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## **Joint Stakeholders Submission for the Universal Periodic Review of Sri Lanka**

### **Submission by :**

In special consultative status with UN ECOSOC

#### **Association Bharathi Centre Culturel Franco Tamoule**

Association des Etudiants Tamoule de France (France)  
Association Tourner La Page (France)  
Association LE PONT (93300 Aubervilliers)  
Association Tamil Uzhagam (78310 Maurepas)  
Society for Development and Community Empowerment  
Association Burkinabé pour la Survie de l'Enfance  
Solidarité Internationale pour l'Afrique (SIA)  
Society for Development and Community Empowerment (SDCE)  
Association Mauritanienne Pour la Promotion du Droit  
Association Pour les Victimes du Monde  
Kenya Community Development Group KCDG  
Association Congolaise pour le Développement Agricole

#### NGOs With our ECOSOC Status

Association Le Collectif La Paix au Sri Lanka (France)  
Association ABC TAMIL OLI (Seine-Sain-Denis)  
L'Association Culturelle des Tamouls en France (A.C.T.F.). (Paris)  
Association pour le Droit de l'Homme et le Développement Durable.(92700)  
Association internationale des Droits de l'Homme de Bourgogne. (AIDHB 58000)  
Association Jeunesse Etudiante Tamoule (J.E.T.). (93)  
Association Thendral (94470 Boissy-Saint-Léger)  
Maison du Tamil Eelam France (France)  
Swiss Council of Eelam Tamils (Swiss)  
L'Association Mondiale des Droits de l'Homme (A.M.D.H) (Suisse).  
Association international des Droits de l'Homme (France)

**Related to:** Sri Lanka

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Association Loi 1901, doté du statut spécial auprès de l'ECOSOC depuis 2016- SIRET : 800 496 903 00017

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Now, Sri Lanka's request for two years extension to implement the UNHRC Resolution 30/1 of 2015 which has more than twenty recommendations has been unanimously approved in the UNHRC Session on March 23, 2017. The Resolution was sponsored by USA and Montenegro and co-sponsored by UK, Macedonia, Ireland and Sri Lanka. It is pertinent to analyse the implications of this Resolution which has been lying on paper for the last eighteen months which is now dusted back for life for fulfillment before March 2019.

Sri Lanka's political history since independence in 1948 is dotted with a plethora of breaches of pacts, accords, promises and agreements mainly dealing with solutions to the ethnic problem which was given birth in 1956. Added to this, is its dishonoured commitments to UN, UNHRC and even UN Secretary General including the Tamil political leaders.

A short list is as follows:-

|  |             |
|--|-------------|
| Bandaranayake – Chelvanayagam Pact         | 1957        |
| Dudly Senanayake – Chelvanayagam Agreement | 1965        |
| Indo-Sri Lanka Accord                      | 1987        |
| Chandrika's Devolution Package             | 1995        |
| Ranil Wickremasinghe – Oslo Accord         | 2002 – 2004 |
| Post Tsunami Management Agreement (PTOMS)  | 2004        |
| UNHRC Resolution 30/1 of Oct. 2015         | 2015        |

Besides, thirteen Commissions were appointed beginning from Sansoni Commission in 1977 and ending recently with the Paranagama Commission to investigate disappearances during the period from 2011 – 2015 which presented its report in 2016. Added to this is the recent Consulting Task Force [CTF] consisting of eleven prominent citizens appointed in February 2016 to report on reconciliation which held its sittings all over the island, heard oral statements including about 7300 written submissions from all walks of life. The CTF submitted its report in January 2017. The Report comprehensively dealt with all the issues affecting the process of accountability, justice and reconciliation.

Added to the above are other joint and oral statements and undertakings dished out to UN Officials, Tamil Leaders and to the public during public and private meetings.

Former President Mahinda Rajapakse's joint statement with former UN Secretary General Ban-ki-Moon on 23rd May, 2009 was meant to suit that occasion. The statement committed Mahinda to carry out the following matters:

-“To ensure the economic and political empowerment of the people of the North through its programmes.”

-“To work towards a lasting political solution and a national solution acceptable to all people to be evolved.”

A firm resolve to proceed with implementation of 13th Amendment and consultation with all parties to further enhance this process to bring about lasting peace in Sri Lanka.”

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These commitments met their expected fate of death sooner than expected and Mahinda is now showing his real face to advance his political fortunes banking on communal politics by keeping the Tamils at bay.

