

UN Human Rights Council Urged to Debate a Special Sri Lanka ad hoc Tribunal, as Recommended by UN Rights Chief: TGTE

“TGTE submitted a proposed draft Resolution for promoting Justice, Accountability and Human Rights in the island of Sri Lanka”

GENEVA, SWITZERLAND, March 20, 2017 /EINPresswire.com/ --

Today the Transnational Government of Tamil Eelam (TGTE) sent to all Member States at the UN Human Rights Council (UNHRC) a proposed draft Resolution for promoting Justice, Accountability and Human Rights in the island of Sri Lanka, along with a letter calling for their support and careful consideration of the proposal.

The letter signed by TGTE’s UN Representative, Suginthan Murugaiah, stated that while the TGTE was cognizant of the fact that it did not enjoy the standing of a member state to the UNHRC, the proposal for an alternative draft Resolution was being made from the victims’ perspective, urging Member States to take into account the points mentioned in it.

The letter referred to TGTE’s One Million Signature Campaign which garnered support of over 1.6 million people from countries around the world for their call for an International Investigation on Sri Lanka. It also referred to TGTE’s own Resolution passed at their 6th Parliamentary session held on 4 December 2016 in Paris, calling the UNHRC to act as they did with North Korea and refer Sri Lanka to the UN General Assembly.

TGTE’s draft Resolution points out that the UNHRC has never held a public debate on the UN High Commissioner’s recommendations for an ad hoc tribunal and calls the UNHRC to consider a timely and transparent debate on the High Commissioner’s recommendation for the establishment for a special ad hoc tribunal for Sri Lanka.

The draft Resolution takes note of observations made by the High Commissioner in his advance copy of the Report, observations of the Consultation Task Force on reconciliation mechanism, observations made by the Special Rapporteur on Minority issues in her Report on her mission to Sri Lanka, and the second Spot Report “A Road Map to Victims Justice” by Sri Lanka Monitoring Accountability Panel which stated that the Government of Sri Lanka continued to act in bad faith to frustrate HRC Resolution 30/1.



The Draft Resolution thus calls for Sri Lanka's referral to the UN General Assembly with recommendation to establish a Special Tribunal or to the UN Security Council with recommendation to refer Sri Lanka to the International Criminal Court (ICC).

BELOW, PLEASE FIND TGTE'S DRAFT RESOLUTION PROMOTING JUSTICE, ACCOUNTABILITY AND HUMAN RIGHTS IN THE ISLAND OF SRI LANKA:

Item 2

The UN Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations, (PP1 HRC/30/1)
Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments, (PP2 HRC/30/1)

Recalling Human Rights Council resolutions 19/2 of 22 March 2012, 22/1 of 21 March 2013, 25/1 of 27 March 2014, (PP3 HRC/30/1)

Reaffirming that it is the responsibility of each State to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, (PP5 HRC/30/1)

Welcoming the visits to Sri Lanka from 6 to 9 February 2016 by the United Nations High Commissioner for Human Rights and from 31 August to 2 September 2016 by the United Nations Secretary-General,

Welcoming also the visit from 9 to 18 November 2015 by the Working Group on enforced or involuntary disappearances, the visit from 26 January to 2 February 2016 by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the joint visit from 29 April to 9 May 2016 by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the visit from 10 to 20 October 2016 by the Special Rapporteur on Minority Issues,

I. Takes Note with Appreciation the comprehensive report presented by the United Nations High Commissioner to the Human Rights Council at its thirty-fourth session, as requested by the Human Rights Council in its resolution 30/1,

Notes with concern, some of the findings contained in High Commissioner's report including:

- "Little progress has been made with regard to the preservation of evidence and the investigation into the mass graves discovered in different parts of the country in recent years."
- "The lack of decisive progress in the above-mentioned emblematic cases reflects a lack of capacity or willingness of the State to prosecute and punish perpetrators of serious offences when they are linked to security forces."
- "The failure to show progress in the above-mentioned cases [emblematic cases enumerated in the report] only strengthens the case for the establishment of a specialized court to deal with system crimes, staffed by specialized personnel and supported by international practitioners, as recommended by the Consultation Task Force in its final report. In the view of the High Commissioner, international participation in accountability mechanisms remains a necessary

guarantee for the independence, credibility and impartiality of the process and an integral part of the commitments of the Government under Human Rights Council resolution 30/1.”

