



Refer **Sri Lanka** to International Criminal Court



Preface

TGTE's greetings to the Human Rights Community.

The Transnational Government of Tamil Eelam (TGTE) is political formation of diaspora Tamils of the island of Sri Lanka, and it operates based on the principles of democracy, accountability, transparency and self determination

The TGTE initiated a signature campaign, an 'Urgent Appeal to the United Nations', in 2015 calling for the referral of Sri Lanka to the International Criminal Court (ICC) for War Crimes, Crimes against Humanity, and Genocide committed during and after the war that ended in 2009.

The Campaign gathered an unprecedented 1.6 million signatures around the world. [signature campaign](#) On April 29, 2011, following the publication of the Report of the UN Panel of Experts, the TGTE launched a Petition, 'Referral of the Political and Military Leaders of Sri Lanka to the Prosecutor of the ICC for Investigation and Establishment of an International Mechanism Recommended by the Panel,' which elicited more than 100,000 signatures. The Petition is attached here as Exhibit A. In spite of the call from such a large mass of people for action at the ICC, the Human Rights Council passed a consensus resolution in 2015 calling the government of Sri Lanka to establish an accountability mechanism with the participation of foreign judges.

However, as the Report of the High Commissioner for Human Rights dated January 25, 2018 has explicitly stated, "a comprehensive transitional justice strategy, including a clearly defined timeline for implementation has yet to be made publicly available and consulted." Sri Lanka's President and Prime Minister have both repeatedly and explicitly repudiated the government's commitments made to the Council.

On Nov. 11, 2017 President Sirisena in a speech to an audience of 350 soldiers at the Colombo Army Hospital said, "Unlike the disgruntled politicians and some retired Army personnel allege, saying that the War Heroes would be tried and punished, I, as the President of this country would not allow anyone be subjected to interrogations by foreign judges." <http://www.ft.lk/front-page/President-reiterates-his-pledge-to-protect-war-heroes-from-foreign-tribunals/44-643195>

In an interview to Al Jazeera, Sri Lankan President Maithripala Sirisena also denied that any war crimes were ever committed at all by government forces against Tamil civilian populations in 2009. "I must say very clearly there is no allegation regarding 'war crimes', there were war crime allegations during the early stages. But at the UN Human Rights Council in Geneva, mainly in the proposals presented in September, there were no war crime allegations against us" he told the news channel.

The High Commissioner has observed that, "An overall trait of the Sri Lankan justice system is the perceived double standards in the administration of justice with regard to treatment of the State officials or security personnel accused in criminal proceedings."

Therefore, the Tamil victims of Sri Lanka's international crimes believe that only through either the referral of Sri Lanka to the ICC or, as the High Commissioner himself has repeatedly stated, through the exercise of Universal Jurisdiction, can justice be done to the Tamil victims.

Due to the continuing denial of justice and accountability for the serious crimes committed during the war by Sri Lanka, we believe that the dissemination of literature from our earlier campaign "Refer Sri Lanka to ICC" for wide circulation and urgent action is more relevant than ever today.

Justice delayed is justice denied.



Visuvanathan Rudrakumaran, Esq.
Prime Minister- TGTE

Refer Sri Lanka to International Criminal Court

We, the undersigned people from around the world, urge the United Nations to refer Sri Lanka to the International Criminal Court (ICC) or to establish a similar credible International Judicial Mechanism for investigation and prosecution of war crimes, crimes against humanity and genocide committed against the Tamil people by the Sri Lankan State.

