

Association Tamil Uzhagam
18 Rue de la Saône
78310 MAUREPAS
E-mail : tamiluzhagam78310@gmail.com
Tél. : 00.33.6.69.58.95.39

Association Tamil Uzhagam

UPR Submission: Sri Lanka

Related to: Sri Lanka
UPR Session: 28th session of UPR, November 2017
Submitted on: 29 Mars 2017

Joint Stakeholders Submission for the Universal Periodic Review of Sri Lanka

In special consultative status with UN ECOSOC

Association Tamil Uzhagam

Association Tourner La Page (France)
Association des Etudiants Tamoule de France (France)
Association Bharathi Centre Culturel Franco Tamoule
Association LE PONT (93300 Aubervilliers)
Association Tamil Uzhagam (78310 Maurepas)
Society for Development and Community Empowerment
Association Burkinabé pour la Survie de l'Enfance
Solidarité Internationale pour l'Afrique (SIA)
Society for Development and Community Empowerment (SDCE)
Association Mauritanienne Pour la Promotion du Droit
Association Pour les Victimes du Monde
Kenya Comunity Develepment Group KCDG
Association Congolaise pour le Développement Agricole

NGOs With our ECOSOC Status

Association Le Collectif La Paix au Sri Lanka (France)
Association ABC TAMIL OLI (Seine-Sain-Denis)
L'Association Culturelle des Tamouls en France (A.C.T.F.). (Paris)
Association pour le Droit de l'Homme et le Développement Durable.(92700)
Association internationale des Droits de l'Homme de Bourgogne. (AIDHB 58000)
Association Jeunesse Etudiante Tamoule (J.E.T.). (93)
Association Thendral (94470 Boissy-Saint-Léger)
Maison du Tamil Eelam France (France)
Swiss Council of Eelam Tamils (Swiss)
L'Association Mondiale des Droits de l'Homme (A.M.D.H) (Suisse).
Association international des Droits de l'Homme (France)

Northern Provincial Council Jaffna: RESOLUTION ON THE NEED FOR AN INTERNATIONAL MECHANISM

Acknowledging the long standing efforts of United States, India along with the international community in securing justice, rights, peace and security to this troubled Island

Recognizing the efforts of the international community through the 'TINHRC process towards Investigating and ensuring justice, accountability for mass human rights' violations committed from 21 February 2002 until 15 November 2011

Noting the statements made by the Chairman and Councilors of this Northern Provincial Council on the need for an independent, international investigative mechanism

And further noting the demand of the victims, most of whom call this Province their home, for an independent, international investigation

Highlighting the fact that victims of human rights' violations are spread across many countries

We wish to bring the following to the attention of the International Community, member states of the UNHRC and Human Rights, Activists:

Sri Lanka has had a long and blighted history of human rights violations which initially manifested as discrimination against the Tamil minorities and over the course of six decades evolved into a full blown civil war marked by mass atrocities. In our Resolution passed on 10th February 2015, we characterized the treatment and continuous killings of Tamil people in Sri Lanka in the years since the independence of the country in 1948 as amounting to genocide under the Genocide Convention and under International Law. Under the Genocide Convention, the State of Sri Lanka bears responsibility for such Genocide. Under International Law, as codified in the Rome Statute of the International Criminal Code, actual perpetrators are responsible for the acts of genocide they had committed. The treatment of the Tamils by the Armed Forces and other agents of the Government of Sri Lanka involve the commission of other international crimes including crimes against humanity, torture, rape, enforced disappearances and the seizure of civilian land. The Council awaits the Report of the OISL of the United Nations High Commissioner on Human Rights to be released on September 2015 which is due to identify the nature of the crimes committed and possibly, the alleged perpetrators.

In this context, we the members of the Northern Provincial Council believe that the trial of the alleged perpetrators should not take place through any mechanism instituted by the Government of Sri Lanka (GOSL) as a State also incurs responsibility for the acts of its agents. Under these circumstances, the trial of the perpetrators of international crimes by a domestic mechanism, would be a travesty of justice as it would amount to the potentially guilty Government trying its own agents, thereby violating the prohibition in the maxim *nemo iudex in sua causa*.

Furthermore on a legal dimension also no domestic law prescribes these international crimes. Trial under new legislation will offend the prohibition of *ex post facto* prosecutions contained in the maxim *nullum crimen sine lege*. (There is no crime without a Law). The argument that Article 13(6) can cure the defect as it states that crimes against general principles are incorporated in Sri Lankan law is contentious as international crimes depend largely on international treaties and customary international law. The constitutionality of such a process becomes doubtful. It also

becomes doubtful as, under the constitution, foreign judges cannot be appointed to exercise jurisdiction within Sri Lanka in respect of domestic crimes stated in domestic legislation.