Though the above mentioned pacts, agreements etc. were offered to the Tamils to solve the ethnic problem created by the offerers, the said pacts and agreements except the Indo-Sri Lanka Accord which is breathing for life were scuttled by the opposition party in power either by UNP or SLFP generously assisted by extremist and leading Buddhist clergy members.

The betrayed Tamils were further humiliated by pogroms initiated and conducted by the extremists holding position in the ruling party. For example:- The then President of Sri Lanka [late] J. R. Jayawardene said, "The more you put pressure in the north, the happier the Sinhala people will be here. Really, if I starve the Tamils out, the Sinhala people will be happy."

[President J.R.Jayawardene's interview with Ian Ward July 26th 1983 Daily Telegraph.]– This utterance clearly shows the mindset of Sinhalese leaders –

The leftist parties, LSSP and Communist Party who championed the causes of Tamils until 1970s also somersaulted their position to taste the political power when they formed a coalition government with SLFP led by late Srimavo Bandaranayake in 1970. They caused immense harm to the Tamils by enshrining Buddhism as a state sponsored religion thereby strengthening the Sinhala-Buddhisisation agenda which was set in motion from 1948, and being vigorously pursued since then.

It has always been a trade mark for the Sinhalese leaders to make different commitments and promises when in Tamil areas to suit occasions while revealing their true position and intention in the south to preserve and advance their political fortunes and base. This double speaking strategy commenced with Sir John Kotalawalea when he promised parity of status for Sinhala and Tamil language at a public meeting in Jaffna in 1954 and later on his return to the south denied his promise. This deceptive tactics is still continuing undeterred and unashamedly. The present President is no exception as he has made several promises to the Tamils as well as to the Tamil leaders on various occasions which are the release of all political prisoners, release of all civilian lands in the North and East, resettlement of the displaced and reduction of Army all promised within a time frame. Only time will tell the fate of these promises.

The hidden genocidal war without witness conducted by the former President Mahinda Rajapakshe, his brother and Defence Secretary Gotapaya Rajapakshe with the Army Chief General Sarath Fonseka has resulted in unforeseen consequences to the Sri Lankan Government when the foreign media exposed the war crimes, crimes against humanity involving wholesale massacre of unarmed civilians, all of which fit the crime of 'GENOCIDE' as defined in the UN Convention on GENOCIDE in 1948.

The International Community and the United Nations watched the genocidal war with their eyes closed and kept mum but later awoke due to worldwide hue and cry raised against the brutal war of this century. There were hurried visits to Sri Lanka by UN Officials who were busily compiling the statistics and details of the war crimes etc. committed while collecting evidences from the affected victims and relatives. Six UN Special Rapporteurs have so far undertaken visits to Sri Lanka from 2011 to 2016, besides the visit of Human Rights High Commissioner for Human Rights His Excellency Zeid Ra'ad Al-Husseini in 2016. Their reports comprehensively detailed the war crimes committed by the security forces, the plight of the victims and displaced, the continuing practice of torture, culture of impunity, including the sufferings of the minority communities. All their reports with their findings, conclusions and recommendations

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have been submitted to the Human Rights Council for proper action and resolution, followed by further action by the UN and/or Security Council at their discretion.

The Special Rapporteurs who visited Sri Lanka or made Reports on Sri Lanka are:

|                              |             |
|------------------------------|-------------|
| Marzuki Darasman             | 2011        |
| Charles Petrie               | 2012        |
| Pablo de Greiff              | 2015 – 2016 |
| Juan Mendez/Monica Pinto     | 2016        |
| Tae-Unq-Baik/Bernard Duhaime |             |
| Ariel Dulitzky               | 2016        |
| Rita Izak Ndiaye             | 2016        |

In addition. Yasmin Sooka Executive Director representing International Truth and Justice Project [ITJPSL] Sri Lanka has issued eight reports since 2014 and ten Press Releases with precise and unchallengeable details as to the war crimes etc. committed by security forces even identifying the perpetrators.

The above Reports also detailed the progress made by Sri Lanka since the resolution on October 01, 2015 [30/1] The Reports without doubt highlighted the Sri Lankan failings as to the implementations of the 30/1 UNHRC Resolution. There is almost unanimity as to Sri Lanka's non compliance with the twenty recommendations of UNHRC Resolution. Even the recommendations as to the Office of the Missing Persons and Right of Protection to Witness Act which were initiated for implementations by the Government are now kept in limbo with an uncertain outcome as to its implementation.

