

TGTE Appeal to UN to Help Thilleepan's Memorial to be Observed Peacefully in Sri Lanka

" Thilleepan died after a protest hunger strike against Sri Lankan Government sponsored Sinhalese settlements (Colonization) in Tamil areas "

NEW YORK, UNITED STATES OF AMERICA, September 22, 2020 /EINPresswire.com/ --

Transnational Government of Tamil Eelam (TGTE) today sent an urgent appeal to the United Nations Special Rapporteur on Freedom of Peaceful Assembly & Association and the United Nations Special Rapporteur on Freedom of Opinion and Expression, urging them to help Thilleepan's memorial to be observed peacefully in Sri Lanka.

This appeal was sent after several Magistrates, at the request of the Police, banned remembrance of Martyr Thilleepan, who died after a protest hunger strike against Sri Lankan Government sponsored Sinhalese settlements (Colonization) in Tamil areas.

Two days ago Tamil political parties jointly urged Sri Lankan President to lift the ban on remembering Martyr Thilleepan. In that letter they said that "The prohibition has caused severe pain of mind and emotional impact on the collective consciousness of our people"

The appeal to the UN was submitted by Global Diligence LLP - International law and human rights compliance - on behalf of Transnational Government of Tamil Eelam (TGTE).

The appeal urges UN Special Rapporteur to:



- Send an URGENT Communication to the Sri Lankan Government, urging it to ensure that all Sri Lankan public authorities respect the Tamil's right to pay homage to Lt Col Thileepan, through peaceful assembly and expression, at this years' events. In particular, that:
- The current prohibition on the 2020 Annual Commemoration to pay homage to Lt Col Thileepan and related celebrations, is immediately lifted;
- All Sri Lankan public authorities respect the Tamil's right to peaceful assembly with respect to the 2020 Annual Commemoration, without any further unwarranted interference.

BELOW, PLEASE FIND THE FULL REQUEST:

URGENT REQUEST

Violations of the Rights to Peaceful Assembly and Association and to Freedom of Opinion and Expression in Sri Lanka

RE: Prohibition of the 33rd Commemoration of Lt Col Thileepan's Passing

22 September 2020

1. This request is submitted jointly to the United Nations Special Rapporteur on Freedom of Peaceful Assembly and Association and the United Nations Special Rapporteur on Freedom of Opinion and Expression. It is submitted by Global Diligence LLP,¹ on behalf of the Transitional Government of Tamil Eelam ("TGTE").

2. The recent prohibition by Sri Lanka authorities of the 33rd Commemoration of Lt Col Thileepan's hunger strike to death is a matter of serious frustration for Sri Lanka's beleaguered Tamil People. If not addressed, it has the potential to heighten ethnic tensions in this highly volatile environment. Intervention by the UN Special Rapporteurs is both justified and urgent. The events were planned for this week, with the main event being 26 September 2020.

I. The Facts:

3. The Tamil People in Sri Lanka have been engaged in decades of struggle – both armed and peaceful – for liberation from the oppression meted out by the Sinhalese majority government in Colombo, Sri Lanka.³ On 13 September 1987, the Liberation of Tamil Eelam ("LTTE") leadership handed a letter to India with five demands (the LTTE believed the Indians could force the Sri Lanka's to comply). On 15 September 1987, when no response was received from India, the LTTE's political leader in Jaffna Peninsula - Lt Col Thileepan – went on a hunger strike hoping to persuade India to meet its five demands.⁴ The 23-year-old Lt Col Thileepan gave speeches that were broadcast widely, and many participated in his hunger strike. On 26 September, after refusing water for 12 days, Lt Col Thileepan died. He was given a martyr's funeral in Jaffna.

