

19 JULY 2023

**ON THE INADEQUACY OF A 'TRUTH AND RECONCILIATION MECHANISM' TO ACHIEVE POST-WAR
TRANSITIONAL JUSTICE**

The Government of Sri Lanka (GOSL) has proposed a new National Unity and Reconciliation Commission (NURC) to promote truth and reconciliation internally. This is in no way aligned with the demands of the victim-survivor community, nor does it address the underlying causes that led to the armed conflict. In light of past experience and the lack of trust in any domestic mechanism, we reject the proposed NURC for the following reasons:

1. The Tamil victim-survivor community has persistently called for a robust and comprehensive international mechanism, including investigations into atrocity crimes and prosecution of perpetrators thereof, aimed at addressing all four pillars of transitional justice. A truth commission is insufficient to meet this demand. Whereas the proposed NURC aims to enable perpetrators of atrocity crimes to evade accountability in the guise of reconciling them with the victims, the Tamil victim-survivors have persistently called for justice and accountability through identifying and bringing perpetrators of mass atrocity crimes to justice.
2. The proposed NURC, predicated on the idea that truth alone is adequate to achieve transitional justice and will lead to reconciliation, is being presented without the adequate participation or consensus of the Tamil victim-survivors community. Stakeholder consultations involving the Tamil victim-survivor community have been scarce, and a portion of civil society organisations that the Government claims to have contacted cannot be considered the sole representatives of the victim-survivors.
3. Past truth and reconciliation commissions established in South Africa and other Latin American countries were the products of the transition of power from the oppressors to the oppressed. Any positive outcomes of such commissions could be attributed to this shift in power, the recognition that a portion of the population had been oppressed and a widespread and popular demand for truth and reconciliation. In Sri Lanka, these features are absent. The North-East where the victims-survivors are from is still heavily militarised, the national politics is dominated by Sinhala-Buddhist chauvinism, the armed forces that ruthlessly executed the war are still being paraded as 'national heroes' and the Sinhala-Buddhist state is disinclined to sharing power with the victim-survivor community. In view of the fact that truth commissions fail amidst extreme partisanship, systematic injustice, repression and deep division in communities, these aforementioned factors indicate that the climate required for a truth commission is non-existent. It is also unlikely to be impartial and should be viewed as yet another manipulative and self-serving state maneuver to bring the discourse on transitional justice to a hasty conclusion in its favour.
4. The abject failure of the past mechanisms established by the GOSL, such as the Paranagama Commission, the Udalagama Commission, the Lessons Learned and Reconciliation Commission, the Consultation Task Force on Reconciliation Mechanism, the Office of Mission Persons, the Office for National Unity and Reconciliation and The Office for Reparation, have eroded any scant trust and confidence the Tamil victim-survivor community had in the Sri Lankan state. The recommendations of these bodies, along with the UNHRC Resolution 30/1, which the Sri Lankan state co-sponsored, which includes the establishment of a judicial mechanism for accountability, have been completely disregarded by successive Sri Lankan governments. These failures, along with the aggressive Sinhala-Buddhisisation of the North-East spearheaded by the Department of Archaeology, demonstrate that the current proposal is just another eyewash.

5. The GOSL's outright rejection of the UNHRC Resolutions 46/1 and 51/1, both of which stressed accountability project and mandated the OHCHR to continue monitoring and reporting to the UNHRC on the human rights situation at the adoption of the Universal Periodic Review at the fifty-third session of the UN Human Rights Council, illustrates duplicity of the GOSL and casts doubt on the motive behind the proposed commission.
6. The Tamil victim-survivor community have had to recount the atrocities they had been subjected to – the truth - in front of various forums with no tangible outcome. They are frustrated, exhausted and traumatised and are no longer willing to trust the state. The reality that Sri Lanka does not even provides bare minimum psycho-social support, nor any victim and witness protection programmes aimed at safeguarding them throughout their engagement renders further engagement with any internal mechanisms futile and perilous. Forcing them to recount their stories at another forum with no real prospect of tangible outcome nor any victim and witness protection would be grossly negligent, irresponsible and inhumane.

The experience of the previous futile mechanisms has completely destroyed any trust the Tamil victim-survivor community had in the GOSL. To enable them to consider participating in any domestic mechanisms, the GOSL must, as a necessary prerequisite, build trust and confidence amongst the Tamil victim-survivor community. To this end, we call for the implementation of the following recommendations of the very commissions that successive governments established:

- A. The GOSL must, in rhetoric and action, promote and build a plural, multi-religious and multi-ethnic Sri Lanka in a way that recognises and establishes a secular and plurinational state.
- B. Confidence-building measures, such as the expedited return of land held by the military, the immediate cessation of acquisition of land by the military, immediate cessation of the surveillance, harassment and intimidation of civil society, families of the disappeared, former combatants, persons released under the Prevention of Terrorism Act (PTA), journalists and dissenters in the North and East, the repeal of the PTA and the immediate release of political persons held thereunder. The GOSL must refrain from enacting any legislation comparable to the PTA which violates international human rights standards.
- C. Atrocity crimes must be criminalised through legislation. There shall be no temporal limitations and must allow the prosecution of such crimes committed in the past.
- D. The Government must undertake phased demobilisation of the armed forces with the view to rehabilitating and reintegrating them into society and civilian life those that have no record of human rights violations or crimes.
- E. Policy and operational framework covering all pillars of transitional justice must be drafted and made public.

We, the undersigned, believe that a truth commission at this point is counterproductive and is incapable of addressing the root causes of the armed conflict. What is needed is a holistic and comprehensive approach to transitional justice incorporating necessary structural changes to meet the long-standing, unmet demands of the Tamils of North-East. We, therefore, implore the relevant stakeholders to call for:

- i. Cessation of efforts to establish the proposed National Unity and Reconciliation Commission;

- ii.** Adoption, with international participation, of a holistic and comprehensive approach to transitional justice, giving effect not only to truth and reconciliation but also to prosecution, reparations and institutional reforms;
- iii.** Immediate initiation of an international investigation into and prosecution of atrocity crimes perpetrated against the Tamil community;
- iv.** Demilitarisation of the North-East and complete cessation of land acquisition, occupation, , encroachment and colonisation that are being undertaken inside the traditional Tamil homeland;
- v.** Immediate international investigation into enforced disappearance and unconditional release of Tamil political prisoners;
- vi.** The recognition by the Sri Lankan state that the Tamil community has hitherto been oppressed and persecuted and acknowledgment of their unhindered right to remember those that fought during the war of national liberation and those who died during the genocide and other atrocity crimes; and,
- vii.** A political solution in the form of radical state restructuring arrived through good faith negotiation, the participants of which shall consist not only of politicians but also Tamil civil society representatives, intelligentsia and the diaspora. Such a solution shall take into account the historical demands of the Tamils that the 'Vaddukottai Resolution', 'Thimbu Principle' and the resolution proposal in the Tamil People's Council encapsulate, and the genocide and oppression the Tamils have suffered since independence at the hands of the Sri Lankan State.

Signatories:

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