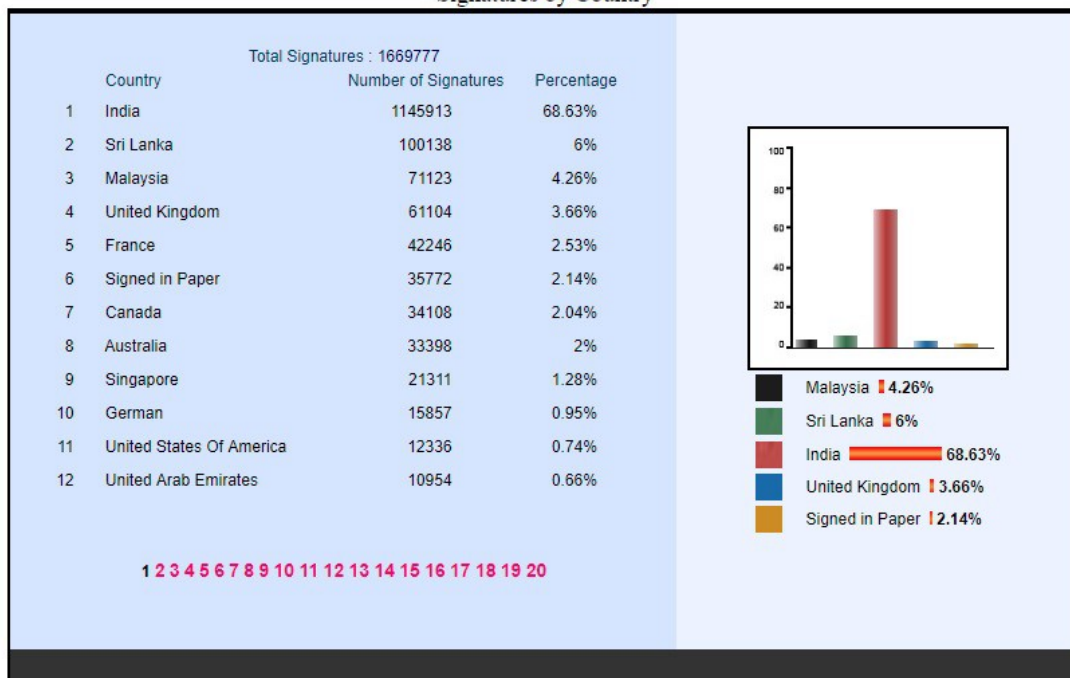
According to the UN Internal Review Report on Sri Lanka, there were “credible estimates” of civilian casualties of 70,000 Tamils during the first six months in 2009. As the former U.S. Secretary of State Hillary Clinton pointed out, Sri Lanka is one of the notable countries, along with Bosnia, Burma, the Democratic Republic of the Congo, Sudan and elsewhere, where rape was used as a tactic of war.

We firmly believe that neither a domestic mechanism nor a hybrid mechanism will mete out justice to the Tamil People. The call by the new Sri Lankan government for a domestic or hybrid mechanism to replace any international judicial process is an attempt to deflect the call for referral to the ICC and to delay other meaningful actions on accountability. Efforts to establish a domestic Truth and Reconciliation Commission is another diversionary tactic to protect those who committed serious crimes against Tamils.

The current situation in Sri Lanka constitutes an ongoing “threat to the peace” under Chapter 7 Article 39 of the UN Charter, because there has been absolutely no accountability for war crimes, crimes against humanity, and genocide.

www.tgte-icc.org

Signatures by Country



Urgent Appeal to the United Nations: Refer Sri Lanka to the ICC

Tamils from around the world petition the United Nations to refer the perpetrators of War Crimes, Crimes against Humanity and Genocide committed against the Tamil people in the island of Sri Lanka to the International Criminal Court (ICC) for investigation and prosecution.

We firmly believe that neither a domestic mechanism nor a hybrid mechanism will mete out justice to the Tamil people. Efforts to establish a Truth and Reconciliation Commission without equal participation by the victims will not bring the perpetrators of these serious crimes to justice.

The current situation in Sri Lanka constitutes an ongoing “threat to the peace” under Chapter 7 Article 39 of the UN Charter, because there has been absolutely no accountability for genocide, war crimes and crimes against humanity.

In support of our call, we submit the following facts:

1. The Sri Lankan State is not Ethnically Neutral
 - a) “Accountability also requires official acknowledgment by the state of its role and responsibility in violating the rights of its citizens when that has occurred.”¹

Comment –

 - a.i. The Serious Crimes were perpetrated on the Tamils by the State Apparatus. No acknowledgement of responsibility has ever been made by the Sri Lankan State in any form. Attempts have been made by the new government to shift the blame exclusively onto the former president and the former defense minister, rather than acknowledge that the system itself must bear responsibility.
 - a.ii. No Sinhalese has ever been held accountable for political crimes or human rights abuses against a Tamil since the country’s independence. The few individuals found guilty in court are either pardoned or given bail.
 - a.iii. The Sri Lankan State conducted itself like a cultural warhead of the Sinhala-Buddhist majority community. The government of the State, in this case Sri Lanka, has not only violated the fundamental human rights of the Tamils but also failed to respect and protect them for over sixty years, since independence in 1948.
2. The Sri Lankan Judiciary is not Ethnically Neutral
 - a) A predominantly Sinhalese judiciary trying cases against a Sinhalese military cannot bring justice. This is clearly in evidence in all of the past Commissions of Inquiry.
 - b) The Sri Lankan judiciary is always subservient to political leadership when it comes to abuses against Tamils and that is in evidence in all of the past Commissions of Inquiry. Even under a Tamil Chief Justice in 1983, no prosecution was ever brought against anyone for the mass killings of Tamils in the 1983 pogrom.
 - c) In the past, with the single exception of the Krishanthi Kumarasamy case, prosecutions in cases of rape against Tamils have been either not initiated or been quickly abandoned. Murders and rapes with indirect backing by the armed forces have been covered up. Limited prosecutions have led to few convictions. A subservient judiciary has provided absolute support to the military in the period during and before Rajapaksa’s presidency. In cases involving Tamils, the judiciary has rarely gone against Government thinking.²
3. The Sri Lankan Justice System will not deliver Justice to the Tamils

