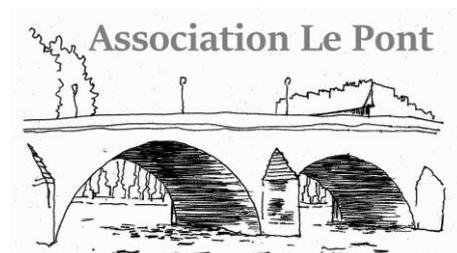


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Stakeholders Submission for the Universal Periodic Review of Sri Lanka

In special consultative status with UN ECOSOC
Association LE PONT (93300 Aubervilliers)

Sri Lanka's Sixth Amendment: A Violation Of UN Charter And Fundamental Human Rights

Late President JR Jayewardene of Sri Lanka after allowing and being complicit in the massacres of Tamils in the 1977, 1983 pogroms and justifying them as a normal reaction of Sinhalese to take revenge on innocent Tamils, hurriedly passed the 6th amendment to the constitution in August 1983 to stifle the voice of Tamils. The amendment's important sections are under:

Article. 157 "No political party or other association or organization shall have one of its objectives or aims in the establishment of a separate state within the territories of Sri Lanka"

"No person shall directly or indirectly in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate state within the territory of Sri Lanka which if found guilty could strip his/her civic rights etc.

Penalties include: Loss of civic rights citizenship, confiscation of moveable and unmoveable properties etc. There is also a provision "requiring elected members of parliament to take oaths swearing allegiance and loyalty to the unitary constitution of Sri Lanka" It is relevant to note that a case against Tamil National Alliance Party is now pending in the Supreme Court of Sri Lanka alleging their violation of the 6th amendment by indirectly and/or directly calling for a separate state for Tamils in their election manifesto. However, Tamil National Alliance Party has subsequently handed over a written undertaking to the Speaker in the Parliament of Sri Lanka owing their allegiance to a unitary state and renouncing a separate state for Tamils in Sri Lanka. This matter is thus silenced by the Tamil National Alliance Party for the time being and it is still open for Tamil National Alliance to raise the legality and validity of the provisions of sixth amendment which flout the provisions of UN Charter and UN Covenant on Civil and Political rights 1966 and the International Covenant on Economic and Social rights 1966 to which Sri Lanka is a signatory.

Sri Lanka joined the UN in 1955 and is a member, being duty bound to follow the principles and provisions embodied in the UN Charter and other conventions to which it signed and pledged to observe.

UN preamble of December 10, 1948 says: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom of justice and peace in the world" and the UN's Universal Declaration of Human Rights December 10, 1948 lists the following rights to each individual of a member state.

The right to freedom of:

1. Speech
2. Peaceful assembly
3. Choice of Religion

4. Right to security of person
5. Presumption of innocence until proved guilty according law in a public trial
6. Right to a fair and public hearing by an impartial jury – Tribunal

Article 19 says: "Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek to receive and impart information and ideas through any media and regardless of frontiers"

Article 30 says: "Nothing in the declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein" Art (2) also states "Furthermore no distinction shall be made on the basis of the political jurisdictional or international status of that country to which a person belongs whether it may be independent, trustee etc and every person is entitled to all the rights and freedoms set forth in the declaration without distinction of any kind, such as race, colour, sex, language, religions political or other opinion national or social origins, property, birth or other status"

The Preamble of Universal declaration of Human Rights among others mentions:

"Whereas it is essential, if a man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and repression that human rights should be protected by the rule of law"

Article 1 of UN Covenant on Civil and Political Rights grants the inherent right of self-determination to peoples as follows: " All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and thereby pursue their economic, social and cultural development"

The right of self-determination is now a fundamental right and thus recognized as a principle with legal validity exercisable by peoples of nations who have subscribed to it in the UN. This right has been successfully exercised by many countries in Africa to free themselves from the colonial rulers during the 1960s. However, Tamils in Sri Lanka who have suffered and continue to suffer under the successive Sinhala-majority governments, have been denied of their right to freely determine their political status due to the anti-democratic piece of legislation enacted in 1983 as the sixth amendment to the constitution. The sixth amendment prohibits, a political party, or association or organization having objectives or aims to establish a separate state within Sri Lanka. It also prohibits a person in or outside Sri Lanka to encourage, support espouse, promote, finance encourage or advocate directly or indirectly the establishment of a separate state within Sri Lanka.

This amendment clearly violates the UN Article of the right of self-determination in addition to the violation of freedom speech embodied in the Universal Declaration of Human Rights 1948 Article 19 which is granted to each individual of a member state.

This legislation being a violation of UN charter provision enacted against the Tamils in Sri Lanka , can be seen from the following reasons:

1. Tamils living in Sri Lanka are peoples to qualify and fall within the provisions of article one, as their independent rules were recognized until 1833 when the British rulers imposed their unitary form of government in Sri Lanka.

2. The Article does not set any pre-conditions to resort and exercise their right of self-determination.

3. The Article is primarily intended and aimed at those peoples who are victims of discrimination, massacres, genocide, marginalised, or facing extinction due to overt and covert measures of Governments in power and to those peoples ruled by colonial masters.

4. The Tamils qualify to resort to this right for the following reasons: – Various discriminatory legislations enacted against them since 1948.