This Council wishes to emphasise that Sri Lanka's descent into grave human, political and social rights' violations was precipitated and reinforced by the failure of key pillars of State which were meant to protect and serve its citizens. The prolonged decline in the political culture and political will of the State and the failure of key institutions of Justice, law and order, i.e. Judiciary, police and the armed forces, ensured that impunity became the new norm in Sri Lanka. The Tamil community bore the full brunt of this new norm at all levels of its existence.

The prejudice among the members of the Judiciary against the minorities has been well recorded both by international organizations like the International Bar Council and by Sinhalese lawyers like Jayantha de Almeida Guneratne, Kishali Pinto Jayawardene and Gehan Gunatilleke in their publication *The Judicial Mind – Responding to the Protection of Minority Rights*. Similarly International Independent Group of Eminent Persons (IIGEP) who were nominated by international donor countries and the government of Sri Lanka and vested with a wide mandate to observe all investigations and inquiries conducted by and on behalf of the Commission of Inquiry into 17 atrocities, on resigning, cited reasons which aptly captured the long history of failures on the part of the State and the entrenched institutional flaws. The reason cited by IIGEP included the lack of political will, transparency and timeliness in the proceedings, non-corporation of state bodies and lack of victim/witness protection among other things as reasons for its failure.

For these reasons, the Council calls upon the International community to set up an international tribunal to try those alleged to have committed international crimes against the Tamil People in Sri Lanka. We urge the new leaders of the Sri Lankan government to be courageous enough to work with the International community to set up a credible international mechanism which will deliver justice and put this nation on a path of meaningful reconciliation.

1. This principle was accepted by the Privy Council in one of the trial at bar cases in Ceylon.

Justice C.V.Wigneswaran
Chief Minister
Northern Provincial Council Jaffna

Justice Canagasabapathy Visuvalingam Vigneswaran, is a Sri Lankan Tamil lawyer, judge and politician. He was a magistrate and a judge of the District Court, High Court, Court of Appeal and Supreme Court. He is the current Chief Minister of the Northern Province.

Northern Provincial Council (Tamil: வட மாகாண சபை Vaṭa Mākāṇa Capai; NPC) is the provincial council for the Northern Province in Sri Lanka. In accordance with the Sri Lankan constitution, NPC has legislative power over a variety of matters including agriculture, education, health, housing, local government, planning, road transport and social services. The constitution also gives it powers over police and land but successive central governments have refused to devolve these powers to the provinces. NPC has 38 members elected using the open list proportional representation system.

Recommandations

- a. Take immediate measures to demilitarize North and East and hand over lands (occupied by the military for over 25 years) to their rightful owners without any further delay. Also the Tamil people of the North East must be given access to their residential and agricultural lands to engage in economic and livelihood activities
- b. Having violated international humanitarian law and engaging war crimes the Relevant UN bodies must urge the Government of Sri Lanka to sign the Rome Statute in order to ensure justice and accountability to the victims of such heinous crimes under the International Criminal Court.
- c. Endorse the Tamil genocide resolution of 2015 passed by the Northern Provincial Council in February 2015. The said resolution clearly points out genocide of Tamils became synonymous with the country's policies since it gained independence, and Tamils across the island, particularly in the North-East have been subject to gross and systematic human rights violations, culminating in the mass atrocities committed in 2009. Sri Lanka's historic violations shows over 60 years of state sponsored anti-Tamil pogroms, massacres, sexual violence, and acts of cultural and linguistic destruction perpetrated by the state. The resolution alleged that these atrocities have been perpetrated with the intent to destroy the Tamil people, and therefore constitute genocide. Therefore the acceptance of the Resolution on Genocide of Tamils adopted by the Northern Provincial Council will enable to seek an UN inquiry to investigate the genocide of the Tamil people in Sri Lanka by successive Sri Lankan Governments, and direct appropriate measures at the International Criminal Court outlining the Tamil people had no faith in the domestic commission.
- d. Take immediate steps to fully implement without delay the Resolution 30/1 and the Recommendations of the of the OISL Report.
- e. Measures must be taken to ensure justice for victims of rape and torture which has been the weapon of Sri Lanka's genocide of the Tamil people. Human Rights Watch (HRW) stated such acts of sexual violence perpetrated on Tamil detainees and surrendeeds by Sri Lankan security forces is deliberate and is premeditated. Such acts of abuses are coercive, designed to intimidate, to instill fear, to extract information, sometimes to extract confessions... This is a deliberate policy. Therefore we urge that an independent international investigation be carried out on Sri Lanka to probe allegations of such abuses.
- f. The United Nations Committee against Torture (CAT) during its review in early December 2016 has urged Sri Lankan government to establish an independent mechanism to investigate allegations of torture and sexual violence during and after the conflict. In delivering its concluding observations the committee said that torture was a common practice in Sri Lanka. Therefore the government of Sri Lanka must be urged to implement the recommendations of the CAT Committee including ensuring that all allegations of unlawful detention, torture and sexual violence by security forces are promptly, impartially and effectively investigated by an independent body... as well as expedite the establishment of the mechanisms called for in Human Rights Council resolution 30/1 and, in particular, a judicial mechanism with a special counsel to investigate allegations of torture, enforced disappearances and other serious human rights violations. The mechanism should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality at the national and international levels.
- g. Perpetrators of war crimes and crimes against humanity must be investigated and brought to justice. The government must ensure that military forces who had perpetrated heinous acts of abuses and crimes must be investigated and not be protected or safe guarded to gain political mileage and to win the support of the Sinhala majority.
- h. Call on the Sri Lankan government to take steps to abide by the Vienna Declaration as well as Durban Declaration and Programme of Action and to let the Tamil people of the island to exercise its inalienable right to self-determination.
- i. Initiate and implement effective witness and victim protection.
- j. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner.
- k. Facilitate to the Working Group on Enforced and Involuntary Disappearances to victims family without intimidations.
- l. Families of the disappeared are clear in their demands for truth, justice, redress, and guarantees of non-recurrence. It is critical to address the enormous problem of enforced or

