for violations are necessary to ensure non-recurrences but such initiatives have not taken place so far. These are the primary causes of the continuation of violations:

- In the political ground, the activities of the Sinhala Buddhist majoritarian elements against the minority communities are increasing. This has created fear and loss the trust on the good governance government among the minorities. Therefore, immediate actions must be taken to eliminate the activities of such Sinhala Buddhist majoritarian elements and to create an environment where the minorities could live with dignity and with equal status.
- Even though the Constitution has ensured that the Tamil language shall be the administrative language in Northern and Eastern provinces but, in reality the language policy is not implemented accordingly. Especially, in the Eastern province, the government administrative bodies are dealing with the Tamils speaking people in Sinhala language. Similar situation is experienced in the Central areas where the Malayaha Tamil people densely live. Therefore, Tamil speaking government officers should be appointed in areas where Tamil people densely live to ensure the usage of Tamil language in government administration.
- End Militarization in North and East

The militarization that exists in North and East areas is continuously enforcing the Sinhala Buddhist majoritarianism over the minorities. The presence of military in these areas has placed the lives of individuals and the community to always being in fear and tension. It has abolished the independent and free day to day life of the people.

The militarization is a key reason for the militarized land encroachment, the economic activities of the military, the territorial violations (exploitation of land

and sea resources) of Southern Sinhalese in Tamil areas, the expansion of Buddhist places and ethnic based intimidations. The power of the military in these areas is a cause for the violations and violent activities of the police, the disorder of rule of law and the threats against the judiciary. Further, militarization is the base for the functions of the intelligence who engage in the day to day social life of the civilians and have kept them under continuous surveillance. Specifically, the marginalized groups of the society (women and war affected people) are subjected to more violations by the militarization.

Therefore, the government must take measures to end militarization. Reformation and vetting are important in ending militarization:

- a) Immediate actions must be taken to terminate the military officers who are responsible for serious human rights violations and other military personnel who have engaged in these actions from their positions and to investigate them
- b) The Sri-Lankan military has been consisted with young men. Even though there is no war, the expenses for military is high and these men excessively stay in camps. Therefore, reducing the size of military by 70% and using these young men's capacities for positive development of the country

By this it could be possible to end militarization in North and East and also to improve discipline in the military

- Political prisoners

To promote the reconciliation the government should release the political prisoners who have been imprisoned for a long period. It also important to consider the Sri-Lanka Human Rights Commission's Press Communiqué⁶ highlighting to the Attorney General of the ill effects of long term detention, the human rights violations and instruct the Sri-Lankan government to release the political prisoners.

⁶ Press Communiqué, Human Rights Commission of Sri-Lanka, 27 November 2015, HRC Release of prisoners <http://hrcls.lk/english/wp-content/uploads/2015/11/HRCSL-Press-release-on-27-November-2015.pdf>

- Political resolution for the long period of political issue of the Tamil people

As Tamil people of North and East has demanded for a political solution with federal system by democratic means since 1950s, a political solution must be ensured to them with a federal system. As whatever political solutions are proposed in Sri-Lanka are decided by the political and ideological stances of the majority Sinhala community, there are questions that Tamil people would gain political resolution by a “referendum”. Therefore, it is important to learn the lessons and new methods of other countries to ensure the political resolution of Tamils.

4. The necessity of UN’s direct participation in the transitional justice initiatives of Sri-Lanka

Since 2010 UN has given more attention towards Sri-Lanka and since 2012 several resolutions were passed on Sri-Lanka. Resolution 30/1, the recommendation of the OISL report and the recommendations of the WGIED report are important among those. Even though an extension was given in March 2017 to Sri-Lanka to full fill its duties according to Resolution 30/1, the government does not give proper attention towards it. Further, as Sri-Lankan issue is going to be removed in the agenda of the Council from 2019, a situation would raise that the Sri-Lankan government to completely give up its international human rights and humanitarian obligations towards the Tamil people.

Therefore, to properly implement the transitional justice mechanisms, UN’s direct participation is necessary beyond to its expertise advices and monitoring. Because, there is no any assurances that the minority Tamil people who have been oppressed by the Sinhala Buddhist majoritarianism would get justice by the same state apparatus. Therefore, UN must sign a memorandum of understanding with Sri-Lanka.

5. Dual justice mechanisms – international investigation and hybrid mechanism - to investigate the crimes against the international human rights and humanitarian rights:

- The direct intervention of the International Criminal Court is necessary to investigate the individuals who are most responsible for war crimes. UN must play its role on this regard. In Sri-Lankan context, as the governments want to protect their political interests, no government would investigate the individuals who are most responsible for war crimes. This is the continuing experience of Sri-Lanka.

Therefore, individuals who are responsible for war crimes must face international investigation and to end “impunity for war crimes”.

- The Sri-Lankan government must pass a law to establish a hybrid justice mechanism with international judges, lawyers and prosecutors as per its commitments to the Resolution 30/1 and to investigate all who have committed and involved in war crimes. The executing authority of the law must be given to the Ministry of Transitional Justice.

6. Ensure the security and safety of the human rights defenders and the civil society activists:

The human rights defenders and the civil society activists are the first people who have taken the message of the transitional justice to the communities. They created awareness among the affected people about their rights and made the affected people to participate in the national consultation and continuously assisting them. But, the HRDs and civil society workers continuously undergo surveillance, monitoring, trawling, investigations and intimidations by men attached to the government intelligence section. Where ever workshop or a social event takes place the intelligence presence there and question. The activities of the intelligence are a biggest barrier to the HRD and civil society workers. Until to date the intelligence attached to the military, police and to the Ministry of Defense are harassing the civil society workers in various ways. Specially, intelligence men continually make telephone calls to women human rights defenders and visit their homes and question them. Therefore, the government must immediately stop the actions of intelligence against human rights defenders and civil society workers.

North East Coordinating Committee

Sri-Lanka

10 October 2017