

TGTE's Response to Sri Lankan Foreign Minister Mangala Samaraweera's Address to UN Human Rights Council

"Sri Lanka's Nation Building has failed due to rigid Sinhala Ethnocratic nature of the Sri Lankan State"

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Office of the Prime Minister
Transnational Government of Tamil
Eelam [TGTE]
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SALIENT POINTS:

1. Opposition to the participation of foreign judges not political but racial.
2. Neither international nor domestic remedy available for the aggrieved parties by Sri Lanka's accession to the Convention on enforced disappearance.
3. PTA targets Tamils and created de-facto partition of Sri Lanka.
4. Demonization of Peaceful Advocacy As An Act Of Terrorism.
5. Plain clothes Security Personnel carrying pistols – Second phase of military governance.
6. Admonition by UN Official.
7. Constitutional mirage.
8. Winning election on a pledge of power sharing between Sinhalese and Tamils has now resulted in power sharing among Sinhala elite.
9. Sinhala militarization of Tamil land.
10. Disregard to recommendations by Government-appointed Consultation Task Force.
11. Rape Camps.



EXECUTIVE SUMMARY:

The TGTE's response to the Sri Lankan Foreign Minister's address to the 34th Session of the HRC states that the reason for the failure of the nation building acknowledged by the Foreign Minister was the rigid ethnocratic nature of the Sri Lanka state. The Response cites the failure of previous accords between the Tamils and successive Sri Lankan Governments and the opposition to or non-implementation of various commissions to inhibit impunity of the Sri Lankan armed forces as examples of this truism.

The Response also gives the full picture of the matters referred to by the Foreign Minister as “achievements”. With respect to OMP – lack of consultation of the victims, rejection by the GOSL of the demands of the survivors for international involvement and the failure to make OMP operational are pointed out. Regarding the GOSL accession to the International convention on Enforced Disappearance, the absence of domestic legislation to give effect to the Convention and the non-declaration under Article 31 of the Convention that allows the aggrieved party to seek international remedy have been pointed out. While pointing out enforced disappearance as a continuing crime, the issuance of the certificate of “absence” for missing persons is shown as a ploy to bury the issue.

The Response notes the Sri Lankan Government's demonization of peaceful advocacy as an act of "terrorism". It contends that such listing was a violation of freedom of speech, freedom of conscience and the Eelam Tamils' right to self-determination. The Response points out the observation by the UN Special Rapporteur on Minority Issues that the almost entirely Sinhalese Sri Lankan army and its disproportionately heavy presence in the Northern province amounted to it being seen as an occupying force. The Response while pointing out the recent replacement of new military personal carrying AK47 by security personal in plain clothes carrying pistols contends that this was the second phase of military governance in Tamil areas. It also points out that the military presence constitutes not only a threat to Tamils' physical security but also inhibits international creativity and economic activity in the community.

The Response points out that the Constitutional Reform process was a mirage in the way that it failed to recognize Tamils as a distinct nation or the NorthEast as Tamil inhabited areas, a historical and political reality recognized by the 1987 Indo-Sri Lankan Accord. The proposed Constitutional drafts are in effect a retreat and not progress. The Response also noted Sri Lanka's failure to implement the recommendations proposed by WGEID, CAT and CEDAW and pointed CERD's observation that the strength of anti-Tamil racism made these abuses possible. Finally, the Response showed how the Minister remained completely silent on matters such as the existence of “rape camps” brought out by the International Truth and Justice Project. Such camps maintained by the security forces of a country today would become a rare and documented case since the Japanese Imperial Army held such camps during the Second World War.

The Response concludes as demonstrated above, due to the rigid ethnocentric nature of the state, the Government of Sri Lanka will neither mete out transitional justice to the Tamil victims nor will it engage in the path of reconciliation under which both people can live in freedom, dignity and security in the island of Sri Lanka. The TGTE's view that a two-year extension or even a twenty-year extension would not lead to any progress or change in Sri Lanka if the Human Rights Council decided to simply roll over the existing Resolution 30/1 passed in 2015. The emptiness of the rhetoric in Foreign Minister Samaraweera's address to the UN Human Rights Council was no more than a reflection of the pervasive ethnocracy and the interests of the State he represents.

