

Sri Lanka UN Resolution: The World Witnessed Two Visions of Justice

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Prime Minister

Transnational Government of Tamil Eelam



The Transnational Government of Tamil Eelam (TGTE) thanks the United Nations Human Rights Council (UNHRC) for keeping Sri Lanka on its agenda for its consideration of the mass crimes committed in the island of Sri Lanka, but expresses disappointment at the dilution of principles of justice.

The world witnessed two visions of justice at the 30th Session of the UNHRC this month. One vision of justice which States are willing to dispense—a justice that is in direct contradiction to the unequivocal findings of the OHCHR report—and then one vision called for by humanity at large demonstrated by the participation of 1.4 million people through the “Million Signatures Campaign” calling for “Referral of Sri Lanka” to the International Criminal Court (ICC). The Northern Provincial Council in Sri Lanka, the Tamil Nadu State Assembly, and the Transnational Government’s Parliament passed resolutions calling for an international mechanism to investigate and prosecute international crimes namely war crimes, crimes against humanity and genocide.

The UN High Commissioner for Human Rights, Prince Zeid, was bold in telling that accountability “requires more than a domestic mechanism” and he called for a special hybrid Court. Today, however, the Human Rights Council, a state-centric institution, has passed a resolution noting that:

... a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for integrity and impartiality; and further affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the Special Counsel’s office, of Commonwealth and other foreign judges, defense lawyers, and authorized prosecutors and investigators;

This Resolution is a fudge. It prioritizes the Sri Lankan Government’s obsession with controlling criminal proceedings over the victims’ rights to effective justice. Any reasonable observer knows that all criminal proceedings within the Sri Lankan justice system will be stymied by racial bias and political interference. No amount of international judges will be able to prevent that reality. The role of the Sri Lankan State in the mass crimes will be whitewashed.

In the resource paper prepared at our request by “Global Diligence LLP,” the following recommendations were made to ensure the impartiality and independence of a hybrid Court:

24. Based on a treaty between the UN and the Sri Lankan Government, a hybrid criminal tribunal

should be established comprised of the following general attributes:

- a. A location in a neutral country, geographically proximate to Sri Lanka, that will ensure the protection of witnesses and victims;
- b. Exclusively international judges. Alternatively, a majority of international judges with an equal number of Sri Lankan Sinhalese and Tamil judges on each bench / chamber;
- c. An international prosecutor with two deputies, one Tamil and one Sinhalese;
- d. An international registrar with two deputies, one Tamil and one Sinhalese;
- e. A defence support section headed by an international legal practitioner;
- f. The application of substantive customary international law, including (as applicable) war crimes, crimes against humanity, and genocide, as well as recognised forms of criminal liability such as command responsibility and joint criminal enterprise;
- g. The application of Sri Lankan procedural law modified for consistency with ICCPR protections;
- h. Secure funding and a financial management committee in line with above;

None of these features are explicitly included in the Resolution. It calls for nothing more than a Domestic Mechanism dressed up with a fig-leaf of minimal international participation. As the High Commissioner already clearly stated in his Report, such a Domestic Mechanism will not work. When Sudan offered to setup a domestic mechanism for international crimes committed in Darfur, the proposal was flatly rejected by the HRC. Similarly at the most recent Session, the HRC made a recommendation to refer North Korea to the International Criminal Court. Tamil victims deserve the same level of justice. Such a double standard and the subjugation of the principles of justice to the vagaries of political expedience continues to undermine the credibility of the HRC and the rule of law.

The High Commissioner's Report and the Resolution passed today are also at variance in other respects. The High Commissioner's Report clearly and repeatedly states that it was the Tamils who had borne the brunt of the persecution, whereas the Resolution is conspicuous in denying the existence of the Tamil Nation. The High Commissioner in his Report noted the change of tone of the new regime in Sri Lanka in their dealings with the HRC, and emphasized that – like the previous regime – the new regime had also refused access to the Office of the High Commissioner's Investigation of Sri Lanka (OISL) and withheld requested information. In contrast, the Resolution passed at the HRC goes out of the way to portray the Sri Lankan regime as some long-awaited messiah.

Rape of Tamil women continues under the present government. Land in the NorthEast continues to be occupied by the armed forces. Fear and control still exist. Nothing seems to have changed under the present regime except possibly its geopolitical shift.

While real justice to Tamils has been delayed at the September Session of the HRC, there is space in the present international legal order for access to remedies by Tamil victims. As the High Commissioner himself urged in his Report, States on their own are able to exercise the powers of universal jurisdiction to investigate and prosecute those who are implicated in international crimes.

We note that the legal standard of 'reasonable grounds' employed by the High Commissioner in his Report is the same threshold of proof required by the Judges of the International Criminal Court

before issuing an arrest warrant. Therefore, we urge civilized nations of this world to initiate criminal investigations followed by extradition proceedings against those who have been implicated in international crimes. The High Commissioner's Report can indeed form the basis for such action.

We call upon the High Commissioner to make the evidence gathered during the investigation available to states willing to undertake cases through the important legal principle of universal jurisdiction. The TGTE is willing to work with any State in this regard. The TGTE will facilitate the exploration of all techniques available to bring war criminals and perpetrators of genocide to justice through means available under the law. The measures taken by the Sri Lankan Government will not exhaust these remedies unless they are measures that satisfy the standards of international law.

The TGTE for its part will form an International Team comprising international Judges, international lawyers and Human Rights activists to monitor the implementation of the present HRC Resolution. We propose to announce the details of the Committee on the 2nd of November 2015.

In conclusion, TGTE would like to recognise how instrumental the international Civil Society has been in the establishment of the ICC, International Tribunals for Former Yugoslavia and Rwanda, and the Referral of Sudan to the ICC, and the catalytic role it continues to play in instigating trials and prosecution of perpetrators. We take heart in the immeasurable interest shown by civil society actors at home and around the globe on the plight of Tamils and in ensuring that at the end the vision of justice as promoted by the humanity will prevail. The TGTE will continue its global campaign to mobilize public opinion towards that vision of justice to the victims of genocide and the pursuit of prosecutions around international crimes committed in the island of Sri Lanka.

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