Sri Lanka having now successfully manoeuvred to stalemate the said recommendations, is now getting another two year extension by the UNHRC to out manoeuvre and engineer and finally free itself from its commitments of the UNHRC Resolution and stultifying the implementation.

This extension of two more years despite the worldwide protests of Tamils is clearly a runaway victory for Sri Lankan's diplomacy and a dismal failure and disappointment for the Tamils and victims who are crying for justice in Sri Lanka. The sufferings of the Tamils is further compounded by the disunited Tamil National Alliance [TNA] who appears to have given their approval for the said extension, calling for conditions of review by a UN Office in Sri Lanka which has been ignored by the sponsors.

The said two year extension is not only inimical to the Tamils but is also an endorsement and express approval to prolong and allow the sufferings of the victims. There is not an iota of doubt that Western countries are determined to protect and ensure the survival of the present pro West friendly Government, while keeping the tenets of justice, accountability and reconciliation at an arm's length. Sri Lanka is thus emboldened by this stand and posture of Western countries whose dictates only usually prevail in the UNHRC and/or Security Council.

Sri Lanka has already declared its defying stand over the following issues: –

- [1] No Hybrid Court and no foreign legal personnel will be allowed in Sri Lanka to participate in the internal judicial mechanism if and when set up.
- [2] Government has promised 100% [one hundred percent] protection to the security forces involved in the war as they are 'war heroes' and would not be allowed to be dragged to courts for any crimes committed during and after the war.

Viewing the above said contentions of Sri Lankan Government, the question arises as to the necessity for an internal judicial mechanism in the face of the impunity granted to the security personnel and those involved in the "command responsibility", As such any

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internal judicial mechanism, even if it is set up, will not serve the goals of justice and accountability clamoured by the victims for the last ten years or more.

For the Tamils, the hopes of justice and accountability being laid to rest, the only option is to agitate for action by the UN to initiate suitable measures to hold Sri Lanka accountable for the war crimes, crimes against humanity as confirmed by their Special Rapporteurs in their various damning reports. Waiting for another two years to obtain justice is seemingly a futile exercise viewing the internal climate which prevails in Sri Lanka, where communalism chauvinism and extremism continue to hold sway over the Sinhala voters who only determine the political fortunes of the main Sinhala parties. The powerful Buddhist clergy's influence and involvement in support of a Buddhist ONLY Sri Lanka is another key factor which ties up the major parties in the South from offering any political rights or even concessions to the oppressed Tamils.

The avenues open for the victims to hold Sri Lanka accountable are a referral to the International Criminal Court or set up an ad hoc International Tribunal by UN or Security Council.

There is little chance to initiate a trial before and by ICC as three conditions have to be met before it can exercise its jurisdiction.

- [1] When national courts are unwilling or unable to prosecute criminals or
- [2] When UN Security Council refers to ICC
- [3] Individual states refer the matter to ICC

Since Sri Lanka has not signed the Rome Statute of 1998, which created the ICC in 2002, it is not bound by the provisions of ICC. Likewise there is little chance that Security Council will refer Sri Lanka to ICC, as Russia and China will certainly block their move, viewing their cordial relationship with Sri Lanka. In the same manner the Office of the Prosecutors initiating investigations and prosecutions is not possible unless a member state or ICC or the Security Council refers Sri Lanka for investigation another option is the creation of ad-hoc Tribunals which are created for special purpose. These are Special Tribunals dealing with persons accused of international crimes, namely genocide, war crimes and crimes against humanity. They can be created by the Security Council like the ones for Yugoslavia and Rwanda. Likewise UN has been involved in the creation of Special Courts in consultation with the affected states like the ones in Sierra Leone, Cambodia, Lebanon and East Timor. Another option is the doctrine of Universal Jurisdiction which allows national courts to try cases of gravest crimes against humanity even if these crimes are not committed in the national territory, and even if they are committed by government leaders of other states. This option is not pursued by states as the affected states have prevailed upon to stall any investigation and prosecution by another national court, after the failure of case against Chilean Dictator Pinochet who could not be brought to trial in UK while he was residing in Spain.

To sum up, unless and until Security council and/or UN initiates proper measures like referring Sri Lanka before ICC or setting up Special or Mixed Tribunal by UN with the participation of local judges, the prospects of accountability followed with punitive measures against Sri Lanka appear bleak and dim.

