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Sri Lanka: implement Task Force recommendations to deliver justice for victims of human rights abuse – ICJ

Bangkok, Thailand – The Sri Lankan government must deliver on the clear demand for justice from Sri Lankans nationwide by implementing the Consultation Task Force recommendations without further delay, particularly the calls for a special court with international judges and a bar against amnesties for crimes under international law, the International Commission of Jurists (ICJ) said today.

The Consultation Task Force on Reconciliation Mechanisms (CTF), a panel of 11 independent eminent persons appointed by Prime Minister Ranil Wickremesinghe in January 2016, publicly released its final report on 3 January 2017.

The report, reflecting the views of people across the country gathered through island-wide public consultations on transitional justice, highlights the lack of public confidence in the justice system's capacity and will to deliver justice for victims of Sri Lanka's nearly 30-year armed conflict that ended in 2009.

"The CTF report highlights a widespread lack of trust among Sri Lankans across the country, regardless of region, ethnicity, religion or language, in the ability of the criminal justice system in its current form to address serious human rights abuses stemming from the conflict," said Nikhil Narayan, the ICJ's South Asia senior legal adviser.

The report also calls upon the Government of Sri Lanka to take necessary steps to ensure a credible transitional justice process in line with the October 2015 UN Human Rights Council resolution 30/1 that it co-sponsored.

"If the Sri Lankan government wants to restore public confidence in the system, it must seriously consider victims' voices and implement the CTF recommendations on truth, justice and reparation consistent with the commitments it voluntarily undertook at the Human Rights Council," Narayan added.

Importantly, the CTF report reiterates the commitments pledged in HRC resolution 30/1, calling for active international participation in a special judicial mechanism established to deal with accountability for human rights abuses committed during the conflict by both sides, and for a bar against amnesties for international crimes.

According to the ICJ, the Sri Lankan government took an important first step towards reconciliation when it adopted the UN resolution and later established the CTF to carry out public consultations to hear a cross section of voices on transitional justice.

"Unfortunately, since then, it has been disappointing in its lack of urgency in implementing much of those stated promises and in its apparent disregard for the CTF recommendations," Narayan said.

Several members of the government have dismissed the CTF's recommendations, especially with regard to the inclusion of at least one international judge on every bench of the special judicial mechanism.

The Minister of Foreign Affairs recently spoke of the need for “an independent and credible domestic mechanism” without alluding to any international participation, as has been reiterated by those seeking redress as a crucial element to ensure faith in the justice mechanism.

The ICJ has in the past highlighted Sri Lanka’s culture of impunity in the justice system looking at a number of emblematic cases, and called into question the State’s capacity and political will to use the criminal justice system and other ad-hoc measures to deliver justice and accountability to victims and survivors of serious human rights abuses.

“As the situation of Sri Lanka comes before the UN Human Rights Council again this March, the Sri Lankan government is in a position to demonstrate both to the UN Member States but more importantly to its own people at home its seriousness in pursuing truth, justice, reparation and non-recurrence for conflict victims who have been waiting for justice for decades. It must seize this opportunity before it is one more of many missed opportunities,” Narayan added.

Contact:

Nikhil Narayan, ICJ South Asia senior legal adviser, t: +91-8939325204 (Chennai); +94-758898067 (Sri Lanka); +1-562-261-3770 (Whatsapp) ; e: nikhil.narayan@icj.org

Background:

Sri Lanka’s nearly 30-year armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009, was marked by widespread practices of unlawful killings, torture and other ill-treatment, enforced disappearances, rape and sexual violence, among other serious human rights abuses and violations of international humanitarian law committed by both sides to the conflict. Some of these practices continued by government security forces after the end of the conflict. Although exact figures are difficult to ascertain, various reports by independent organizations have put the number of such cases in the thousands.

The UN HRC Resolution 30/1, co-sponsored by the Sri Lankan government, provides for Sri Lanka to undertake several measures towards establishing a credible transitional justice process. These include the establishment of four principal authorities: an office of missing persons; a reparations office; a truth-seeking commission, and a special justice mechanism (special court) consisting of both Sri Lankan and foreign judges, prosecutors, lawyers and staff. The resolution also calls for the repeal of the draconian Prevention of Terrorism Act (PTA). To date, very little progress has been made in regards to these steps.

Recognizing that ‘accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system’, the resolution calls for the establishment of ‘a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law’. It affirms that ‘a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality.’ It also highlights ‘the importance of participation in a Sri Lankan judicial mechanism, including the special counsel’s office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.’

As per the reporting requirements in the resolution, Sri Lanka will be on the agenda of the Human Rights Council session in March 2017, during which the High Commissioner for Human Rights, Zeid al Hussein, will submit his report on the state of Sri Lanka’s compliance with the resolution.

Among the 700+ page CTF report's findings and recommendations are the following key recommendations the adoption and implementation of which are crucial to help move the country towards a sustainable peace:

- Reform and structural change of the criminal justice system to address broad issues which impede access to justice and accountability
- Strengthening capacity and competence of the Judiciary, Attorney General's Department, the Police (including forensics) and Judicial Medical Officers
- Bifurcation of the Attorney General's Department and reverting to a Director of Public Prosecutions as a separate and independent entity to avoid conflict of interest in prosecuting crimes alleged against State officers
- A number of confidence-building measures ranging from the expedited return of land held by the military, to the release of a list of all detainees and detention centres, the repeal of the Prevention of Terrorism Act (PTA) and the immediate release of persons held under the PTA without charges
- Crimes under international law, such as war crimes and crimes against humanity, to be incorporated into Sri Lankan law immediately through legislation, without temporal prescriptions and in a manner that allows for the prosecution of these crimes committed in the past, in line with Article 13(6) of the Constitution and Article 13(2) of the ICCPR
- Legislation setting up the proposed transitional justice mechanisms to be introduced without delay
- Active international participation in the judicial mechanism - from judges in the special court, to the Office of the Special Counsel, investigators and staff
- Ensuring that there will be at least one international judge on every bench of the Special Court
- Ensuring representation of all ethnic communities and gender in respect of judges and prosecutors on both the Court and the Office of the Special Counsel
- The Special Court's mandate to try international crimes, including war crimes and crimes against humanity, and pay particular attention to crimes of sexual violence and crimes involving child victims
- No amnesties for crimes under international law, such as war crimes and crimes against humanity, as well as gross human rights abuses including torture and ill-treatment, enforced disappearances and rape and other forms of sexual violence