

Justice A.K. RAJAN
Justice D. HARIPARANTHAMAN
Justice C.T. SELVAM
Justice G.M. AKBAR ALI
Retd. Judges of the Madras High Court, Tamilnadu, India

Date: 5th March 2021

To

The United Nations High Commissioner for Human Rights Honourable Ms.
Michelle Bachelet,
The United Nations Core Group on Sri Lanka,
The 47 Member States Represented in the United Nations Human Rights Council

Respected Madam,

**Ref: Report of the Office of the United Nations High
Commissioner for Human Rights on Sri Lanka
- United Nations A/HRC/46/20 (The Report).**

We are retired Judges of Madras High Court in India, who are deeply disturbed by the deteriorating humanitarian situation in our neighbouring state, Sri Lanka. Hence our interest in the recent "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka" for the Human Rights Council's Forty-sixth session (22 February -19 March 2021).

We would like to share our considered views with every one of you concerned and request further meaningful action.

The Report cited in Reference appears to be the proverbial light at the end of the tunnel in our quest for justice to the victims of international crimes in Sri Lanka,

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namely war crimes, crimes against humanity and genocide. We feel that the relevant organs of the UNO including the Security Council ought to give due weight to the conclusions and recommendations of the High Commissioner's Report, which has been wholeheartedly welcomed by the Tamil community back in the Homeland as well as in the Diaspora and TamilNadu, India. It has also been acclaimed as a ray of hope by unbiased Human Rights organizations and enthusiasts. Now it is for you all, particularly the Core Group on Sri Lanka and the UNHRC to accept the Report totally and translate the well-conceived recommendations into an authentic resolution referring Sri Lanka to the International Criminal Court for the credible allegations listed in the OISL Report of 2015.

The Report has not only traced the history of the conflict and of the resolutions passed by the UNHRC in the past, including the 30/1, 34/1 and 40/1 Resolutions from which Sri Lanka has unilaterally withdrawn for no justifiable reason. The Report has gone further in giving a warning about the recurrence of the same international crimes based on the current situation prevailing in Sri Lanka. This is a Report which concerns itself not only with the Responsibility to Protect. The Report has negated, and rightly so, any chance of a domestic mechanism on the basis of past experience and the present trends.

Six of these broader trends to which the High Commissioner draws attention in the Report are worth mention: i) militarization of civilian government functions; ii) reversal of Constitutional safeguards; iii) political obstruction of accountability for crimes and human rights violations; iv) majoritarian and exclusionary rhetoric; v) surveillance and obstruction of civil society and shrinking democratic space; and vi) new and exacerbated human rights concerns. The High Commissioner is



concerned these represent important early warning indicators that require the Human Rights Council's urgent attention.

The then UN High Commissioner for Human Rights Hussein stated in his 2015 report on Sri Lanka that the crimes committed were 'systemic.' In our view it only means that there is no space for transitional justice in Sri Lanka. The call of the hour is remedial justice.

The International Commission of Jurists said in 2019 itself that referral of Sri Lanka to the ICC was "fully warranted."

The Human Rights Commissioner Bachelet herself noted in her 2019 report that "Some segments of civil society have continued to call for international investigations and for the Security Council to refer the situation in Sri Lanka to the International Criminal Court for international prosecutions and adjudication of those most responsible for these crimes."

Historic logic has only taken the right course that now the High Commissioner has strongly and unequivocally recommended ICC referral and other related steps.

To date, more than 300,000 Tamils in North and East of Sri Lanka have been massacred by Sri Lankan state terrorism led, endorsed and supported by successive Sinhalese governments, including more than 147,000 people between December 2008 and May 2009, and more than 70,000 people during the final assault in May 2009 according UN intern report, Charles Petrie.