¹U.N. Secretary-General, *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, ii, 69 (Mar. 30, 2011), available at <http://www.unhcr.org/refworld/docid/4db7b23e2.html> [Hereinafter UN Panel of Experts Report].

“...based on a review of the (Justice) system’s past performance and current structure, the panel has little confidence that it will serve justice in the present political environment”³

Comment – Even though the President is changed, the political environment vis-à-vis Tamils, has not changed.

4. The call by the new government for a domestic mechanism to replace any international effort is an attempt to deflect the collection of evidence and the prosecution of perpetrators

- a) “The Sri Lankan authorities... would leave no stone unturned to bring justice to all those responsible for killings, violence and acts of destruction no matter who they were and regardless of their status, ideology or political alignments. There would be no exception.” – Statement by the Ambassador for Sri Lanka at UN Sub-Commission in August 1983 following the anti-Tamil pogrom that killed 2-3,000 Tamil civilians.

Comment – The above statement was made by the regime of the United National Party (UNP), the Party to which the current Prime Minister belongs. Thus far, there has been no investigation and no prosecution of the 1983 pogrom.



- b) Passage of the Witness Protection laws on February 20, 2015

Comment – Absence of laws on the books is not the reason for impunity, rather the racial environment is. Laws against torture are already in the books but, as a US Immigration Judge said, “[The Sri Lankan Government] carries out torture essentially as a tool of sovereignty. Adequate publicity about the witness protection law has yet to be given, the legislation has not been publicly shared, police officers and other interested persons have not been educated on its provisions, and the punishment that would be given if those provisions are violated has not been determined.

A priori to the witness protection law is the access of the witnesses to the OHCHR’s Investigation of Sri Lanka (OISL).

5. Lessons Learned and Reconciliation Commission (LLRC) has not delivered Justice to Tamils

“...the LLRC is deeply flawed, does not meet international standards for an effective accountability mechanism.”⁴

6. Other Domestic Mechanisms will not deliver Justice to the Tamils

- a) “Other domestic institutions that could play a role in achieving accountability also demonstrate serious weaknesses. Over three decades, Commissions of Inquiry have been established to examine a number of serious human rights issues. While some have served important fact finding goals, overwhelmingly, these Commissions have failed to result in comprehensive accountability for the violations identified.”⁵

²The targeting of Tamil women through militarization: A lesson in History [<http://tamilfightback.com/the-targeting-of-tamil-women-through-militarization-a-lesson-in-history/>]

³U.N. Secretary-General, *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, ii, 69 (Mar. 30, 2011), available at <http://www.unhcr.org/refworld/docid/4db7b23e2.html> [Hereinafter UN Panel of Experts Report].

⁴U.N. Secretary-General, *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, ii, 69 (Mar. 30, 2011), available at <http://www.unhcr.org/refworld/docid/4db7b23e2.html> [Hereinafter UN Panel of Experts Report].

⁵*Id.*

- b) Additionally, countless Presidential Commissions established under different regimes to investigate human rights violations have not led to prosecutions of perpetrators or justice.⁶

Comment – The change of guard in Sri Lanka will not result in a change in the institutionalized impunity. Even though the President has been changed recently, the political environment vis-à-vis Tamils has not changed. Almost all the leaders of the current Government were leaders of previous governments when mass killings of Tamils took place and they failed to bring the perpetrators to justice.

