



Submission to the United Nations Universal Periodic Review regarding:

The Muttur massacre

Ensuring justice for victims and families

Creating a precedent concerning war crimes against aid workers

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I. Executive Summary

1. In follow-up of precedent reviews, we write to seek your support in ensuring that the upcoming review of Sri Lanka accurately reflects the need to address the Government's lack of commitment in implementing all aspects of United Nations Human Rights Council (HRC) Resolution 30/1 as well as recommendations made in the Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka specifically pertaining to the "Muttur massacre" referenced as an "emblematic case".
2. Internationally condemned as one of the most atrocious acts perpetrated against humanitarian aid workers, the brutal execution of 17 employees of Action Contre la Faim (ACF) in Muttur, in August 2006 bears testimony of Sri Lanka's unwillingness to uphold accountability. More than 10 years after the crime, the High Commissioner notes that "no noticeable progress has been made in ensuring accountability"; in fact none of the perpetrators have been effectively prosecuted. While the Government of Sri Lanka (GoSL) claims that they encountered "difficulties in summoning or interviewing potential witnesses now living abroad", we regret that no official diplomatic request seems to have been made to relevant countries – for example to the French Government – to set up an international judicial assistance in criminal matters. This seriously questions the seriousness of the GoSL to effectively ensure accountability for this crime.
3. Since the 2012 2nd Cycle Universal Periodic Review (UPR) of Sri Lanka, five HRC Resolutions have requested that Sri Lanka complies with its relevant obligations to investigate, hold accountable and create an independent court to prosecute those responsible for this crime. So far impunity still prevails for the authors of the Muttur massacre. Through the UPR, ACF submits that the United Nations and the international community must address Sri Lanka's utter failure to fulfil its international obligations.
4. Impunity regarding the Muttur massacre is raising serious concerns on the protection of aid workers, human rights and humanitarian representatives around the world – including from the UN – murdered during their mission in support of affected populations. 3rd Cycle UPR has the inestimable responsibility to deter such crimes by placing accountability for such crimes high on the agenda. Impunity will prevail unless respect for the rule of law and sound administration of justice is upheld.

II. Chronology of events

5. On 1 August 2006, 17 local ACF staff were deployed from Trincomalee by boat on their regular daily assignment to provide sanitation and water assistance in Muttur. Sixteen of the staff were Tamil while one was Muslim. Five were women.
6. The bodies were found on 6 August 2006 lined up and most were face down, executed with bullet wounds to the head. The police and Sri Lanka Army (SLA) had made no effort to secure the crime scene. On 29 August 2006, the Sri Lanka Monitoring Mission (SLMM) ruled that “there cannot be any other armed groups than the security forces who could have been behind the act” finding the security forces by 4 August had gained full control over Muttur, which both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan security forces had controlled for periods of time during the first week of August.
7. This case was not effectively investigated, illustrating the entrenched impunity enjoyed by perpetrators and the challenges met in furthering accountability at the domestic level in Sri Lanka. The security forces from the outset pre-empted impartial investigations by declaring publicly already on 7 August 2006 that the LTTE was responsible. The magistrate initially assigned to the case was threatened. The international forensic pathologist appointed to oversee a second autopsy was harassed and retracted his finding that a bullet likely to be from a Special Task Force (STF) weapon was lodged in the skull of one of the victims.
8. The case was investigated by the Human Rights Commission of Sri Lanka and the Udalagama Commission. Several witnesses who testified to the Commission were threatened and due to the lack of witness protection were forced to leave the country.
9. Police testifying to the Commission claimed they were unaware of the presence of the ACF and gave inconsistent and incomplete accounts.
10. There has also been extensive harassment by security forces of the victims’ relatives and of local ACF staff whenever international attention was drawn to this case.
11. Based on the information UN High Commissioner for Human Rights established the OHCHR Investigation on Sri Lanka (OISL) has compiled, there are reasonable grounds to believe that members of the security forces committed the extrajudicial executions of the ACF staff (A/HRC/30/CRP.2 Killings of humanitarian workers 238.).