The Tamil Nadu Legislative Assembly passed unanimously a resolution on 8 June 2011 which, based on the report, accused Sri Lanka of: failure in constitutionally resolving the righteous demands of Tamils since independence; working for complete extermination of Tamils in the island; mass killings of innocent Tamils, other atrocities and failure in humanitarian action during the

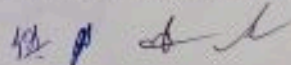
war; continued human rights abuses after the war; and human rights abuses on media persons and others outside of the war zone. The resolution urged the Indian central government to impose economic sanctions against Sri Lanka until Tamils are given equal rights and to press the UN to declare as "war criminals" those who committed alleged war crimes during the conflict in Sri Lanka.

On February 10, 2015 Northern Provincial Council unanimously passed a resolution saying that genocide of the Tamil in Sri Lanka has been continuous since 1948, and that the UN must investigate it and submit a report at the March 2015 session of the UN Human Rights Council (UNHRC), and refer its findings to the International Criminal Court (ICC) for further action. The Resolution was tabled by **Chief Minister Justice CV Wigneswaran, former Chief Justice of Sri Lanka** and adopted by the Council unanimously.

This resolution provides an overview of the evidence demonstrating successive Sri Lankan governments' genocide against Tamils, and respectfully requests the ongoing United Nations Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) to investigate the claim of genocide and recommend appropriate investigations and prosecutions by the International Criminal Court.

Canadian Parliament have passed Motion calling for the UN to investigate the genocide of Tamils on 21st of June 21, 2019. The Canadian Parliament has passed a motion urging the UN to investigate allegations of genocide against the Tamils in Sri Lanka:

1. Reaffirms Canada's call for Sri Lanka to implement its obligations within a clearly specified time frame, as mandated under the UN Human Rights Council Resolutions 30/1 and 40/1; and re-affirms Canada's support in



advancing accountability, peace, and reconciliation among all peoples on the island; and

2. Calls upon the United Nations to establish an international, independent investigation into allegations of genocide against Tamils committed in Sri Lanka, including the last phase of the armed conflict in 2009.

Hence, we kindly urge the international community as represented by the UNHRC to follow up the Report of the UN High Commissioner for Human Rights by passing a resolution that mandates the following steps:

- 1) Refer Sri Lanka to the UN Security Council with recommendation to refer Sri Lanka to the International Criminal Court.
- 2) To prevent recurrence of mass atrocities, the victims should be allowed to find a permanent political resolution to the Tamil National Question that has plagued Sri Lanka since independence, manifest in lethal racial pogroms against Tamils in 1958, 1977 and 1983 and war crimes, crimes against humanity and genocide against Tamils during the 1983-2009 war and its aftermath. Specifically, victims should be empowered to participate in finding the political resolution via a referendum conducted under international auspices to determine the political future of the Tamils.
- 3) For the UNHRC to continue to receive and review an update from the Office of the High Commissioner for Human Rights every six months about the plight of 90,000 Tamil war widows, any progress in finding the whereabouts of the thousands of disappeared Tamils, the situation of unlawfully imprisoned Tamil Prisoners of War (POWs), land grabs under different pretexts, the level of military presence, and any activities on accountability for international crimes.

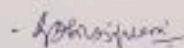
- 4) The Council Members to have a new Resolution under Agenda 4 to appoint a special Rapporteur to monitor and investigate ongoing human rights violations and repression against the Tamil people.
- a) Monitor and investigate human rights violations, transmits urgent appeals and letters to Sri Lanka on alleged violations of human rights;
 - b) Undertakes country visit to Sri Lanka and to the region and engage with relevant stakeholders; Submit reports to the General Assembly and Human Rights Council on the situation of human rights in the North and East of Sri Lanka; and
 - c) Engages publicly on issues of concern, including through press releases.
- 5) We need to have a special session at Human Rights Council on Sri Lanka referring the Sri Lanka to the International Criminal Court by security council.

Yours Sincerely,

1. Justice A.K.Rajan

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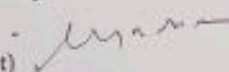
2. Justice D. Hariparanthaman

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Justice K.P.SIVASUBRAMANIAM
Retd. Judge of the Madras High Court, Tamilnadu, India

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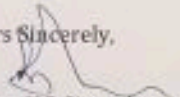
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