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Human rights situations that require the Council's attention

Written statement* submitted by the International Buddhist Relief Organisation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Continuing violation of Human Rights of people with complicity of UNHRC by postponing Local Government elections*

The Postponement of Local Government Elections in Sri Lanka: A Continuing Violation of the Human Rights of the People of the Country with Possible Complicity of the UNHRC

In September 2015 the UNHRC adopted resolution 30/1 on Sri Lanka which called among other things for constitutional reform in this country. The resolution was co-sponsored by Sri Lanka. The resolution is unique in the history of the UNHRC because it is the first time that a resolution that adversely affects the sovereignty of a country has been *co-sponsored* by that country.

Unfortunately, the Government of Sri Lanka (GOSL) has used resolution 30/1 as a pretext to undertake highly repressive and possibly illegal policies and is constricting if not extinguishing what remains of the democratic space in this country in order to continue those policies in the face of widespread public opposition. In particular, it is postponing local government elections indefinitely.

The term of local government councils is four years and the last elections were held in 2011. So, elections were due in 2015, and have not been held since then. The Government keeps postponing them under various pretexts.¹ To make matters worse, the Government recently Gazetted the 20th Amendment to the Constitution, which will postpone Provincial Council Elections at least until 2019.²

It is common knowledge in Sri Lanka that the Government is postponing elections because it is afraid of losing very badly if elections – any elections – are held.³ The UNHRC is responsible for the present situation because of its failure to critically reassess resolution 30/1.

The circumstances surrounding the adoption of resolution 30/1 can be further elaborated as follows:

1. The basis for resolution 30/1 was the conclusions and recommendations of High Commissioner's report A/HRC/30/CRP.4, also known as the OISL report.⁴

1 One such excuse is to say that elections cannot be held until the Delimitation Committee report is filed, but when the Committee attempts to file the report, refuse to accept it by giving the flimsiest of excuses. (See 'Legal action against those who delay Delimitation report – CaFFE (Campaign for Free and Fair Elections) 1st January 2017, www.lankaweb.com; and also, 'Musthapa attempting to stall LG polls further – CaFFE, www.ceylontoday.lk, 3rd July 2017 is See,

2 Gazette issued on 3rd August 2017

3 *The Island*, one of Sri Lanka's leading English newspapers, in an editorial, discusses the real reasons why elections are being postponed as follows: "President Maithripala Sirisena not only accepted but also praised the original report submitted by the delimitation Committee headed by Jayalath Dissanayake. It was duly ratified by Parliament and signed by Speaker Karu Jayasuriya. But, the government made a volte-face as it was looking for an excuse to postpone the local government polls which it was not ready to face. It appointed the Asoka Peiris committee to review the Jayalath committee report obviously in a bid to delay the mini polls in the hope that it would be able to get its act together in time for the next electoral contest. But, its plans have manifestly gone awry and it is scared of an election owing to several factors such as the ignominious defeats its constituents have suffered at the first round of co-operative society elections, over rising cost of living, mega rackets like the central bank bond scandal, unfulfilled pre-election pledges, rampant corruption, the absence of development drive and the not-so-cold war within the ruling coalition between the UNP and the SLFP. ("Waiting for Godot," *The Island*, Editorial, 4th January 2017

4 Paragraph 1, resolution 30/1

2. The OISL report was released to the public in September 2015, and tabled at the Council on or about 29th September 2015, followed by the subsequent adoption of resolution on or about 1st October 2015.
3. Because the GOSL co-sponsored resolution 30/1, neither the resolution nor the OISL report were subjected to debate and discussion at the Council prior to the vote.
4. Resolution 30/1 was adopted without a vote.
5. While the GOSL attempted to characterize the adoption of resolution 30/1 as a unanimous vote by the Council, that is far from the reality. Since Sri Lanka the nation directly affected by the resolution chose to accept it without question, Members of the Council who for whatever reason may have opposed the resolution were bound by their obligations under the UN Charter as well as common diplomatic courtesy not to express their reservations openly.
6. It should be noted that, when resolution 25/1, the resolution that authorized the OISL report was tabled in March 2014, the GOSL opposed the resolution, and it was joined by a significant number of member countries, while others chose to abstain from voting.
7. Resolution 25/1 was adopted by a vote of 23 in favour, 12 against and 12 abstaining, which clearly shows that the OISL report was not unanimously endorsed by the Council.
8. It should be noted that, the members who were against the resolution or abstained from voting did so among other things for reasons of principle, and not a few of them specifically stated that they considered the investigation to be a breach of the Council's mandate.⁵