SRI LANKA'S NATION-BUILDING HAS FAILED DUE TO THE RIGID SINHALA ETHNOCRATIC NATURE OF THE SRI LANKAN STATE:

The acknowledgement by the Foreign Minister of Sri Lanka, Mr Mangala Samaraweera, in his address to the 34th Session of the UN Human Rights Council that Sri Lanka has failed in its 69 year-old experiment in nation-building acquires immense significance. Yet, the dismal failure of the Foreign Minister to even hazard a guess as to the root causes of that failure is even more significant. The fundamental reason for why nation-building failed in Sri Lanka from the time of independence in 1948 is the rigid Sinhala ethnocentric nature of the Sri Lankan State. Sinhalese make up 74.9% of the population and they believe that they are the ‘chosen people’ to control society and the State in the island for the benefit of their people without the need to share power with other nations and minorities.

The UN Special Rapporteur on Minority Issues stated in her January 2017 Report:

"The sense that minorities are generally excluded from most areas of decision making and power structures was pervasive. Among the many challenges and issues raised, one underlying root cause of all grievances was the inadequate levels of minority participation and representation in major institutions and decision making bodies and the resultant frustration with systemic social and political marginalization. The dominance of the Sinhalese and Sinhala as the de facto sole language in these bodies were cited as a major hindrance to minority participation"

Due to their inability to realize the benefits of a plural society, successive governments have failed to abide by their own commitments to build a more just, democratic and inclusive Sri Lanka in which Tamils and Muslims had equal rights as the Sinhalese. "Long term political settlements" through quasi power-sharing agreements such as the Bandaranaike-Chelvanayakam Pact, and Dudley Senanayake-Chelvanayakam Pact did not materialize due to strong opposition from the Sinhala constituency which in turn has been the dominant hegemonic feature of the Sinhala ethnocentric state of Sri Lanka. Notably, the 13th Amendment of 1987 to allow for power sharing within a unitary constitutional structure was not implemented due to the opposition from the Sinhala population. Recommendations of various commissions of inquiry including the 1977 Sansoni Commission, the 1991 Inquiry into the Attack on Medecins Sans Frontiers (MSF), the 1991 Kokkaddicholai Commission of Inquiry, the 1991-1993 Presidential Commission, the 1994 Commission of Inquiry into Disappearances, the 1998 All Island Disappearance Commission, the Presidential Truth Commission on Ethnic Violence, the 1981-1984 Bindunuwewa Commission, and the 2006 International Independent Group of Eminent Persons (IIGEP) did not lead to any remedial actions due to the fierce opposition from the Sinhala constituency. It has resulted in the failure to develop a judicial system trusted by victims in Sri Lanka.

Even today, the Sri Lankan Government has failed the international community and the Tamils over the last 18 months through its failure to implement the UNHRC Resolution 30/1, in which it made a series of commitments to the Tamils as well as to the international community. The salient feature of the transitional justice mechanism proposed by the UN Human Rights Council (HRC) through Resolution 30/1 – the one which allowed the victims to repose trust in a process based in the ethnically biased Sri Lankan judicial system - is the "participation of Commonwealth and foreign judges". However, the Sri Lankan President and the Prime Minister have repeatedly said that there will not be any foreign judges involved in the legal processes to come. They cite various reasons ranging from protecting the "honor of the nation", safeguarding "war heroes", "political opposition", etc. It should be noted that not a single Tamil leader, a Tamil political party, a Tamil Civil Society Organization or the victims has voiced opposition to the inclusion of foreign judges. The provision is only opposed by the Sinhala constituency. Thus, there is no "political opposition" for the inclusion of foreign judges, but only ethnically oriented opposition - a feature of the rigid ethnocentric Sri Lankan State.

ABSENCE OF REAL REMEDY ON 'SUCCESSSES' - OMP:

Even the matters listed as "achievements" by the Foreign Minister in his address to the UNHRC are at best only half fulfilled or not exactly at all as they seemed. The establishment of the Office of Missing Person (OMP) should be viewed in the context of the comments by the country's Prime Minister, Mr Ranil Wickramasinghe in 2015 that 'most of the disappeared are dead', and again in 2016 that most of the disappeared have 'gone abroad'. The question arises, therefore, what purpose is served by the establishment of the OMP? It should be noted that the legislation to set up the OMP was made without consulting the victims adequately. What is more, despite early demands by survivors for a robust involvement of international experts in the OMP, the Sri Lankan Government only agreed to

have technical support in the legislation it originally passed in August. Then, recently, the Prime Minister initiated amendments to prevent OMP members having the discretion to ask for even foreign technical support. These shortcomings, and the failure to make the OMP operational, have survivors of war and their supporters agitating in the towns of Vavuniya and Kilinochchi right now. Meanwhile, families of the disappeared in the town of Batticaloa who tried to use the newly promulgated Right to Information Act say that they found government officials unresponsive.

