

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 UNHRC 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 this year, 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 this month 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*.

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

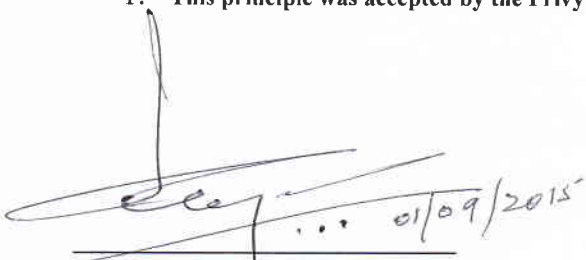
Furthermore on a legal dimension also no domestic law prescribes these international crimes. Trial under new legislation will offend the prohibition of *ex post facto* prosecutions contained in the maxim *nullum crimen sine lege*. (There is no crime without a Law). ¹The argument that Article 13(6) can 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.


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