- “[T]he Prevention of Terrorism Act continued to be used to make arrests, including of more than 25 individuals in March and April 2016 and 12 in October and November for alleged links to a criminal gang... [M]ost detainees under the Act are of Tamil origin....”

- “The Government has created several ad hoc bodies, including the Secretariat for Coordinating Reconciliation Mechanisms, and the Office of National Unity and Reconciliation ... These bodies, however, are yet to present a sufficiently convincing or comprehensive transitional justice strategy to overcome the legacy of mistrust and scepticism left by numbers inconclusive ad hoc commissions and procedures.”

- “The Government appears to have prioritized the design of the truth and reparations aspects, with little commitment to the establishment of a judicial mechanism involving participation of Commonwealth and other foreign judges, as called for by the Human Rights Council in resolution 30/1.”

- “The Prevention of Terrorism Act had been notoriously used during the conflict to suppress dissent and target minority groups ... While most detainees under the Act are Tamil origin, both special high courts are based in mostly Sinhalese areas.”

- “The Consultation Task Force referred to instances of surveillance and intimidation by intelligence or security personnel during consultations it held in the North and the East, despite the steps taken to allay such concerns. The Task Force noted this perceived “inability” of the Government to rein in the security and intelligence machinery during the consultations is a grave concern.”

- “The use of torture remains a serious concern.”

- “OHCHR received credible information from a well-known human rights organization according to which “white van” abductions, torture, and sexual violence by Sri Lankan security forces persisted. These allegations must be properly investigated. OHCHR raised this matter with the authorities.”

II. Takes note of, the final report of 3 January 2017 from the Consultation Task Force on Reconciliation Mechanisms, an esteemed group of members from civil society appointed by the Government of Sri Lanka and its findings.

“The main recommendations contained in the report include the establishment of a hybrid court with a majority of national judges and at least one international judge per bench, and with no temporal jurisdictional limitation; and the prohibition of amnesties for war crimes and crimes against humanity, or for gross human rights violations and abuses, such as torture, enforced disappearance and rape.”

III. Regrettably notes that the Human Rights Commission of Sri Lanka in its November 2016 report stated, “that complaints it had received illustrated the routine use of torture by the police throughout the country as a means of interrogation and investigation.”

IV. Expresses grave concern that the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment found that torture was commonly used in criminal investigations and that he “observed that total impunity applied to both old and new cases.”

V. Notes with concern the Report of the Special Rapporteur on minority issues on her mission to Sri Lanka (A/HRC/34/53/Add.3) including:

“As at 18 May 2016, there were 5,785 outstanding cases of enforced disappearance. While most victims of conflict-era enforced disappearances and extrajudicial killings at the hands of the Sri Lankan army were Tamils.

The Special Rapporteur felt widespread, deep-seated frustration and anger about the lack of progress in the search for truth, compounded by the chronic pattern of impunity.

It was evident that ethnicization of politics, and the polarized environment that is prevalent at every level of governance are not conducive to the protection and promotion of minority rights.”

VI. Takes note of the Second Spot Report ‘A Roadmap to Victim’s Justice’ by Sri Lanka Monitoring and Accountability Panel comprised of International jurists (Peter Haynes QC (UK), Andrew Ianuzzi (USA), Richard J. Rogers (UK), Professor Heather Ryan (USA), Justice Shah (India), Geoffrey Robertson QC-Consultant) including:

“Seemingly, the Sirisena administration has been acting in bad faith for some time with respect to its commitments under the HRC Resolution.

