

# Report Card on Implementation of Commitments Made by Sri Lanka to UN Human Rights Council - TGTE

*"Economic Recovery and Accountability for Atrocities are Not Mutually Exclusive"*

UN HUMAN RIGHTS COUNCIL, GENEVA, SWITZERLAND, October 4, 2022  
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## MANDATES:

In March 2021 the UN Human Rights Council (HRC) passed Resolution 46/1 by votes of 22 for, 14 abstain, 11 against. This resolution follows 2015's Res.30/1 which was adopted by a

consensus vote, co-sponsored by Sri Lanka itself and giving 2 years to implement the 25 commitments on transitional justice undertaken by Sri Lanka. In 2017, Sri Lanka & the HRC reaffirmed those commitments in Res.34/1, which gave another 2 years extension for implementation.

In 2021 Sri Lanka withdrew from its commitments and refused to co-sponsor Res.46/1. One and a half year has now passed and we now review the implementation of mandates for action from Res.46/1 and issue our Report Card.

Overall, Sri Lanka has failed at implementing the mandates of Res.46/1, primarily due to the fact that Sri Lanka is a Sinhala, Buddhist, fundamentalist state. Thus there is no space for justice for Tamils.

## EXECUTIVE SUMMARY:

Sri Lanka failed this assessment. The reason why Sri Lanka failed was that Sri Lanka is a Sinhala Buddhist Fundamentalist state. There is no space for Justice for Tamils. Keeping Sri Lanka in the same classroom for another two years will not result in any progress towards accountability.



Report Card on Sri Lanka

The TGTE Prime Minister, Visuvanathan Rudrakumaran, in his tweets commented on the Office of the High Commissioner For Human Rights (OHCHR) 2022 Report on Sri Lanka. He noted the OHCHR's observation that the trend in Sri Lanka is towards Sinhala Buddhist majoritarian ideology with the support of the military and Buddhist monks and the High Commissioner's call for a credible domestic truth-seeking mechanism along with ad hoc special courts, are mutually contradictory. TGTE's Prime Minister also tweeted that Sri Lanka should not be allowed to use transitional justice as a sophisticated form of impunity. Noting that the Sri Lankan Foreign Minister's statement that the Sri Lankan constitution will not allow participation of foreign judges and Sri Lanka will not accept universal jurisdiction, he concluded that the remedy is a referral to the International Criminal Court (ICC).

Mr. V.P Lingajothy, TGTE's Minister for Human Rights, noted the continuing land grabs and increasing Sinhala settlement by the government, in Tamil areas. He also pointed out the OHCHR's statement that Sri Lanka is spending US \$ 1.86 billion, which amounts to 15% of its expenditure. Noting that giving more time to Sri Lanka will only facilitate them to carry out and complete structural genocide of Tamils, he concluded his remarks saying that justice delayed is justice denied.

Mr. Sutharsan Sivagurunathan, TGTE's Minister for Political Affairs, in his remarks to the UN Human Rights Council pointed out OHCHR's recommendations that Sri Lanka should reduce its military expenditure in the process of economic recovery. He said that the TGTE has also been highlighting for the last several months that over whelming military expenditure has been one of the main reasons for the current economic crises. He called for the reduction of military expenditure as a precondition for economic assistance by international institutions as well as by other countries. He further stated that the military occupation of the Tamil Nation is a bulwark for Sinhalization and Buddhistization and is also exploiting the economic livelihood of Tamils. He further said that the upcoming UN Human Rights Council resolution should include a timetable for military withdrawal from the Tamil areas.

Mr. Mahinthan Sivasubramaniam, TGTE's Minister for International Affairs, stated that Tamils have been subjected to mass atrocities on account of their Tamil ethnicity. He also pointed out that according to the February 2017 report of the International Truth and Justice Project, the Sri Lankan military runs Rape Camps where Tamil women are held as sex slaves. He pointed out the High Commissioner's observation in her 2021 report in which she called the member states to take measures to refer the situation in Sri Lanka to the ICC. He also pointed out that the above call was endorsed by all previous High Commissioners for Human Rights, nine former UN Special Rapporteurs and all three members of UN Panel of experts on Sri Lanka.

As for non-recurrence, as the several attempts including international mediation for political resolution resulted in failures, he called for an internationally conducted referendum to bring a permanent political solution to ensure non-recurrence of these atrocities.