It is unreasonable to suppose that these nations opposed the OISL report on grounds of principle, will suddenly do an about-face and embrace resolution 30/1,

9. if it were not for the fact that Sri Lanka itself had opted to co-sponsor that resolution.
10. Thus, the conclusion is inescapable that, the sole legal basis for resolution is the aforesaid co-sponsorship.

Under the circumstances, the UNHRC had an independent obligation – an obligation arising out of the relevant provisions of its own Charter along with Article 2(7) of the UN Charter – to subject the OISL report to an official assessment prior to permitting resolution 30/1 to be tabled.

It should be noted that, though the GOSL has thus far not subjected the OISL to an official assessment, Sri Lankan citizens in their private capacity have been doing so since September 2015.

In particular, two groups – the Federation of National Organizations (an association of national groups in Sri Lanka) and The Global Sri Lankan Forum (an organization of expatriate Sri Lankans) – by a public commission authorized an assessment of the OISL report in early 2017.

⁵ See, The Head of Delegation for India said, *inter alia*: “It has been India’s firm belief that adopting an intrusive approach that undermines national sovereignty and institutions is counterproductive.” (Explanation of vote by Ambassador Dilip Sinha, 27 March 2014, www.mea.gov.in); Meanwhile, the Head of Delegation for Pakistan said, *inter alia*: “No self-respecting country would agree to the intrusive measures advocated in this resolution [resolution 25/1], in particular operative paragraph 10 of the resolution is inconsistent with the principles and purposes of the UN Charter which calls for respecting the sovereignty and territorial integrity of States.” (“Why Pakistan opposed the US resolution on Sri Lanka,” Full text of explanation of vote by Pakistan’s permanent representative to the UNHRC, 27 March 2014, www.ft.lk)

As a result, a 2-volume report titled, “A Factual Appraisal of the OISL report: A Rebuttal to the Allegations Against the Armed Forces” was released to the public on 13th March 2017.⁶

The report showed that the OISL report’s evidence was seriously flawed, characterized among other things by lies, obfuscations, contradictions, and a total failure to consider exculpatory evidence.

The report was formally handed over to the Sri Lankan Presidential Secretariat, along with the UN Country Representative in Sri Lanka, and copied to the Office of the UN High Commissioner for Human Rights. The aforesaid report was also forwarded to each Member of the Council.

On 6th June 2017, the OHCHR acknowledged receipt of the said report.

However, to date the Presidential Secretariat, the UNO, UNHRC and the OHCHR have not indicated what follow-up measures if any have been taken to pursue the substantial charges made in the ‘Factual Appraisal.’

Under the circumstances, one must presume that those institutions accept the analysis and conclusions of the said Factual Appraisal.

It is still not too late for the UNHRC to subject the OISL report to an official assessment and thereby to reassess resolution 30/1.

In the meantime, the GOSL continues to advertise the fact that it is conducting its reform programs with the blessing, support and legal imprimatur of the UNHRC, and thereby to defend staying in power, which latter necessarily involves postponing local government and Provincial Council elections at least until 2019.

The UNHRC is therefore complicit in what is happening with regard to the Government’s ongoing deprivation of the democratic rights of the citizens of Sri Lanka, and as a result the credibility of the UNHRC is fast eroding in the eyes of the people of Sri Lanka.

Recommendations

- a) The UNHRC must immediately launch an official assessment of the OISL report, and afford an opportunity for Members of the Council to debate and discuss the said report.
- b) The UNHRC must immediately launch an inquiry into the facts and circumstances surrounding the passage of resolution 30/1.

* The Federation of National Organizations (Sri Lanka), and The Global Sri Lankan Forum, NGOs without consultative status, also share the views expressed in this statement.

⁶ The report can be accessed at www.globalsrilankanforum.com, www.lankaweb.com, among other sites.