

TGTE CONGRATULATES HIGH COMMISSIONER ZEID. URGES UNHRC TO CONSIDER INT'L ACTION TO ENSURE ACCOUNTABILITY IN SRI LANKA

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The Transnational Government of Tamil Eelam (TGTE) congratulates the UN High Commissioner for Human Rights, Honorable Zeid bin Ra'ad, for his thorough and comprehensive report. The High Commissioner's report constitutes a fitting reply to the empty claims regarding 'reconciliation' and 'justice' made by Hon. Mangala Samaraweera, Foreign Minister of Sri Lanka, in his Geneva speech two days earlier.

We also congratulate the High Commissioner for his bold rejection of the proposal to set up a domestic mechanism to deal with allegations of war crimes and crimes against humanity in Sri Lanka, even one that was aspiring for "international standards" or functioning with the "technical and financial assistance" from the international community.

The High Commissioner is right when pointing out in his report that the "structures and institutional cultures that created the repressive environment of the past remain in place" and that the "criminal justice system remains vulnerable to interference and influence by powerful political, security, and military actors." It is worth recalling that the same rationale was put forward by the UN Secretary General's Panel of Experts who noted that "[...] based on a review of the [Justice] system's past performance and current structure, the panel has little confidence that it will serve justice in the present political environment."

The absence of an environment in Sri Lanka to mete out justice domestically is one of the reasons why more than 1.4 million people around the world participated in the "Million Signatures Campaign" launched by the TGTE calling for the "Referral of Sri Lanka to International Criminal Court."

The High Commissioner's observation that "the sheer number of allegations, their gravity, recurrence and the similarities in their modus operandi as well as the consistent pattern of conduct they indicate, all point towards 'system crimes'" connotes that it was the Sri Lankan State itself that was the perpetrator of the international crimes. The High Commissioner further observes that such "system crimes" "[...] usually required resources, coordination, planning, and organization and were executed by numbers of perpetrators within hierarchical command [...] which give rise to Command as well as individual responsibility."

In this connection it is pertinent to note that the present leader of Sri Lanka, President Sirisena, served as the Defense Minister during the final two weeks of the war in 2009, during which thousands of Tamil civilians were intentionally targeted.

The High Commissioner has welcomed the "change of regime" in Sri Lanka while he also accurately

observed that the new government had not changed its stance on cooperation with international investigations, nor admitted the investigation team to the country. As noted by him, the same new government has “struck a very different tone on reconciliation in public statements.”

We welcome the High Commissioner’s recommendation to establish a full-fledged country presence of the OHCHR and proposing the visit of the special Rapporteur on truth, justice, reparations and guarantee of non-recurrence and the relevant special representative of Security-General. Recommending such international presence resonates well with our call in December 2013, when the TGTE Parliament passed a resolution calling for setting up of an International Protection Mechanism for Tamils.

Like the Panel of Experts, the Commissioner did not consider whether the crime of genocide had been committed. In his remarks, during the press conference accompanying the report, he did not foreclose the possibility that such could be considered by those ultimately called to investigate and adjudicate the crimes committed against Tamils.

The Commissioner’s report does refer to crimes committed on a discriminatory basis. He describes that “IDP’s were treated as suspects and detained because of their Tamil ethnicity”; and that the land disputes have become increasingly focused on ethnicity. He called upon the Sri Lankan government to enact legislation to criminalize genocide among other international crimes. These are all signs that the international community is finally coming to the realization that the Tamils were and may still be the victims of genocide.

The Commissioner called upon the Sri Lankan Government to immediately remove from office security force personnel and public officials suspected of involvement in human rights violations. For our part, the TGTE calls upon the Sirisena administration, as a matter of decency, to rescind the “Field Marshall” title given to Mr. Sarath Fonseka, the former Army Commander, and cancel the promotion of Major Jagath Dias and place him on leave without pay.

We note that the High Commissioner’s report is silent about the failure of the UN itself in preventing the large-scale massacre of Tamils in 2009 covered in the report, despite the live evidence available to them at the time, much of it from their own staff on the ground. It may perhaps be too much to expect the investigators to cover this aspect, yet in the interests of justice and future peace in the world, the TGTE wants to record its disappointment at the silence of the High Commissioner on this important aspect of culpability of international organisations.

Despite the above, we urge the Human Rights Council to accept the findings in the High Commissioner’s report as a way of securing the credibility of the Council which is also at stake today, as pointed out by him in his opening remarks.

We urge all civilized Nations, as the High Commissioner called for, to exercise universal jurisdiction and prosecute Sri Lankan political and military leaders who are suspected of international crimes when they set foot in their respective countries. The TGTE undertakes to cooperate with any Nation willing to heed the High Commissioner’s call.

We also request, as the Commissioner said, “to ensure a policy of non-refoulement of Tamils who have suffered torture and other human rights violations, until guarantees of non-recurrence are sufficient to ensure that they will not be subject to further abuse.”

The High Commissioner has called for the establishment of a hybrid tribunal similar to other hybrid tribunals. In this connection we also note that in the case of North Korea, even though it was not a signatory to the Rome Statute, the Human Rights Council recommended last year that the Security

Council refer it to the International Criminal Court. TGTE believes that a hybrid court cannot succeed in Sri Lanka because the government does not have the will to deliver justice and a conducive environment does not exist there to enact such a mechanism.

The inherently ethnocentric character of the Sri Lankan state coupled with persistent hostile environments for witnesses will eventually warrant, as found in the Commissioner's last words in the Report, "further international action to ensure accountability for international crimes."

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