With respect to the Tamils right to self-determination, it is stated that as pointed out by UN

Expert Panel on Sri Lanka that real or perceived exclusion of Tamils from the political process of Sri Lanka is a root cause of conflict. Based on the General Assembly resolution 2625, which is considered as customary international law and / or as a form of remedial justice, the TGTE is campaigning for an independent state. It is also stated that the Tamils did not consent to the 1972 and 1978 constitutions, thus when Sri Lanka severed its ties with British the Tamil sovereignty reverted to the Tamils. Presently the state of Tamil Eelam is a de jure state. On that basis the TGTE will accede to the Rome statute on behalf of the de jure Tamil Eelam state. It is hoped that based on the above, the ICC will assume jurisdiction and will bring prosecution for the crime committed in the North-Eastern part of Sri Lanka.

The TGTEs statement marking the International Day of Disappeared pointed out that Sri Lanka has the second highest number of cases of enforced disappearance registered with the UN working group. It is noted that while Sri Lanka ratified the Convention on Enforced Disappearances, it made reservation to article 31, which enables the victims to directly petition to the Committee established under the Convention. In the statement it is also noted that former Police Chief Jayantha Wickramaratne, who lead three police units allegedly involved in mass disappearance at the end of the armed conflict, was appointed to the Office of Missing Persons (OMP). It is further stated that the Office of Reparation is also militarized by the appointment of retired Major General Waduge Palitha Piyasuri Fernando.

TGTE's statement entitled "Sri Lanka Is Hiding Behind Economic Disaster To Avoid Accountability For Atrocity Crimes Committed Against Tamils" stated "One of the primary reasons for the economic disaster in Sri Lanka is tremendous financial burden placed by maintaining a large army with sole purpose of subjugating the Tamils." It is also noted in the statement that even 13 years after the end of the war in Tamil homeland there is 1 military person for every 6 civilians according to the California based Oakland Institute.

\*\* The statement noted that different responses to the protests in the NorthEast and the South. It is pointed out in the statement that the responses by the Sri Lankan government and the Sinhala civil society to "Gota Go Gama" protest base camp and routine protest in the NorthEast show the naked racism in the Sinhala polity. For example, it is stated in the statement the Lawyers of the Bar Association of Sri Lanka (BASL) stood in front of the protesters to ensure they were not attacked by police and STF, whereas BASL did not turnup when protesters at Mullivaikal Memorial Day or Maveerar Nall were attacked.

Following factors mandate the referral to the ICC:

- 1) Sri Lanka does not have Criminal Provisions for War Crimes, Crimes Against Humanity and Genocide.
- 2) The Sri Lankan state is not Ethnically Neutral.
- 3) The Sri Lankan Judiciary is not Ethnically Neutral.

\*\* REPORT CARD ON IMPLEMENTATION OF COMMITMENTS MADE BY SRI LANKA:

GRADES: D = Distinction, C = Credit, P = Pass, F = Fail.

Implement the Recommendations of 2021 High Commissioner's Report. OP2

F - In 2021 Sri Lanka revoked its consent to the UNHRC's 2015 Res 30/1.

(1) Actively promote an inclusive, pluralistic vision for Sri Lanka based on non-discrimination and the protection of human rights for all and in line with the 2030 Agenda for Sustainable Development; [from Paragraph 60 of HC Recommendations in A/HRC/46/20]

F The Sinhala Buddhist fundamentalism will not allow it.

(2) Ensure constitutional and legislative reforms to address the recommendations made by UN human rights mechanisms and contained in the resolutions of the HRC;

F Discussion of constitutional and legislative reform, plus non-transparent bodies set up, but no concrete action.

(3) Publicly issue unequivocal instructions to all branches of the military, intelligence and police forces indicating that torture, sexual violence and other human rights violations are prohibited and will be systematically investigated and that those responsible will be punished;

F No action taken.

Torture is in the DNA of Sri Lanka.

(4) Order all security agencies to immediately end all forms of surveillance and harassment of and reprisals against human rights defenders, social actors and victims of human rights violations;

F Surveillance, harassment and reprisals of war victims have continued without let-up since the war, while actions against HRDs and other actors have increased this year.