involuntary disappearances in Sri Lanka by tracing the missing, determining what happened, and prosecuting those responsible. This will be an important first step in dealing with the past.

- m. Moreover, the State should endeavor to build trust with Tamil Nation affected by war, who are weary about participating in yet another flawed domestic mechanism purporting to address enforced or involuntary disappearances.
- n. The pain and loss suffered by the people is immense and indescribable and therefore, it is important that they should be a part of the transitional justice process especially in formulating the framework of the four reconciliation mechanisms. It is imperative that the Government of Sri Lanka and UN understands the suffering and yearnings of the affected Tamil Nation. If not, search for truth and justice would be just another failure.

Anti-Terrorism Legislation

- o. Repeal the Prevention of Terrorism Act and abolish the system of administrative detention;
- p. Ensure that security measures adopted in the context of armed violence comply with international human rights law;
- q. Release all individuals arrested under emergency or anti-terrorism laws, unless they are charged with recognizable criminal offences and remanded by an independent, regularly constituted court. Any trials must be held promptly and in regularly constituted courts with all internationally recognized safeguards provided.

National Human Rights Action Plan

- r. Promptly implement the concrete human rights commitments contained in the National Human Rights Action Plan, particularly those that will protect against ongoing gross violations of human rights and ensure an end to impunity.

National Institutions

- s. Strengthen and ensure the independence of human rights institutions such as the National Human Rights Commission,

Witness Protection

- t. Initiate and implement effective witness and victim protection, in line with commitments made during the previous review but not yet implemented.

Torture and ill-treatment

- u. Implement the recommendations of the Special Rapporteur on torture, including to strengthening legal safeguards for eliminating all forms of ill treatment or torture in prisons and detention centres.

Death Penalty

- v. Abolish the death penalty and commute all death sentences to terms of imprisonment.

Extrajudicial Executions

- w. Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards.

Impunity

- x. Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law.
- y. Stop to protect war criminals and promote them as high level diplomats

War crime, Crime against Humanity and Genocide

- z. We request you to take measures to judicially address the Genocide against the Tamil people as called upon by the unanimous resolution adopted by the Northern Provincial Council of Sri Lanka in February 2015.
- aa. Recognise the obvious pattern of sexual abuse against Eelam Tamil women as being carried out with genocide intent.
- bb. Initiate an independent international investigation into the genocide of Eelam Tamils on the island to bring perpetrators of the crime of genocide to justice.
- cc. Application of international criminal law, including war crimes, crimes against humanity, and genocide;

Ratification and implementation of international human rights treaties

- dd. Ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance;
- ee. Implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- ff. Ratify the Rome Statute of the International Criminal Court;
- gg. Establish procedures in law to consider modalities for implementing the views of the UN Human Rights Committee.

Right to Self Determination

- hh. Referendum for the Eelam Tamils in Sri Lanka, so that Tamil Nation can decide their political destiny.
- ii. Under these circumstances, the UN is duty bound to strive for justice to the Tamil victims. We urges the UN to undertake the following measures which would reassure the Tamils that justice would ultimately prevail.
- jj. The UNHRC should pass a resolution against Sri Lanka for non compliance of the previous resolutions passed at the UNHRC since 2012 and refer Sri Lanka to the UN Security Council as Sri Lanka has defied the UNHRC time and again with false and unkept promises
- kk. UN Security Council should refer Sri Lanka to the International Criminal Court for investigation and prosecutions into war crimes, crimes against humanity and genocide.
- ll. Tamils should be recognized as a separate Nation.
- mm. The Right to Self Determination of the Tamils should be recognized by the International Community
- nn. A referendum in Tamil Eelam must be conducted under the UN supervision