The said approved extension of another two years for Sri Lanka in the UNHRC is a confirmation of the following positions and matters:-

- Sri Lanka has successfully delayed the implementation of the recommendations allowing for its lapse with passage of time. It is also doubtful that the Office of the Missing Persons [OMP] will properly function due to the mounting opposition from

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extremists who oppose it by harbouring suspicion that it will result in hauling up security personnel involved in the disappearances said to be about 65,000 during the ten year period.

Sri Lanka has also engaged in a game of duplicity by sponsoring the Resolution which calls for a hybrid court with the participation of foreign jurists and prosecutors while on the other hand declaring its true intention to defy it with open statements from President, Prime Minister and Foreign Minister who have confirmed the shut out of foreign legal personnel setting foot in Sri Lanka. This provision of hybrid court to ensure accountability and break the culture of impunity is going to be a non-starter by all means. The question also arises as to the necessity for even an internal justice mechanism advanced by Sri Lanka in the face of the “guarantees of impunity” for security forces declared by the President and Prime Minister. The proposed internal judicial mechanism, if set up will only end up as a white horse and an eye-wash cheating the Tamil victims, like closing the stable after the has horse bolted.

- The Western countries and their allies are determined and united to protect the present friendly Government, no matter about its history of human rights violations and defiance of UNHRC’s recommendations. Political, geographic and strategic considerations and interests take precedence in deciding the nature of treatment of a country by the West. Sri Lanka thus enjoying this warmth of western countries is emboldened to steer its own agenda with wholesale denials of all allegations and criticisms. In this shady game of double standards, Tamil victims are left behind and abandoned to fend for themselves without any relief in sight and forcing them to take the matters in their own hands willy-nilly.

- The United Nations High Commissioner for Human Rights, His Excellency Zeid Ra’ad Al-Hussein and UN Special Rapporteurs must be commended for their dedicated and sincere efforts in compiling their Reports which exposed the war crimes, crimes against humanity, culture of impunity, torture, rape and disappearances etc. They have fulfilled their functions of ‘exposing and informing’ the world for follow up action which appears to be hanging in balance in the hands of UNHRC, UN and/or Security Council as options at the end of the two year extension ending in March 2019.

Expecting Sri Lanka to implement the said 20 recommendations within another 24 months which have been breathing for life for the last 15 months is like chasing a mirage as water in the desert.

- The main pillars of Sri Lankan politics are communalism, chauvinism, Buddhisisation and Sinhalisation. Coupled with lack of political will and good faith, no Sinhala party or its leaders will dare to dismantle these entrenched traits ruining their race for political power. Sri Lanka’s rejection and disregard of its own Commissions like LLRC and Consulting Task Force stand as solid evidence of its lack of political will and bad faith.

- It is the fervent plea of Tamils that ‘do not let human rights become a pawn in the game of politics’ as when accountability is shielded, justice dies leaving reconciliation meaningless while paving way for the rise of militancy and extremism’.

- The UN High Commissioner’s oral statement on March 22, 2017 is unequivocal, frank and forthright, when he stated “A general lack of trust in the impartiality of the justice system in the country regarding past violations and continuing ‘unwillingness or inability to address impunity reinforces the need for international participation in a judicial mechanism. It is important for the country’s future to send the signal that impunity is no longer tolerated’.

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Presenting an oral update on the rights situation in Sri Lanka, the top United Nations human rights official today said that a general lack of trust in the impartiality of the justice system in the country regarding past violations and continuing “unwillingness or inability” to address impunity reinforces the need for international participation in a judicial mechanism.

“It is important for the country’s future to send the signal that impunity is no longer tolerated,” Zeid Ra’ad Al Hussein, the UN High Commissioner for Human Rights.

“For this to be credible, [the judicial mechanism] should include a special counsel, foreign judges and defence lawyers, and authorized prosecutors and investigators,” he added, noting that national consultations had also identified international participation as a way to gain the trust of the victims.

He also said that while the design of truth and reparations processes appear to be underway, such efforts needed to be in consultation with victims and the civil society, and that the repeal of the terrorism prevention act and its replacement with legislation that complies with international human rights law is to be concluded.

Also in his remarks, the UN rights chief hailed the work of the civil society and human rights defenders in the country and underlined that they must be protected from harassment and intimidation.

Making particular reference to the reports of intimidation of members of civil society at the Palais des Nations (the UN Office at Geneva), the High Commissioner said that his office (OHCHR) would be looking into the issues closely.

He also called on the Sri Lankan Government to consult the independent commissions in the country, the Human Rights Commission, which he said play an invaluable role in strengthening good governance.