4. Since his death, Annual Commemorations have been held to pay homage to Lt Col Thileepan

("Annual Commemoration"). However, this year, the Annual Commemoration and the week-long celebrations leading up to it have been banned, by two Magistrate Courts. Acting at the request of the Police, the Magistrate Courts of Jaffna and Mullaitivu issued orders banning the commemorative events.⁵ According to the (unofficial) translation provided to Global Diligence, the Jaffna Court justified its decision thus:

The Chief Police Inspector of the Jaffna Police Station has submitted a Report in the above-mentioned case stating that the LTTE has been designated as a banned organization under Government Gazette No. 1721/2 dated 2011.08.29 of the Democratic Socialist Republic of Sri Lanka, that the following persons have made arrangements for inviting people to come to the Memorial Pillar of one Rasaiya Parthiban @ Thileepan, a prominent member of the above-said banned organization, situated opposite the Rio Ice Cream Parlour, Nallur within the jurisdiction of Jaffna Municipal Corporation, that preparations have been made to celebrate his memory by holding meetings, street-side marches and vehicle rallies with the participation of some persons having come over from foreign countries without due permission and that there is a grave risk of the Covid-19 pandemic spreading through them and so has prayed of this Hon'ble Court to ban the memorial event.

Hence, in exercise of the powers bestowed on me by Section 106 of the Criminal Procedure Code I pass this order to ban the holding of the above-said memorial event, gathering the public for meetings and rallies within the jurisdiction of this Magistrate Court in this regard.

The Magistrate Court of Mullaitivu reasoned that:

The Chief Police Inspector of Mullaitivu has reported that the above-mentioned persons have, by way of remembering Rasaiya Parthiban @Thileepan a member of the banned organization (LTTE), applied for organizing a Fast Opening Day Rally, Public Meeting and other events in the police jurisdiction of Mullaitivu during the period from 18.09.2020 to 26.09.2020, which is a punishable offence under section 79(2) read with 79(3) of the Police Act, and under the Isolation and Prevention of Diseases Act, Act No. 3 of 1891. Furthermore, it is a punishable offence under the Special Gazette No. 1721/2 issued on 2011.08.29 with regard to eradication of terrorism. Hence the above-mentioned persons are hereby banned from organizing any fasts, memorial meetings or functions with regard to the organization banned by the Government in the period from 18.09.2020 to 26.09.2020 and I pass this order in exercise of my powers bestowed upon me by Section 106 (1)(3) of the Criminal Procedure Code, Act No. 15 of 1979.

5. As is apparent from the above, the two Magistrates banned the assemblies on the basis that:
 - a. Lt. Col. Thileepan was a member of the LTTE at the time of his death –which was declared an illegal organization several years later.
 - b. Police had allegedly received information that unnamed foreign citizens were planning to attend the event, which risked spreading COVID19.
6. In the run up to the Annual Commemoration, at least one former Tamil Member of

Parliament has reportedly been arrested. On 15 September, M. K. Shivajilingam, a former northern provincial council member, was arrested as he attempted pay tribute to Thileepan in Nallur.⁶ Furthermore, security forces have reportedly destroyed certain arrangements made for the Annual Commemoration.⁷

7. On 19 September 2020, representatives from Tamil political parties based in the North and Eastern Provinces, sent an urgent appeal to Sri Lankan President Gotabaya Rajapakse.⁸ The appeal highlighted the “political and emotional significance” for the Tamil people in “paying their Homage to Martyr Thileepan”, and stated that the prohibition has caused “severe pain of mind and severe emotional impact on the collective consciousness” of the Tamil people. The Tamil representatives asked the Sri Lankan President to intervene and noted that if the ban was maintained they would have no alternative but to register their “disapproval and condemnation in a peaceful and democratic manner.”

II. The Law:

1. Peaceful Assembly:

8. The right of peaceful assembly is a fundamental right protected by the Article 21 of the International Covenant on Civil and Political Rights (“ICCPR”) and is provided for in other international and regional instruments.⁹ In its recent General Comment of 17 September 2020, the Human Rights Committee (“HRC”) stressed that:

“The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. [...] Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences. [...] (Para 1)

It is of particular importance to marginalized individuals and groups. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.”¹⁰ (Para 2)

9. Importantly, the HRC noted that the right to peaceful assembly is not negated simply because the subject matter is contentious. And assemblies that may cause disruption must still be protected and managed by the State:

“However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity.¹¹ These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.” (Para 7)

10. The law is clear. States have an international legal obligation to “respect and ensure” (ICCPR Article 2.1) peaceful assemblies can take place “without unwarranted interference and to facilitate the exercise of the right and to protect the participants.” Accordingly, “States are obliged not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause” (HRC Comment para 23). Importantly, States must ensure that the courts do not interpret laws in a discriminatory manner:

“States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity [...]. States have a duty to protect participants from all forms of discriminatory abuse and attacks.” (HRC Comment para 25).