7. Other Obstacles to Accountability in a Domestic or Hybrid Mechanism

- a. "... Ongoing exclusionary policies which are particularly deleterious as political, social, and economic exclusion based on ethnicity, perceived or real, have been at the heart of the conflict: the continuation of war time measures including not only emergency regulations and Prevention of Terrorism Act...but also the continued militarization of the former conflict zone and the use of paramilitary proxies, all of which perpetuate a climate of fear, intimidation and violence."⁷

Comment – Except emergency regulations and the active use of active paramilitary proxies, all of the factors, notably the Prevention of Terrorism Act (PTA), are still in existence even after the change of guard in Colombo. The new President has repeatedly said that he will not remove the military from the North. The fact that the military apparatus is still intact and the militarization of the NorthEast continues has a deep impact on day to day activities there. Therefore, it is unlikely that victims/witnesses will be truly free before a domestic tribunal.



8. Due to international pressure, an International Independent Group of Eminent Persons (IIGEP) was created to oversee a domestic commission of inquiry on serious human rights violations in November 2006, to ensure independence and legitimacy. The IIGEP, after months of interacting with the commission, terminated its operation in March 2008, citing among others, the absence of a minimum level of trust between the commission and the IIGEP necessary for the success of the work.

9. Presence of Former Military Personnel in the Current Government

- a. Given the appointment of the former Army Commander responsible for the armed forces' assault on an estimated 300,000 – 400,000 civilians as a Defense Advisor, a domestic or hybrid mechanism will not work.

Comment – As established in the Nuremberg Principles, an order from the hierarchy does not absolve the culpability of the perpetrator. It is contended that the Sri Lankan Military commanders and the army personnel also acted on their own due to racial prejudice

⁶(Amnesty International, Twenty Years of Make Believe: Sri Lanka's Commissions of Inquiry,"11 June 2009

<https://www.amnesty.org/en/documents/ASA37/005/2009/en/>

⁷U.N. Secretary-General, *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*, ii, 69 (Mar. 30, 2011), available at <http://www.unhcr.org/refworld/docid/4db7b23e2.html> [Hereinafter UN Panel of Experts Report].

- b. The then army commander and present defense advisor, Mr. Sarath Fonseka, for example, observed, “I strongly believe that this country belongs to the Sinhalese but there are minority communities and we treat them like our people. We being the majority of the country (75 per cent), we will never give in and we have the right to protect this country. They can live in this country with us. But they must not try to, under the pretext of being a minority, demand undue things.”⁸
- c. Fonseka’s rhetoric embodies the sentiment of Sinhala nationalist chauvinism that has been a hallmark of Sri Lankan politics since its independence. Sinhala nationalism serves to institutionalize impunity for political crimes against Tamils.

Internal message from the then United States Ambassador in Sri Lanka Patricia Butenis:

- d. An internal message from the then United States Ambassador to Sri Lanka, Patricia Butenis, said that one of the reasons there was such little progress towards a genuine Sri Lankan inquiry into the 2009 killings was that the President and the former army commander, Sarath Fonseka, were themselves largely responsible for the killings. “There are no examples we know of a regime undertaking wholesale investigations of its own troops or senior officials for war crimes while that regime or government remained in power,” Butenis noted. “In Sri Lanka this is further complicated by the fact that responsibility for many alleged crimes rests with the country’s senior civilian and military leadership, including President Rajapaksa and his brothers and opposition candidate General Fonseka.”⁹



- e. Amb. Butenis’ analysis that no regime will investigate its own leaders remains equally true under the current Sirisena Administration, given his role in the military leadership in 2009 and Former Army Commander Sarath Fonseka’s continued position of privilege in the new government.
- f. The publication *Dirty Dozen: First of the Lot, Genocide/WarCriminals*, published by the Transnational Government of Tamil Eelam, contains the first twelve names of military and political leaders against whom there is credible evidence of involvement in war crimes, crimes against humanity, and genocide.¹⁰

10. The Pursuit of Justice versus the Pursuit of Peace is a false Choice

- a) “The pursuit of justice is often said to clash with the pursuit of peace. Whatever the theoretical merit of that proposition, the findings of this Commission of Inquiry irrefutably demonstrate that there is no hope for a sustainable peace in Darfur without immediate access to Justice.” – Louise Arbour

⁸(Interview with Canadian magazine National Post on September 23, 2008.)

⁹(Wikileaks Cables: ‘Sri Lankan president responsible for massacre of Tamils,’ as quoted in *The Guardian*, 1 December 2010.)