Eg: Sinhala only Act 1956, Standardisation act 1972, numerous pogroms in 1956, 1958, 1977, 1981, 1983 and 2009 which reveal the A hidden agenda of genocide – cultural, structural and ethnic since 1948.

5. An agenda of making Sri Lanka a Sinhala-Buddhist state – measures include, building of Buddhist Viharas, Buddha Statues (in the north and East where there is no Buddhists. stationing of one soldier to every civilians in the north. Seizure and occupation of civilians lands depriving of occupation and earnings to owners of seized lands and displacement of civilians in thousands, languishing political prisoners. Entrenched culture of impunity to security personnel, absence of credible judicial process. A programme of systematic colonization of parts of Tamils ^[L]_[SEP] homeland area of north-east was initiated and is continuing subtly. Peoples without land will become peoples lost among other peoples and ultimately face extinction.

In summary: The right of self-determination is recognized as an inherent and inalienable right legally bestowed on all peoples of countries who are members of UN. Though UN has omitted to prescribe an international mechanism to achieve this objectives, the ways and means are open and left with the peoples to choose the proper method including the right to rebel against oppressive states as stated in the preamble of human rights.

Viewing the above provisions of UN, the sixth amendment of Sri Lanka is nothing but a piece of legislation striking at those provisions, even nullifying them to the detriment of the Tamils. The freedom of speech and expression being suffocated, Tamils are at the mercy of Sri Lankan governments, and under silence denied with the freedom to express their opinion and agitate for the right of self-determination through referendum.

A referendum is a pre-requisite for the Tamils to decide their own fate, whether to opt for an autonomous rule, or a separate state or a confederation or even a federal form of government.

The sixth amendment is therefore draconian in effect as it extends its arms long enough to haul up any person even outside Sri Lanka, whether citizen or not including even foreign heads officials or organizations who dare to support the cause of a separate Tamil state. One who calls for separate state and another one saying Tamils cannot co-exist with Sinhalese become equally liable under the privisions of sixth amendment.

The UN, Its Secretary-General, Human Rights Council and the countries including concerned human rights organizations must pay their attention to this gross continuing violation of an

international UN legal principle laid out under Article (1) of UN Covenant and through Article (2),(19] and (30) of human rights and take appropriate measures against Sri Lanka to right the wrong and mete out justice to the beleaguered Tamils while upholding the legitimacy and sanctity of UN human rights provisions, ensuring its compliance and setting up a precedent for any other rogue nation to take notice of. Though Sri Lanka's domestic laws supersede other laws, its violations and breaches of UN provisions rightfully and without delay deserve the attention of UN, International community and Human Rights Council.

The armed insurgency or war against the unitary Sri Lankan state was a resolute and collective reaction of the Eelam Tamil people and their youth, and an inevitable historical response to the systematic and institutionalised oppression, and structural genocide orchestrated by the state towards the Tamils.

The democratic venues to address the Tamil national grievances and aspirations were systematically dismantled and silenced by the Sri Lankan state, which orchestrated repression and pogroms against the Tamils from 1948 until 1977, during the course of their non-violent struggles for national emancipation. The Sri Lankan state denies the national existence of the Tamils as well as depriving them of the right to self-determination.

The 6th amendment of the constitution of Sri Lanka criminalises anyone who espouses the democratic right of the Tamil people to self-determination and independence, as it is deemed a threat to the "territorial integrity, unity and sovereignty" of the Sri Lankan state.

Hence, Tamils incarcerated by the judicial system of the state and its armed forces through the use of emergency laws, are not criminals threatening the state, but political prisoners and prisoners of war, who advocated the political rights and aspirations as well as the security and liberty of the Tamil people in the island of Sri Lanka.

The present government of Sri Lanka is calling itself as a government of good governance which should have the characteristic of Allocation and management of resources to respond to collective problems, including participation, transparency, accountability, rule of law effectiveness and equity''

Good governance should not end up as a smokescreen and shield to hide the bad governance which is in progress.

Recommandations

Anti-Terrorism Legislation

- a. Repeal the Prevention of Terrorism Act and abolish the system of administrative detention;
- b. Ensure that security measures adopted in the context of armed violence comply with international human rights law;
- c. 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

- d. 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

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

Witness Protection

- f. 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

- g. 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

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

Extrajudicial Executions

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

Impunity

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

War crime, Crime against Humanity and Genocide

- l. 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.
- m. Recognise the obvious pattern of sexual abuse against Eelam Tamil women as being carried out with genocide intent.
- n. Initiate an independent international investigation into the genocide of Eelam Tamils on the island to bring perpetrators of the crime of genocide to justice.
- o. Application of international criminal law, including war crimes, crimes against humanity, and genocide;

Ratification and implementation of international human rights treaties

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

Right to Self Determination

- t. Referendum for the Eelam Tamils in Sri Lanka, so that Tamil Nation can decide their political destiny.
- u. 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.
- v. 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
- w. UN Security Council should refer Sri Lanka to the International Criminal Court for investigation and prosecutions into war crimes, crimes against humanity and genocide.
- x. Tamils should be recognized as a separate Nation.
- y. The Right to Self Determination of the Tamils should be recognized by the International Community
- z. A referendum in Tamil Eelam must be conducted under the UN supervision