

Sri Lanka: Rudra rejects local war crimes probe (Colombo Gazette)

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Former LTTE member and peace negotiator and now head of the Transnational Government of Tamil Eelam (TGTE) Visvanathan Rudrakumaran has rejected the war crimes investigation to be conducted by the Presidential Commission of Inquiry, saying he has more faith in a UN led probe than a domestic probe.

In an interview with the Colombo Gazette, Rudrakumaran said that the Tamil diaspora prefers to cooperate with a neutral investigation established by United Nations bodies. He also said that members of the diaspora will argue for the establishment of a tribunal similar to the tribunal in the former Yugoslavia, as a further step.

Full Interview:

1) What does the TGTE think about the new mandate given to the missing person's commission?

The new mandate is deluding. The mandate of the Commission is defined by the flawed conclusion in para 4.359 of the LLRC report. The LLRC was itself prejudiced and issued a report that was exculpatory of the crimes of the army. Para 4.359 contains summaries of the LLRC's concluding observations, which are heavily partisan, fully exonerating the SLAF except for two minor instances. Besides, the expected conclusions are contained in the mandate itself, as it is suggested that the killings of the civilians could be collateral damage proportionate to the task accomplished and that the defense of necessity is applicable. The leading questions asked invite obvious answers.

I would also like to point out that while the mandate of the commission, when it comes to the LTTE, asks specific questions about "human shields" and "child soldiers", it has no specific questions about the conduct of the Sri Lankan military, such as "did the SLA fire heavy artillery on civilians and hospitals?" or "did the SLAF drop bombs on places where civilians were taking refuge?" or "whether the Sri Lankan Government used food as a weapon of war," or "whether the SLA was engaged in forced sterilization". Thus, from the way the mandate is framed, it appears to cover up breaches of humanitarian law by the SLAF.

The mandate gives powers to a commission consisting of persons whose credibility is low. The Sri Lankan judiciary is a cowed down judiciary which has lost its independence. It is presided over by an acolyte of the President. The Commission has personnel who have served on the flawed and discredited LLRC.

It is also interesting to note that the Sri Lankan Government which initially denied civilian casualties due to army conduct (according to the LLRC Report, civilian casualties due to Sri Lankan military

action is zero), now has reversed that position and attempts to justify the massacre of civilians as “collateral damage”. However, under any stretch of legal reasoning/legal imagination, the killing of over a 100,000 civilians within a very short period of time can’t be justified as “collateral damage.”

This commission, like the LLRC, is deficient, because it lacks autonomy to criticize the military. This was seen already in the chairman of the commission, who has said that the disappearances that have been reported to date were those perpetrated by the LTTE. In spite of the fact that the military is behind most of the missing persons he has been evasive about complaints against the SLAF. So there is nothing to say that the commission will facilitate accountability when it comes to issues dealing with the expanded mandate.

The Center for Policy Alternatives published a detailed report chronicling 17 different commissions of inquiry and committees appointed by the GOSL. The committees/commissions went nowhere. Therefore, the domestic commissions have done nothing to work towards accountability or Justice. The same view was expressed in the TNA’s response to the LLRC report that domestic mechanisms had consistently failed in Sri Lanka. Along this line, Stephen Ratner, a member of the UN Secretary General’s Expert Panel, observed that “It may well be that a full and fair examination by the Sri Lankan Government of the state’s own conduct and that of its adversary will need to await electoral developments some years down the road.”

Thus, domestic mechanisms established by the Sri Lankan government however large the mandate may be, would not lead to accountability or justice.

2) Is there room for the diaspora to share information on the war with the Presidential commission?

There is no such room. There is no credible indication of what protection will be given to those who give evidence. One of the notorious deficiencies of the LLRC was the absence of witness protection. Similarly, for the Missing Persons Commission also, there is a lack of witness protection. The above coupled with the GOSL’s explicit threat – not even mentioning the pervasive white van abductions – that anybody who provides evidence to the UN Commission will be prosecuted, clearly establishes that witnesses will not be protected, but will suffer dire consequences. Thus, It is obvious that members of the diaspora also live in fear of what consequences would result for their family members who live in the island of fear, more so for Tamils as they live in areas that are in army occupation.

Moreover, the diaspora prefers to cooperate with the neutral investigation established by United Nations bodies. Members of the diaspora will argue for the establishment of a tribunal similar to the tribunal in the former Yugoslavia, as a further step. The diaspora subscribes to the view that the incidents of killings and rapes beginning from independence and continuing now amount to genocide and that the Sinhalese leaders who incited such activity against the Tamil people are guilty of such genocide. These leaders must be held accountable. The TGTE will work towards establishing such liability. It has already published the names of some of the persons whom it holds as guilty of this enormous crime.

3) Will the appointment of the three foreign experts give the Presidential commission credibility?

The appointment of Sir Jeffrey Nice QC and Professor David Crane as members of the advisory council to the Commission is a ruse by the Sri Lankan Government to distract the UN sponsored International investigation. This is the same old trick of the GOSL. When UN Secretary General appoints the expert panel GOSL came up with LLRC. When the time came for the submission of the report for the UN’s human rights periodic review, the GOSL came up with the National Human Rights Action Plan. Few months before the Commonwealth meeting Missing Persons Commission was announced. Similarly, when the International investigation is about to begin, the GOSL is appointing

Jeffrey Nice and David Crane as advisors. If one were to compare the GOSL's efforts to distract the international community to a multi-stage rocket, the first stage booster called the LLRC has already come to an end of its usefulness. Stage 2 of the rocket, called "the National Human Rights Action Plan" has also run its course. Now, the appointment of International personalities has been ignited. Stage 3 will carry this diddle daddling for quite some distance. The TGTE believes that Rajapakse is doing a sham in order to distract the international community. The GOSL should know that the train has already left the station and it cannot be stopped.

The appointment alone will not give credibility to the Commission. The question is whether they will assist in furthering an impartial inquiry or not. Just because non Sri Lankan officials are appointed to the Commission, does not give it credibility. It should also be noted that the advisory council is tasked with advising the chairman and members of the Commission of Inquiry, at their request, on matters pertaining to the work of the commission. We note that the Information Minister has already indicated that the advice of the foreign experts need not be taken.

When a Presidential Commission sat earlier to probe human rights violations, that included the killing of the Trinco-5 and ACF workers in 2006 in Muttur, an International Independent Group of Eminent Persons (IIGEP) was established to oversee their work. Once again, the IIGEP experts had no direct input in the working of the commission. However, because the IIGEP comprised of honest people, they protested at the way the commission was working and resigned in disgust.

4) In your view do you see the UN or local investigations process actually ensuring justice for the victims of the war?

Definitely. The investigative body appointed by the United Nations is the appropriate body to conduct investigations.

5) Some feel that the whole process is unfair as it fails to properly investigate crimes committed against civilians by the LTTE. What is your opinion on that?

The mandate set up by the UNHRC covers both parties. However as the TGTE has repeatedly said, there is no moral equilibrium between the persecuted and the persecutor.

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