12. Overall, the investigations carried out by the GoSL were fraught with irregularities and in effect amounts to no investigation. In light of the systematic inconsistencies that became perennial features of the investigations, ACF submits that the United Nations and the international community should continue to insist on Sri Lanka's utter failure to fulfil its international obligations regarding accountability for the Muttur massacre.
13. The Consultation Task Force appointed by the GoSL in January 2016 received a significant number of submissions on the value of truth seeking/telling, on the objectives of the proposed Truth, Justice, Reconciliation and Non-recurrence Commission (TJRNC) that corroborates recommendations made by the UN High Commissioner regarding Resolution 30/1.
14. Whilst a number of objectives were identified and given a history of inaction, the importance of justice was reiterated in submissions from all parts of the country as recognition of the need to end impunity.
15. It was also presented in terms of addressing the failures of the existing judicial system, of providing political and economic solutions for collective rights denied and violated, ensuring non-recurrence and laying the foundation for reconciliation.
16. The overwhelming call for justice from across Sri Lanka must be viewed in terms of the failure of the judicial system to deliver, redress and recognise violations, to establish accountability and to ensure the security of victims and witnesses from reprisals.
17. Our 17 colleagues killed in Muttur were there to help the populations recover from disasters. Their unpunished murder is sending a strong message to the international community: that aid workers can be killed in impunity.

III. Sri Lanka's implementation of international law regarding the Muttur massacre

18. Since the last UPR, there has been no significant progress in ensuring accountability for the perpetrators of the Muttur massacre. An overwhelming body of norms, UPR and HRC recommendations continue to be knowingly discarded or violated by the GoSL that refuses to implement a credible court.

International Humanitarian and Human Rights Law

19. Sri Lanka recognises the notion of human rights set by the Universal Declarations of Human Rights
20. International Humanitarian Law is applicable in this case as the hostilities between Sri Lanka and the rebel troops fulfilled the essential prerequisites to be characterised as an internal armed conflict (Prosecutor v Tadic, Case No. IT-94-1 (ICTY APPEAL Chamber))

Geneva Conventions of 1949

21. Sri Lanka is party to the four Geneva Conventions of 1949 and its obligations are derived from common article 3 of the Geneva Conventions that is applicable to conflicts not of an international character.
22. Article 3, common to the four Geneva Conventions imposes an obligation on all parties to a conflict to respect and protect all humanitarian personnel
23. Article 3 was intentionally and knowingly infringed. ACF personnel were executed on the premises of the organisation, heavily labelled and easily identifiable as humanitarian workers by their ACF T-Shirt

UN Security Council resolution

24. The Muttur massacre is in violation of the United Nations Security Council resolution 1502, adopted in 2003, that clearly prohibits attacks, "knowingly and intentionally directed against personnel involved in a humanitarian assistance or peacekeeping

mission undertaken in accordance with the Charter of the United Nations which in situation of armed conflicts constitute war crimes, and recalling the need for States to end impunity for such criminal acts”

International Covenant on Civil and Political Rights (ICCPR)

25. Sri Lanka ratified the ICCPR on June 1980
26. Under article 2(3) of the ICCPR Sri Lanka has a duty to provide for an effective remedy for allegations of human rights violations.
27. The United Nations Human Rights Committee has repeatedly reiterated the need for Sri Lanka to adhere to its obligations under the ICCPR (Sundara Arachige Rajapakse v Sri Lanka CCPR/C/87/D/1250/2004)

UN General Assembly resolution

28. General Assembly 2006 Resolution 60/147 “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian laws” further affirms the duty to investigate as customary international law

OHCHR Principles

29. The OHCHR International instruments relating to the promotion of truth, justice, reparation and guarantees of non-recurrence, including the “Updated Set of principles for the protection and promotion of human rights through action to combat impunity” (E/CN.4/2005/102/Add.1), provides in its Principle 20 “Jurisdiction of international and internationalized criminal tribunals” that: “states must ensure that they fully satisfy their legal obligations in respect of international and internationalized criminal tribunals, including where necessary through the enactment of domestic legislation that enables States to fulfil obligations”

UN Secretary-General Panel of Experts

30. The 31 March 2011 Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka recognised that the "way forward" was through "an independent and complementary international approach" (441.) and that "the Government's current approach to accountability does not correspond to basic international standard that emphasize truth, justice and reparations for victims" (442.)

UPR

31. 2008 UPR recommendations, especially A-1, A-2, A-3, A-4, A-6, A-7, A-15, A-16, A-18, A-26, A-27 and A-28, although endorsed by Sri Lanka, appear not to have been implemented.
32. 2012 2nd Cycle UPR of Sri Lanka recommendations on "Theme: B51 Right to an effective remedy", especially 127.77, 127.75, 127.76, 127.78, 127.85 (based on A/HRC/22/16 - Para. 127) were supported by Sri Lanka but not implemented.
33. In particular, recommendation 128.57. of the 2nd Cycle UPR of Sri Lanka recommended to: "create a reliable investigation commission consisting of professional and independent investigators to identify, arrest and prosecute the perpetrators of the Muttur murders" (based on A/HRC/22/16 - Para. 128 & A/HRC/22/16/Add.1 - Para. 2.16)

HRC

34. The HRC stated that an investigation must satisfy the essential prerequisites that include thoroughness, independence, impartiality, effectiveness and promptness (A/HRC/RES/15/6 6 October 2010)
35. HRC resolutions 19/2 of 22 March 2012, 22/1 of 21 March 2013 and 25/1 of 27 March 2014 recalled the importance of Promoting reconciliation, accountability and human rights in Sri Lanka
36. The Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2 16 September 2015) stated "that Sri Lanka's criminal justice system is not yet ready or fully equipped to promptly conduct the "independent and credible investigation" into the allegations contained in this report, or "to hold accountable those responsible for such violations", as requested by the HRC (A/HRC/RES/25/1)". More importantly, it recommended that Sri Lanka should draw on the lessons learnt and good practices of

other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators.