NEITHER DOMESTIC NOR INTERNATIONAL REMEDY AVAILABLE FOR VICTIMS UNDER THE CONVENTION ON ENFORCED DISAPPEARANCE:

With respect to the legislation to give effect to the International Convention for the Protection of all Persons from Enforced Disappearance, the Honorable Minister has acknowledged that domestic legislation has not been enacted to give effect to the Convention. It should be taken into account that Sri Lanka has not made the declaration under Article 31 of the Convention which allows an aggrieved party to bring individual complaints directly to the Committee on Enforced Disappearances. Thus, as it stands today, the accession to the Convention on Enforced Disappearance is meaningless as far as the victims are concerned.

PROPOSED COUNTERTERRORISM LEGISLATION MORE DRACONIAN THAN THE PTA:

The TGTE in its material submitted the HRC in 2015 entitled "Escalation of Persecution on Account of Tamil Ethnicity" noted that, while the PTA on its face value appeared neutral, it in effect targeted the Tamils. The High Commissioner for Human Rights in his advance copy of the Report on Sri Lanka released last week has corroborated the above. In his Report the Commissioner noted that "The Prevention of Terrorism Act had been notoriously used during the conflict to suppress dissent and target minority groups". The PTA, since its enactment on October 31st, 1979, has imposed a form of martial law in the Tamil areas. The PTA in effect created a de facto partition of the Island of Sri Lanka into Tamil areas and Sinhala areas.

The Special Rapporteur on minority issues in her report stated:

"While the government has committed to repeal of the Act, it appears that the latest draft of the new antiterrorism legislation that would replace the Act falls significantly short of international standards, raising new concerns among the Tamil community that they will continue to be arbitrarily targeted by whatever new security framework comes into force."

With respect to the proposed Counterterrorism Act, as attorney Ms. Subajini Kisho Anton, a civil society leader from Sri Lanka, has observed to the media in Geneva, the proposed Act contains more draconian provisions than the existing Prevention of Terrorism Act (PTA).

"CERTIFICATE OF ABSENCE" COVER UP OF DISAPPEARANCE:

The Foreign Minister applauded the issuance of certificates of absence. However, survivors have repeatedly asserted that they are neither interested in death certificates nor certificates of absence even as a temporary measure, because they believe it is an act to pull the wool over their eyes. They insist that the Government tells them the whereabouts of their loved ones who have disappeared.

Under basic rules of international criminal law, enforced disappearances are an ongoing international crime unless and until the whereabouts of the individual subject to enforced disappearance has been accounted. The crime against humanity of the Sri Lankan state, enforced disappearance of Tamils, continues as of today.

THE DEMONIZATION OF PEACEFUL ADVOCACY AS AN ACT OF TERRORISM:

The Foreign Minister also said that the list of designated persons under Regulation 4 (7) was amended. However, the Minister failed to state that the rationale for designating persons under Regulation by the previous regime as well as by the present regime was their supposed claim for an independent state. The peaceful claim for an independent state is premised on freedom of speech, freedom of conscience, and the legal right of self-determination of the Eelam Tamil people. Exploiting legal process to designate individuals and entities calling for an independent state through non-violent means is an abuse of the legal process and an act of ideocracy.

ADMONITION BY UN OFFICIALS:

The Foreign Minister noted the visit of the UN Secretary General, Mr. Ban Ki-Moon, in 2016 and Special Rapporteur on Minority Issues, Aita Izsak-Ndiaye, at the invitation of the government. While the above is commendable, it would be beneficial in reality had the GOSL taken to heart the recommendations made by the above visitors. The Special Rapporteur on Minority Issues observed the following, among others: "with the army's ethnic make-up being almost entirely Sinhalese and its disproportionately heavy presence in the Northern Province, the military is seen as an occupying force'. The new Sri Lankan regime has removed some checkpoints at certain places. However, these checkpoints were merely taken out of Tamil land and rather put instead into existing army camps. It is similar to a turtle hiding in its shell. Some of the military personnel carrying AK47s are now being replaced by security personnel in plain clothes carrying pistols. This is the second phase of a Military Governance, and it is a very dangerous one. The military presence constitutes not only a threat to Tamils' physical security but also inhibits intellectual creativity and economic activity in the Tamil community.

