

A message by Former Chief Minister, Northern Province of Sri Lanka

“The Hybrid Court could be constituted following the example of the International Independent Group of Eminent Persons (IIGEP) under the Chairmanship of Justice Bhagavathy” said Justice C.V.Wigneswaran, Former Chief Minister, Northern Province. A translation of his message in Tamil is given hereunder -

“Having already granted nearly four years by Resolutions No: 30/1 and 34/1 the granting of further two years’ time through Resolution 40/L.1 by UNHRC on 21/03/2019 has saddened the Tamils world over. This new Resolution would facilitate the War Criminals and those who indulged in offences against Humanity to escape from liability. The Resolution will also pave the way for the continuance of Human Rights’ violations in Sri Lanka. It was unfortunate that some among us lent support to the Military, which raped our women and girls in hundreds (if not thousands) apart from committing genocide against the Tamils, to escape from liability.

Over 3 years have passed since the passing of Resolution 30/1. Not only has the Sri Lankan Government not endeavoured to implement its commitments as per the Resolution but has gone further to reject its obligation to implement while at the same time co – sponsoring Resolution 40/L.1 which obligated the appointment of a hybrid court as per Resolution 30/1. The Sri Lanka Government recently officially rejected at the UNHRC the appointment of a hybrid court.

This shows the duplicity of the Sri Lankan Government. Their credibility is no doubt at stake. If the Sri Lankan Government could go back on their written promises to the UN so quickly, the International Community should gauge the number of times it would have transgressed agreements in relation to the ethnic

problem in the past so many decades and to what extent it would have practiced deception on the Tamils frustrating their legitimate expectations.

When Genocide was committed in Sri Lanka the UN and the International Community failed to stop it. After the war the UN and the International Community had an obligation to ensure accountability and justice. But the UN and the International Community has allowed Sri Lanka to take lightly its obligations towards ensuring accountability and justice in Sri Lanka. This would no doubt enable the Sri Lankan Government to continue with its human rights' violations in the future too. This would be a bad example to the rest of the world in general. If the War Crimes at the end of the war in Sri Lanka were investigated properly in accordance with International Law, its norms and principles and the perpetrators punished, the International Community would have stopped War Crimes being committed elsewhere in the world.

Therefore I make bold to request all the Countries which helped to pass Resolution 40/L.1 to ensure that the contents of Resolution 30/1 are implemented fully and without delay. These Member States must take steps to put into effect the various recommendations set out by the Human Rights' Commissioner.

Three years ago it was stressed in Resolution 30/1 that the Military must leave the lands of Civilians. But until today the Military does continue to occupy Civilian lands.

The Prevention of Terrorism Act has not been withdrawn yet, as promised. The Government wants to replace the draconian PTA with a more stringent and repressive Act called Counter Terrorism Act (CTA) ten years after the war.

Just at this moment while I am writing this there are Sinhala settlements being established in Mullaithivu, Vavuniya and Trincomalee Districts.

The families of the forcibly disappeared are still visiting Police Stations and Army Camps hoping to get information about their loved ones. They are conducting demonstrations on the streets wanting information about their dear ones. But no information is forthcoming from the officials.

This is why I have stressed that the UNHRC must appoint a Special Rapporteur for Sri Lanka whose office must be stationed in the North and East.

Such appointment would ensure the stoppage of Human Rights' violations still taking place in the North and East and it would be possible to also oversee the implementation of Resolution 30/1.

Member states must also give their earnest consideration to the question of sending our War Crimes' matter before the International Criminal Court.

Not only that. Member states should take immediate steps to appoint a Hybrid Court consisting of foreign judges to inquire into the War Crimes committed.

The statement by the Government that in terms of our constitution it is not possible to constitute a Hybrid Court is misplaced.

On August 1st 2005 then President Mahinda Rajapakse appointed the International Independent Group of Eminent Persons (IIGEP) under the chairmanship of Ex Indian Chief Justice P.N.Bhagavati to overlook the investigations conducted by the Udalgama Commission inquiring into 16 Human Rights' violations in Sri Lanka. That could be a precedent to be followed with regard to War Crimes too. The IIGEP consisting of foreign judges was an illustrative example of how the inclusion of foreign judges introduced International standards and also brought credibility among the affected people.

When the IIGEP found the Udalagama Commission investigation and its activities did not conform to International standards and norms and lacked transparency, Justice Bhagawati after one year of the beginning of the Investigation, disbanded the IIGEP and refused to grant approval to the activities of the Commission. That was a classic example which answered the question “Why not a local court instead of a Hybrid Court?”

If may not be out of place for me to mention here that late Justice Mark Fernando and I were consulted by the IIGEP before they disbanded. We were both retired Supreme Court Judges”.

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