11. Whilst States may impose restrictions under Article 21, these restrictions “must be narrowly drawn” (HRC Comment para 8). The grounds for restriction, as laid out in the last part of the second sentence of Article 21, provide an exhaustive list, consisting of: the interests of national security; public safety; public order; the protection of public health; or morals; or the protection of the rights and freedoms of others. Restrictions cannot be based on “the identity of the participants or their relationship with the authorities” (HRC Comment para 22). Such restrictions must be (i) prescribed by law, (ii) taken in pursuit of legitimate aims (e.g. prevention of crime), and (iii) must be necessary and proportionate to those aims.¹²

2. Freedom of Opinion:

12. The full protection of the right of peaceful assembly is possible only when other overlapping rights are also protected, notably freedom of expression and opinion.

III. The Analysis:

13. According to the UN Human Rights Committee, establishing whether someone’s participation in an assembly is protected by Article 21 entails a two-stage process:¹³ First, it must be established whether or not the conduct falls within the scope of the protection offered by the right, in that it amounts to ‘peaceful assembly’.¹⁴ Second, it must be established whether or not any restrictions applied to the exercise of the right are legitimate in that context.

For such restrictions to meet the requirement of legality, they must be both necessary and proportionate to at least one of the grounds for restriction enumerated in Article 21, whilst being guided by the objective of facilitating rather than limiting that right.

14. The Magistrates’ order banning the Annual Commemorations to pay homage to Lt Col Thileepan violates the Tamil’s right to peaceful assembly and to freedom of expression. First, neither the Police nor the Courts provided any evidence suggesting that the Annual Commemoration would not be peaceful. Second, the outright ban on all related events is not ‘legitimate in the context’ and is not ‘necessary and proportionate’ to any of the grounds for

restriction enumerated in Article 21.

15. The Police applied for, and the Court granted the ban on two bases. First, that Tamils should not be permitted to celebrate a former leader of the LTTE, a banned organisation. This is misplaced. Placing an organization (rightly or wrongly) on a terrorist list, cannot serve as a justification to prohibit communities paying respects to the dead, unless the acts of commemoration fall within Article 21. Respect for the war dead, and their graves, is protected under human rights law, in particular the right to human dignity and respect for private life.

16. The second justification was that unnamed foreign citizens were planning to attend the event and hence there was a risk of spreading COVID19. With respect to the risk of spreading COVID-19, the Magistrates provided no evidential basis for their decisions; and failed to identify a single “foreigner” who was planning to attend the event. Nor did the Magistrates explore other ways to facilitate the Commemorations in a time of pandemic, such as social distancing or mask wearing. Therefore, COVID19 cannot serve as a justification to ban outright the commemorative events on the basis of public health. Indeed, the misuse of the COVID19 pandemic to restrict basic rights is well-documented. According to the UN Special Rapporteur on Counterterrorism and Human Rights, these types of arbitrary actions around the globe could lead to “a parallel epidemic of authoritarian and repressive measures following close if not on the heels of a health epidemic.”

17. The only reasonable interpretation of the facts is that the Magistrates’ decisions to ban the Annual Commemoration was rooted in racial or ethnic oppression and discrimination, namely, discrimination against Tamils. In other words, the Courts’ prohibition is based on “the identity of the participants [and] their relationship with the authorities.” This misuse of powers by the Police and Magistrates amounts to a “discriminatory abuse and attack.” Since Sri Lanka “must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity [...]”, Sri Lanka is in clear violation of its duty to “respect and ensure” the rights to peaceful assembly and freedom of expression with respect to the Annual Commemoration to pay homage to Lt Col Thileepan.

IV. Request:

18. On behalf of the TGTE, we respectfully request that you send an URGENT Communication to the Sri Lankan Government, urging it to ensure that all Sri Lankan public authorities respect the Tamil’s right to pay homage to Lt Col Thileepan, through peaceful assembly and expression, at this year’s events. In particular, that:

- The current prohibition on the 2020 Annual Commemoration to pay homage to Lt Col Thileepan and related celebrations, is immediately lifted;
- All Sri Lankan public authorities respect the Tamil’s right to peaceful assembly with respect to

the 2020 Annual Commemoration, without any further unwarranted interference.

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