(5) Promptly, thoroughly and impartially investigate and prosecute all allegations of gross human rights violations and serious violations of international humanitarian law, including torture and ill-treatment, and give the highest priority to ensuring accountability in long-standing emblematic cases;

F There has not been any individual who has been arrested or charged, let alone brought to

justice for international crimes committed during the war.

Recently the charges against a former naval commander for killing 11 Tamils (in a non- armed conflict context).

(6) Remove from office security personnel and other public officials credibly implicated in human rights violations, in compliance with human rights standards, and

F The very few security personnel incarcerated for crimes against Tamil (in non- armed conflict) and other civilians have been released. There are no active criminal proceedings for human rights abuses during or after the war, nor ongoing reforms or implement other reforms of the security sector to strengthen and ensure accountability and civilian oversight; the security sector.

(7) Ensure structural safeguards for the Human Rights Commission of Sri Lanka to function independently and receive adequate resources;

F The Human Rights Commission has been weakened by passage of the 20th Amendment which allowed commissioners to be directly appointed by the president.

(8) Ensure an environment in which the Office on Missing Persons and the Office for Reparations can operate effectively and independently; provide both Offices with sufficient resources and technical means to effectively fulfil their mandate; and proceed with interim relief measures for affected vulnerable families with a gender focus, notwithstanding their rights to effective and comprehensive reparations and to truth and justice;

F The Office for Reparations has been provided a small amount of money to offer in the form of compensation for war-affected families and families of the disappeared, but without addressing their clear and repeated calls to learn the truth of what happened to their loved ones. The Office of Missing

Persons so far has provided no truth to the families of the forcibly disappeared and is certain to offer no acknowledgement of state responsibility for the large- scale disappearances and civilian deaths during the years of war.

(9) Establish a moratorium on the use of the Prevention of Terrorism Act for new arrests until it is replaced by legislation that adheres to international best practices;

C GoSL pledged a moratorium on all but terrorism-related arrests last fall, but has recently been arresting handfuls of protestors under the PTA. Passed PTA reform which does not adhere to international best practices.

(10) Establish standard procedures for

F There have not been any steps in this regard.

(10)granting pardons and other forms of clemency by the President, including by subjecting them to judicial review and excluding grave human rights and international humanitarian law violations;

A priori for pardon is accountability which is anathema to Sri Lanka.

(11) Honour its standing invitation to special procedures by scheduling renewed country visits by relevant thematic mandate holders; continue its engagement with the treaty bodies; and seek continued technical assistance from OHCHR in implementing the recommendations of United Nations

C Few special procedures have visited Sri Lanka, but ~25requests remain outstanding.

GIVE DUE CONSIDERATION TO THE RECOMENDATIONS MADE THE RECOMENDATIONS MADE BY THE SPECIAL PROCEDURES: OP2

3) Acknowledges the progress made by the Office on Missing Persons and the Office for Reparations, and stresses the importance of maintaining support for these institutions, safeguarding their independent and effective functioning, providing both offices with sufficient resources and technical means to effectively fulfil their mandates, allowing them to proceed with interim relief measures for affected vulnerable families, with a gender focus, and resolving the many cases of enforced disappearances so that the families of disappeared persons can know their fate

F On 20 th May 2021, former Police Chief Jayantha Wickramaratne in charge of 3 police units allegedly involved in mass disappearances at the end of the armed conflict was appointed as a member of the OMP. The Office of Reparations is also militarized by the appointment of retired General Waduge Palitha Piyasuri Fernando

4) Calls upon the Government of Sri Lanka to ensure the prompt, thorough and impartial investigation and, if warranted, prosecution of all alleged crimes relating to human rights violations and serious violations of international humanitarian law, including for longstanding emblematic cases; OP8

F Zero

5) Further calls upon the Government of Sri Lanka to protect civil society actors, including human rights defenders, to investigate any attacks and to ensure a safe and enabling environment in which civil society can operate free from hindrance, surveillance, insecurity and threat of reprisals; OP10

F Serious problems with the ... restrictions on free expression and media, including violence and threats of violence against journalists, unjustified arrests and prosecutions of journalists, and censorship; restrictions on internet freedom;

6) Requests the Government of Sri Lanka to review the Prevention of Terrorism Act, and to ensure that any legislation on combating terrorism complies fully with the State's international human rights and humanitarian law obligations; OP11

F No legislation to compote with human rights and humanitarian laws. Tamil victims and human rights organizations want the repeal of the PTA not amendments to the PTA.

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