¹⁰(www.tgte-us.org)

- b) "The role of the Tribunal cannot be overemphasized. From being a vehicle for re-venge it is a tool for promoting reconciliation and restoring true justice." – Antonio Cassese, the First President of the ICTY
 - c) "...the process of healing needs the pursuit of truth, not for the sake of opening old wounds but rather as a necessary means of promoting justice, healing and unity." – His Holiness Pope Francis on his January visit to Sri Lanka
11. Potential Culpability of the new President, Mr. Sirisena, will not be conducive for a Domestic or a Hybrid mechanism
- a) "Sirisena is hardly a beacon of hope for the Tamils: he was acting as defense minister in the nightmarish final fortnight of the war"¹¹
 - b) "I was the Minister in Charge of Defense during the last two weeks of the war in which most of the leaders of the LTTE were killed with General Fonseka at the helm of the Army. Prior to that I have acted as the Minister of Defense five times during the height of the war."¹²
12. Sri Lanka does not have Criminal Provisions for War Crimes, Crimes against Humanity and Genocide

Comment – Because Norway did not have laws against certain Crimes against Humanity, the International Tribunal for Rwanda (ICTR) would not transfer Bagaragaza to Norway since prosecuting the defendant as a common criminal would trivialize his crimes.

In conclusion, Tamils around the world strongly support the referral of the perpetrators and the alleged perpetrators of the War Crimes, Crimes against Humanity and Genocide committed against the Tamil people in the island of Sri Lanka to the ICC for investigation and prosecution or recommendation by the UN Human Rights Council that the United Nations General Assembly set up an International Criminal Tribunal as a subsidiary organ under Article 22 of the UN Charter, even if the new transitional government starts a domestic investigation.

¹¹(<http://www.economist.com/news/leaders/21637389-encouragingly-mahinda-rajabaksa-faces-real-battle-win-re-election-president-better>)

¹²- Maithripala Sirisena's Interview to Daily Mirror (Published: January 2, 2015).

Transnational Government of Tamil Eelam

நாடுகடந்த தமிழீழ அரசாங்கம்

Office of the Chief Executive
875 Avenue of the Americas, Suite 1001,
New York, NY 10001, USA

www.tgte.org
pmo@tgte.org
warcrime@tgte.org

April 29, 2011

His Excellency Ban Ki-moon
Secretary General of the United Nations
New York, NY 10017
USA

Dear Mr. Secretary General:

**Referral of the Political and Military Leaders of Sri Lanka to the Prosecutor of the ICC for Investigation
and
Establishment of an International Mechanism Recommended by the Panel**

We, the undersigned, request you to refer those responsible for genocide, crimes against humanity and war crimes committed against the Tamil People in Sri Lanka to the Prosecutor of the International Criminal Court (ICC) for investigation. We also urge you to appoint a Commission of Inquiry as recommended by the Secretary General's Panel of Experts on Accountability in Sri Lanka to conduct investigations pertaining to the above crimes.

The Panel of Experts has identified five serious violations committed by the Government of Sri Lanka. These are:

- (i) Killing of civilians through widespread shelling,
- (ii) Shelling of hospitals and humanitarian objects,
- (iii) Denial of humanitarian assistance,
- (iv) Human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadres,
- (v) human rights violations outside the conflict zone, including against the media and other critics of the Government

They constitute actions directed by the military and political command of the Sri Lankan Government comprising almost exclusively Sinhalese against the Tamil civilians and therefore clearly establish that genocide, crimes against humanity and war crimes had been planned and perpetrated by the political and military command, resulting in the joint responsibility of the political and military command for the international crimes.

Furthermore, the Panel has gathered additional evidence which discloses that the policies of the Sri Lankan government immediately after the war subjected the Tamil population to torture, forcible imprisonment and other denials of human rights. Such persecutory and discriminatory conduct was based entirely on the ethnicity of people.

The report states that thousands of Tamil civilians were killed in the final months of the war and highlights rape, summary execution, enforced disappearances, widespread shelling, and denial of food and medicine. It is abundantly clear from the Panel's information that Genocide of Tamil civilians has taken place.

We also note that based on recent international as well as national jurisprudence the act of genocide can and has taken place in a limited geographic zone. The intent, an important component of the act of genocide can be inferred from the scale and nature of the operation. Based on information in the Panel report these components of the crime of genocide are present.

We urge you to hold those responsible for the international crimes against the Tamil People by referring the political and military command of Sri Lanka at the time to the Prosecutor of the International Criminal Court (ICC). We also urge you to appoint a Commission of Inquiry to investigate international crimes that took place in the island of Sri Lanka against the Tamil People.

Thank you.
Sincerely,

Refer **Sri Lanka** to
International
Criminal
Court



published by



march 2018