After several months of paying lip service to its commitments to bring justice to victims, the Government of Sri Lanka’s (GSL) anti-justice-agenda rhetoric escalated in August 2016. Reacting to the long-awaited passage of the Office on Missing Persons Act (the ‘OMP Act’), President Sirisena declared that his government would never target ‘war heroes’, a none-to-veiled reference to members of the Sri Lankan armed forces, some of whom are likely to be prime war crimes suspects.

The following month, GSL Justice Minister Wijeyadasa Rajapakshe categorically rejected all allegations of war crimes committed by government forces and indicated that his ‘government would take legal action against anyone who alleges’ the contrary. Moreover, he stated that ‘anyone who discusses mass graves in Sri Lanka’s North is an enemy of the nation and war heroes’. Overly concerned with placating the country’s ‘vast southern Sinhalese nationalist constituency’, the president himself ‘loses no opportunity to publicly declare that he would never compromise on national security or let down the armed forces’.

Given political realities in Sri Lanka and the lack of meaningful progress to date, Sirisena does not appear to be a credible partner in the envisaged endeavors. And with all carrot and no stick from those countries that have the ability to influence events in Sri Lanka, it is unlikely that he will feel compelled to change his current course any time soon.”

VII. Notes with shock the report of the International Truth and Justice Project which documents the existence of “Rape Camps” in which 48 victims had been detained under the Government of former President Mahinda Rajapaksa and 7 of them under the Government of President Maithripala Sirisena.

VIII. Believes that any extension of time will be perceived by the Government of Sri Lanka as a weakening of the international community’s resolve to deliver justice to the victims of these international crimes and emboldens the Government of Sri Lanka to continue to extend permanently the impunity regarding the perpetrators of the grave international crimes.

IX. Believes that any extension of time will be interpreted by the perpetrators as a sign that they can continue to commit crimes against the Tamil Nation without the fear of being held accountable.

X. Believes that extension of time might result in the evidence fading or becoming stale and elderly witnesses may not be in the position to testify.

XI. Firmly believes that the mere extension of time to Sri Lanka will also embolden other

persecutors/genocideries/war criminals around the world that they can frustrate the Human Rights Council's Resolution by engaging in cosmetic measures and delaying tactics.

XII. Notes with regret that the 13 of March 2017 Resolution submitted by Montenegro, the former Yugoslav of Macedonia, United Kingdom of Great Britain and Northern Ireland, and the United States of America does not contain any time bound benchmarks for implementation of Sri Lanka's obligations under Resolution 30/1 such as:

- Six months to establish a hybrid tribunal to investigate and prosecute violations of international law committed in Sri Lanka (30/1, para. 2)
- Three months to "repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international best practices." (30/1, para. 12)
- Immediate implementation of Sri Lanka's obligations under international law with respect to those persons currently detained without a lawful basis for doing so.
- Thirty days to issue unequivocal "instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished." (30/1, para. 17)
- Thirty days to implement "a comprehensive plan and mechanism for preserving all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law, whether held by public or private institutions" (30/1, para. 15)
- Sixty days to being the process of "the return of land to its rightful civilian owners" (30/1, para. 10) and to complete this process within two years.

XIII. Recalls that the Human Rights Council has never held a public debate on the High Commissioner's recommendation for an ad hoc tribunal.

RESOLUTION:

1. To consider and debate in a transparent manner the High Commissioner of Human Rights 2015 recommendation for the establishment of a special ad hoc tribunal for Sri Lanka; and that absent a finding that the government of Sri Lanka has discharged its obligations under Resolution 30/1 to hold the perpetrators of grave international crimes committed against the Tamil People accountable that the Human Rights Council refers the matter to the UN General Assembly with the recommendation that an ad hoc tribunal for Sri Lanka be established and/or refers Sri Lanka to the UN Security Council with the recommendation that the body refer Sri Lanka to the International Criminal Court.

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