“I encourage respect for their mandate and autonomy, adequate financing, and implementation of their recommendations,” he added.

Mr. Zeid also welcomed a number of directives made by the President of Sri Lanka regarding detention but noted that reports of torture, excessive use of force and failure to respect due process are a cause for worry.

“There is clearly a need for unequivocal instructions to all branches of the security forces that any such conduct is unacceptable and that abuses will be punished,” underlined the High Commissioner.

### **The troubling question is ‘are there any takers of this last minute appeal and realise this goal in Sri Lanka?’**

– Above all, a heavy burden on responsibility lies on the shoulders of US and other sponsors to ensure the full implementation of the said recommendations within this two year period, failing which an added more onerous duty and responsibility rests on them to take either punitive or cautionary measures in Sri Lanka for its failures and non-compliance.

### **Consultation**

Eelam Tamil will never give any consultation to the Sri Lankan National mechanism; peoples don’t have any faith on it. And many victims and their families are still unclear how to make their views known. Taking into account the delays so far, a realistic

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timeline for the consultation should be developed to allow for full public participation. Without international involvement Eelam Tamil will never give their testimony.

### **Justice**

The justice mechanism's mandate will be central to its credibility and effectiveness. In devising its form, composition, scope and timeframe, The Council have to be ambitious and seek to deliver justice to as many victims as possible. Eelam Tamils don't have any faith Sri Lankan Judicial system.

We support at minimum the OHCHR's proposal for a hybrid special court, but the court must do more than investigate a handful of cases and must form part of a broader initiative to strengthen the national justice system so that national courts can ultimately prosecute other cases and address future human rights violations effectively. Engagement of international judges, prosecutors, defence lawyers, forensic experts, and victim and witness protection experts will be of the utmost importance to maintain the credibility, independence and effectiveness of the process. Effective witness protection is also vital and must be independent of any security or law enforcement body that is suspected of involvement in human rights violations.

### **Truth**

More than 100 civil societies from Ground already expressed their concern about the Independent of the Office of Missing Persons. The commission must be independent, impartial and made up of highly qualified commissioners with expertise, including on human rights, sexual and gender based violence, and violence against children. It must be granted the powers and authority to gather all information it considers relevant. It must not have the power to grant amnesties for crimes under international law.

In a smart piece, Colombo-based journalist Kusal Perera notes that there were serious problems with the way in which the OMP was created. Many others, including HRW, had previously raised concerns about the lack of proper public consultations related to the OMP's establishment. These are valid worries and important things to keep in mind as Colombo goes forward with its transitional justice agenda.

### **Reparation**

Victims should be provided with full reparation to address the harm they have suffered and to help them rebuild their lives. A reparation program should be established to provide comprehensive measures including restitution, rehabilitation, compensation and satisfaction, as well as measures that would prevent repetition of past violations (see below) and improve the lives of marginalized groups, including women.

### **Non-recurrence**

Justice, truth and reparation can be important mechanisms to ensure that past human rights violations and abuses will never be repeated.

### **Recommendations ;**

1. The judicial process must purely be of international and under the control of the UN, and we request you to recommend the referral to the International Criminal Court or special tribunal for Sri Lanka, and do not support any domestic or hybrid mechanism under the control of Sri Lanka.

2. We request you to take measures to judicially address the Genocide against the Tamil people as called upon by the unanimous resolution adopted by the Northern Provincial Council of Sri Lanka in February 2015.

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3. We request you to press Sri Lanka to become signatory and ratify the Rome Statute of the International Criminal Court so that reoccurrence of similar atrocities can be minimized and the ethnic Tamil population can be protected in the future.
4. Take immediate measures to demilitarize North and East and hand over lands (occupied by the military for over 25 years) to their rightful owners without any further delay. Also the Tamil people of the North East must be given access to their residential and agricultural lands to engage in economic and livelihood activities
5. 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.
6. Recognise the obvious pattern of sexual abuse against Eelam Tamil women as being carried out with genocide intent.
7. Ensure all Tamils held in internment camps and special secret camps are allowed immediate access to international agencies and are released to lead normal lives at the earliest.
8. Initiate an independent international investigation into the genocide of Eelam Tamils on the island to bring perpetrators of the crime of genocide to justice.
9. Conduct a UN sponsored referendum to ascertain the political aspiration of Eelam Tamils, both in the homeland and the diaspora, with a free and sovereign state of Tamil Eelam as an explicit option, as it is the democratic mean to bring about a lasting solution to the conflict on the island.

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