37. HRC Resolution 30/1 of 1 October 2015 recalled the responsibility of Sri Lanka to comply with its relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity.
38. HRC Resolution 34 of 15 March 2017 by requesting “the Office of the High Commissioner to continue to assess progress on the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights in Sri Lanka” and requesting “to implement fully the measures identified by the Council in its resolution 30/1 that are outstanding” recognised that Sri Lanka had made no progress in promoting accountability and justice for the “emblematic case” (OISL A/HRC/30/CRP.2) of the Muttur massacre.

Report of the Consultation Task Force on reconciliation mechanisms

39. A November 2016 Consultation Task Force report commissioned by the GoSL supports recommendations made by the High Commissioner to implement an “an ad hoc hybrid special court”. However, Sri Lanka has rejected recommendations to implement such court that would ensure credible justice for the victims of the Muttur massacre.

IV. Implementation of accepted UPR 2nd Cycle recommendations

40. Sri Lanka has a duty to provide for an effective remedy for allegations of human rights violations. This includes thorough investigations, access to court, fair and impartial hearings and the successful prosecution of the perpetrators. The failure of Sri Lanka to abide by its obligations under article 2(3) of the ICCPR cannot be justified. The duty to provide for a prompt and adequate remedy to all victims of human rights violations is non-derogable.
41. As a result of Sri Lanka's failure to fight impunity and uphold accountability, the HRC through the Universal Periodic Review (UPR) procedure, has repeatedly, in 2008 and 2012, called upon Sri Lanka not to abdicate from its international obligations.
42. In this light, it will be recalled that the 2008 UPR recommendations, especially A-1, A-2, A-3, A-4, A-6, A-7, A-15, A-16, A-18, A-26, A-27 and A-28, although endorsed by Sri Lanka, appear not to have been implemented.
43. 2012 2nd Cycle UPR of Sri Lanka recommendations on the theme: "B51 Right to an effective remedy", especially 127.77, 127.75, 127.76, 127.78, 127.85 (based on A/HRC/22/16 - Para. 127) were also supported by Sri Lanka. In addition, recommendation 128.57 recommended to: "create a reliable investigation commission consisting of professional and independent investigators to identify, arrest and prosecute the perpetrators of the Muttur murders" (based on A/HRC/22/16 - Para. 128 & A/HRC/22/16/Add.1 - Para. 2.16).
44. While Sri Lanka has officially expressed its commitment to implement these recommendations during the numerous UPR sessions, 9 years after the 1st UPR of Sri Lanka, impunity still prevails over accountability.
45. ACF recognises the high value of UPR recommendations and urges all parties to respect and implement them. The UPR's 3rd cycle (2017 – 2021) should continue to demonstrate its key role in promoting and protecting human rights by accurately reflecting the need to address the GoSL's lack of commitment in implementing credible justice.

V. ACF recommendations

46. Alarmed by the total disregard of International Human Rights and Humanitarian Law reflected in the handling of the Muttur massacre; deeply concerned by the inefficiency of the purported investigations; recalling the principles of the Universal Declaration on Human Rights, bearing in mind the ICCPR, the Geneva Conventions and international customary law; recognising that Security Council resolution 1502 is binding; recalling the findings of the United Nations Panel of Experts that criticized the lack of independence of the courts; taking into consideration the 2008 and 2012 UPR Reports; welcoming the HRC Resolutions on “Promoting Reconciliation and Accountability in Sri Lanka”, the following recommendations are submitted to the International Community:
47. That Sri Lanka adopts without further delay specific legislation establishing an *ad hoc* hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, with its own independent investigative and prosecuting organ, defence office, and witness and victims protection programme;
48. That Sri Lanka initiate relevant diplomatic requests to set up effective international legal assistance frameworks in criminal matters among relevant countries to effectively ensure accountability.
49. ACF submits that the United Nations and the international community must adequately address Sri Lanka’s utter failure to fulfil its international obligations. Impunity in Sri Lanka and regarding the protection of aid workers will prevail unless respect for the rule of law and sound administration of justice is upheld.