CONSTITUTIONAL MIRAGE:

The Honorable Foreign Minister Mr Samaraweera talked about the completion of reports by the six Sub-Committees on Constitutional Reform. The Sub Committee's Report on relation between center-periphery, which is the heart of any reconciliation effort, did not recognize the Tamils as a distinct nation or the NorthEast as historically Tamil-inhabited areas, a historical and political reality recognized by the 1987 Indo-Sri Lankan Accord. Thus, the proposed constitutional drafts are in effect a retreat and not progress forward. The new regime came into power with the support of the Tamils promising them power sharing. However, what we witness today is not power sharing among the Sinhalese, Tamils, and Muslims, but power sharing among the Sinhala elite, President Maithripala Sirisena (SLFP), Prime Minister Ranil Wickramasinghe (UNP), and former President Chandrika Kumaratunga.

SINHALA MILITARIZATION OF TAMIL LAND:

Honorable Mangala Samaraweera stated that 5,515.98 acres of state land and 2,090.03 acres of private land were released in 2016 and a further 1,383.51 acres of state land and 30.54 acres of private land were released in January 2017. According to the well detailed study conducted by the British Tamils Forum, as of April 2016, the Sri Lankan Military was occupying more than 96% of the land belonging to the Tamil people with a staggering 67,427 acres being occupied. The Government of Sri Lanka remains the belligerent occupant of Tamil owned land under and subject to the international laws of war.

DISREGARD OF THE RECOMENDATIONS OF THE CONSTITUTIONAL TASK FORCE:

The Honorable Foreign Minister noted that over 7,000 written submissions were received by the Consultation Task Force (CTF) on Reconciliation Mechanisms. However, he failed to mention that - as

the CTF and Special Rapporteurs observed - due to ongoing human rights violation in the Northern and Eastern parts of the country, including abductions, intimidations and harassment by Security Forces, consultations in the Northern Tamil area recorded the lowest number of submissions to the CTF. The Foreign Minister speaks about the success of the public consultations on transitional justice. However, there have been public expressions of misgivings coming from civil society – including members of the CTF – on the coldness with which the Sri Lankan Government received its report and recommendations. Not only did the President and PM not attend the handing over ceremony, the Minister of Justice dismissed the report as one produced by NGOs. The Foreign Minister also failed to mention that the CTF recommended a hybrid court and international participation in the Office of the Special Council of Investigation and Prosecution. The Honorable Minister failed to mention the comment made by the former President Chandrika Kumaratunga, Chairperson of the Office National Unity and Reconciliation, that if a new constitution was promulgated, there would be no need for any accountability mechanisms.

FAILURE TO IMPLEMENT RECOMENDATIONS OF UN COMMITTEES:

The Foreign Minister said that Sri Lankan periodic reports were considered by various committees. However, he failed to mention the withering criticisms against the prevalence of torture and discrimination against women and a lack of a path forward for accountability for disappearances, especially in the post-war NorthEast, by WGEID, CAT and CEDAW. CERD noted the strength of anti-Tamil racism which makes these abuses possible. The Foreign Minister promised progress on the recommendations of all those treaty bodies, but no actions to report on those recommendations.

RAPE CAMPS:

The Foreign Minister remained completely silent about the “Rape Camps” mentioned by the International Truth and Justice Project (ITJP). According to the ITJP, 48 of the victims had been detained under the Government of former President Mahinda Rajapaksa, and 7 of them under the new Government of President Maithripala Sirisena. This then becomes one of the rare documented cases of “Rape Camps” maintained by Security Forces of a country since the Japanese Imperial Army held Korean and Chinese women as “comfort women” during the Second World War. The existence of Rape Camps also raises the question as to whether individuals who are on the list of disappeared are being detained in the said Camps. Earlier, it was rumored that surrendered LTTE female cadres were being used to do cooking and other chores by the Sinhala Army, along with other duties.

Tamils have a 5,000 years old culture and traditions and women have a distinct and important place within this culture. Targeting women in Sri Lanka is similar to the forced abortion of Muslim women by Serbs in the not so distant past with the aim of destroying the identity and integrity of their nation. Under International Criminal Law these rape camps constitute crimes against humanity that verge upon genocide against Tamil women.

CONCLUSION:

As demonstrated above, due to the rigid ethnocratic nature of the state, the Government of Sri Lanka will neither mete out transitional justice to the Tamil victims nor will it engage in the path of reconciliation under which both people can live in freedom, dignity and security in the island of Sri Lanka. It is our considered view that a two-year extension or even a twenty-year extension would not lead to any progress or change in Sri Lanka if the Human Rights Council decided to simply roll over the existing Resolution 30/1 passed in 2015. To us, the emptiness of the rhetoric in Foreign Minister Samaraweera’s address to the UN Human Rights Council was no more than a reflection of the pervasive ethnocracy and the interests of the State he represents.

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