

Transnational Government of Tamil Eelam (TGTE) Welcomes UN High Commissioner for Human Rights Calling Sri Lanka's Bluff

TGTE to UN Human Rights Council: Request Security Council Referral to the International Criminal Court (ICC).

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"Since 2015, virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war."

"The gravity of the cases that a specialized accountability mechanism must address cannot be underestimated."

H.E. Ms. Michelle Bachelet Jeria
UN High Commissioner for Human Rights
(A/HRC/40/23 para. 29)

The UN High Commissioner finds that Sri Lanka has failed its obligations under UNHRC Resolution 30/1

On 8 March 2019, the UN High Commissioner of Human Rights released her highly-anticipated report on Sri Lanka's progress to fulfill its commitments under UNHRC Resolution 30/1. The High Commissioner finds that Sri Lanka has failed its obligation to create the special judicial mechanism described in 30/1, noting that both the President and the Prime Minister have repeatedly asserted that there will be no international involvement in any justice mechanism, walking back on Res. 30/1 terms.

Sri Lanka's complete and utter failure to make even the most minimal efforts to deliver justice to victims and their families cannot be tolerated. The international community must end its complacency with the impunity Sri Lanka extends to the perpetrators of some of the gravest crimes committed this century.

HIGH COMMISSIONER'S ASSESSMENT OF SRI LANKA'S IMPLEMENTATION OF HRC RES. 30/1:

1) Create transitional justice mechanism with international participation.
(para. 2)□

"Concrete results were yet to come." (A/HRC/40/23, para.16).

There is a "lack of a comprehensive strategy or action plan setting out a timeline for the establishment of the various transitional justice mechanisms." (A/HRC/40/23 para. 17: GRADE - FAIL

2) Repeal Prevention of Terrorism Act (para. 12):

The Prevention of Terrorism Act remains in force. In October 2018, the Supreme Court struck down a draft replacement bill citing that references to Sri Lanka's obligations under international human rights conventions it has adopted cannot be regarded as law under the Constitution of Sri Lanka.(A/HRC/40/23, para.32): GRADE - FAIL

3) Prohibit the use of torture (para. 17)□

"OHCHR has continued to receive credible information about cases of abduction, unlawful detention, torture and sexual violence by Sri Lanka security forces, which allegedly took place in 2016 to 2018."(A/HRC/40/23 para. 56): GRADE - FAIL

4) Conduct credible prosecutions of serious domestic crimes before the national courts of Sri Lanka (para. 7)□

"The criminal justice system has yet to demonstrate its capacity or willingness to address complex emblematic cases. This in turn raises questions about the capacity and will of the State to address impunity for serious violations of international humanitarian law and for gross violations and abuses of international human rights law, and has a negative impact on peoples' trust in the justice system." (A/HRC/40/23 para. 38): GRADE - FAIL

5) Resettle internally displaced Tamils (page 2)□

"The return of land occupied by the military in the Northern and Eastern Provinces has continued... Furthermore, communities have complained about new land grabs and other contentious land issues, such as alleged "colonization" through the establishment of irrigation, forestry and archaeological projects, and of continued military involvement in economic activities. Such situations prevent the resumption of livelihoods, unlike what was encouraged by the Human Rights Council in its resolution 30/1." (A/HRC/40/23 para. 35): GRADE - FAIL

6) Protect human rights defenders (para. 11)□

"Some serious concerns nonetheless persist. Reports of harassment or surveillance of human rights defenders and of victims of human rights violations have continued. In 2018, at least two incidents were reported involving the assault of human rights defenders by unidentified aggressors, presumably in connection to their advocacy on cases of disappearance..." (A/HRC/40/23 para. 55)

"Other human rights defenders have reported being questioned by the authorities after having travelled to Geneva to attend sessions of the Human Rights Council". (A/HRC/40/23 para. 55): GRADE - FAIL

In turn, it is the position of Transnational Government of Tamil Eelam (TGTE) that:

1) The Human Rights Council must pass a resolution establishing an international investigative mechanism including a referral of the situation of Sri Lanka to the International Criminal Court.

In her report (para. 51), High Commissioner Bachelet states, "Concerns remain regarding the state's capacity and willingness to prosecute and punish perpetrators of serious crimes when they are linked to security forces or other positions of power." TGTE welcomes the High Commissioner's observation.

Three comprehensive UN investigations have found "credible allegations of violations of international humanitarian law...some of which amount to crimes against humanity." (Panel of

Experts Report, 31 March 2011, p.ii) The 2015 OHCHR Investigation on Sri Lanka (OISL) found “reasonable grounds to believe” (the same standard used by the ICC to issue arrest warrants) that the Sri Lankan Army committed: unlawful killings; enforced disappearances; shelling of hospitals and civilian areas; sexual torture and denying civilians humanitarian aid.

It cited abundant video, photographic and documentary evidence of these crimes and identified the specific units responsible. OISL found that senior level perpetrators are still able to “prevent any progress in...addressing accountability.” (A/HRC/30/CRP.2, para.1270). As High Commissioner Hussein stated in his report to the HRC’s 34th session, the crimes were systematic and necessitate a special court.

Furthermore, the International Commission of Jurists’(ICJ) recent submission to the current HRC states:

“There is a profound lack of trust in the domestic system from the Tamil community, arising from the perception that domestic courts have an ‘ethnic bias’.” It is not just perception, it is a fact. Sri Lanka is a rigid, Sinhala ethnocentric state that will never deliver justice to Tamils. The ICJ also stated that referral to the ICC is “fully warranted.”

The HRC’s upcoming resolution should establish an independent tribunal such as the International Criminal Tribunal of Yugoslavia (ICTY) or the International Criminal Tribunal of Rwanda (ICTR) or request that the UN Security Council refer the case to the ICC pursuant to its authority under Article 13 of the Rome Statute.

2) The Human Rights Council must create an independent and impartial international mechanism for Sri Lanka to preserve evidence of crimes:

Transnational Government of Tamil Eelam calls on the Human Rights Council to establish an Independent, Impartial and International Mechanism for Sri Lanka. Such a mechanism would ensure that evidence of crimes held by the Government of Sri Lanka, other States, the OHCHR and civil society actors will be preserved for use by the ICC and other national courts bringing cases under universal jurisdiction.

Concluding Words:

Impunity for atrocity crimes is a moral and legal injustice that also threatens international peace and security. The Higher Commissioner notes this truth in her report’s concluding remarks when she says about several 2018 events that “the lack of accountability for past actions likely contributed to the return of violence...and played a role in undermining the principles of democracy and the rule of law.”

The first objective of the Human Rights Council listed in Resolution 5/1 is “the improvement of the human rights situation on the ground.” Instead, what we have seen in Sri Lanka since the adoption of resolution 30/1 is further degradation of human rights. It is therefore incumbent upon the Council, in order to fulfill its duty, to reject the status quo, act on the Commissioner’s recommendations, and prioritize international involvement to finally, ten years after the end of the conflict, actually capable of delivering the accountability and protection and promotion of human rights of Tamils in Sri Lanka that the State never will.

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