

Over a Million People Urge UN to Refer Sri Lanka to the International Criminal Court

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As of July 15th, over a million people from around the world have signed on to an appeal to urge the United Nations to Refer Sri Lanka to the International Criminal Court.

This Signature Campaign in fifteen languages was launched about four months ago by the Transnational Government of Tamil Eelam (TGTE) and can be accessed at: www.tgte-icc.org

It is reported that the United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein is preparing to release his report on Sri Lanka for the mass atrocities committed in that country.

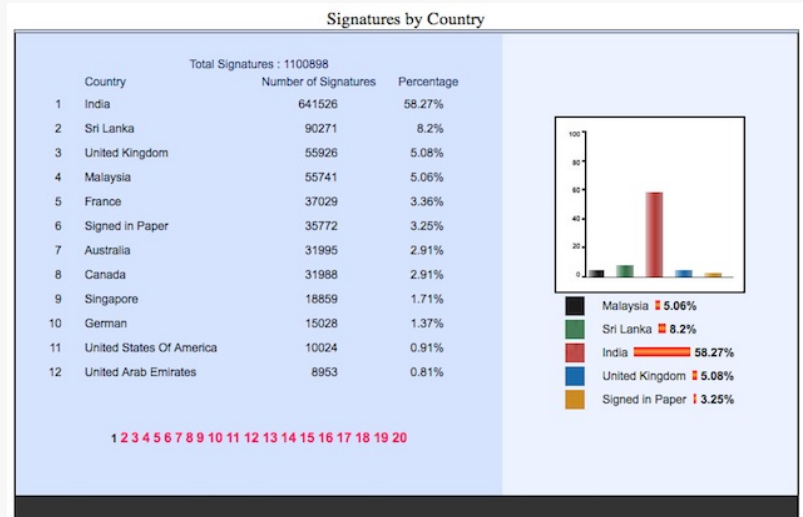
The Signature Campaign observes that:

1) Presence of the former Commander of the Sri Lankan military in the present Government, and the potential culpability of the new President, Mr. Sirisena, will not be conducive to meting out justice in any manner other than through a referral to the International Criminal Court.

2) The fact that “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.”

It Further States:

1) 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,



Petition Results

crimes against humanity, and genocide.

2) 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.

3) It is emphasized in the Petition attached to the Campaign that the crimes against the Tamils on the island of Sri Lanka were perpetrated by the State itself. The petition also pointed out, as observed by the UN Panel of Experts Report, that there existed no political environment to mete out justice for Tamils.

4) It also noted that the promise made by the Sri Lankan Ambassador to the UN following the 1983 racial pogrom - that they will hold an investigation - has never been kept.

The Petition is available in Tamil, Sinhala, English, Russian, Chinese, Malay, Bangla, Urdu, Hindi, French, German, Arabic, Swahili, Turkic and Spanish. A website has been created for the purpose of collecting signatures www.tgte-icc.org

EVENTS AT THE UN:

1) An event was held by TGTE at the UN Human Rights Council titled: "Impending High Commissioner's Report on Sri Lanka: Comparing North Korea & Sudan recommendations for mass atrocities."

2) Another Panel about "whether Hybrid Mechanism will work" was also held in Geneva.

This expert's panel was moderated by: Professor Narsinghen Hambyrajen, Former Minister Counselor of the Trade Division of the Permanent Mission of Mauritius in Geneva and Professor of Law at the University of Mauritius.

Here are some of the highlights:

SPEAKER: Comments by Honorable Richard Rogers, former Head of the Defence Support Team at the Cambodia Khmer Rouge Tribunal and Attorney for Global Diligence;

1) Mr. Rogers dismissed the prospect of domestic trial, saying that it would likely be the victor's justice rather than a real accountability process. He further pointed out that the Sri Lankan Government and the Army are too powerful and too closely implicated in the crimes for this to work.

2) He posed the following question: If the High Commissioner recommends the hybrid option to Sri Lankan Government can the UN insist upon procedural guarantees that are sufficient to protect the court from political interference and personal bias? He said the short answer, in his view was "most probably not."

3) He spoke of his experience with the hybrid tribunal in Cambodia, the frustrations caused by constant political interference with the process. He believes that there would be similar interference if a hybrid tribunal was to be established in Sri Lanka given the links that potential defendants are likely to have within the political system and within the armed forces.

4) Mr. Rogers also warned of the risk that the hybrid court would get bogged down in years of tedious negotiations between the Government of Sri Lanka and the UN and the UN might eventually give in to the demands of the Sri Lankan Government.

5) He concluded by saying a hybrid court may serve the Sri Lankan Government and even the UN who may then claim that justice has been rendered, but it would remove any meaningful change of real justice being done.

SPEAKER: Professor Sornarajah, Visiting Professor at the Centre for Human Rights, London School of Economics.

Professor Sornarajah stated that such a hybrid tribunal is unsuitable for Sri Lanka. Besides the fact that international crimes must be tried by international tribunals, the present situation in Sri Lanka is not conducive to the functioning of such a tribunal. He identified the following circumstances:

1) The local judiciary is heavily tainted and is not independent. The Government has removed successive Chief Justices, provoking the International Bar Council to denounce the lack of an independent judiciary in Sri Lanka.

2) The members of the present administration, including the President who was Minister of Defence during the civil war, held office in the administration of former President Rajapakse. Being complicit, even if not indicted, they are likely to be biased. They would be judges in the cases against them or their associates. *Nemo iudex in sua causa*.

3) Former President Rajapakse is bound to be named as defendant for reasons of command responsibility. His two brothers are also likely to be defendants. Rajapakse is able to demonstrate the support he has among Sinhalese chauvinistic groups by holding massive meetings.

4) In that context, the present regime lacks stability to hold a prolonged trial of war criminals. A return to the anti-Tamil climate of the past is likely.

5) In the context of the heavy militarization that has taken place in Sri Lanka, it is unlikely that the armed forces will permit their leaders or personnel being tried by a hybrid tribunal in Sri Lanka. The spurt of militarization took place under Rajapakse. His loyalists still hold office in the forces.

6) The trials, if held in Sri Lanka, will provoke a Sinhalese nationalist backlash making reconciliation impossible. They may result in further violence against Tamils. Reconciliation, which is the aim of such trials, will not eventuate.

STATEMENT: A Statement by Prime Minister of Transnational Government of Tamil Eelam, Mr. Visuvanathan Rudrakumaran entitled "No Will and No Neutrality: Sri Lanka." He stated in that statement as:

1) An important element in justice is neutrality. When a State itself stands accused as the perpetrator of the international crimes, any involvement of that State in transitional justice vitiates the neutrality. An accused cannot be the sole judge or a co-judge in the legal proceedings against him / her.

2) Last March - 5 years after the first mass atrocity of the 21st century - the UNHRC finally authorized an investigation by the office of the UN High Commissioner for Human Rights (OISL). We have been assured that the report itself will be "strong" and that it undoubtedly will lay out the facts of what took place in significantly greater detail than has been done before. Names of perpetrators may even be released. We believe the report would serve as the basis for fuller investigation and prosecution.

What the High Commissioner's recommendations will include is not yet known, but in the case of North Korea it was recommended last year that the Security Council refer North Korea to the International Criminal Court, even though North Korea is not a signatory to the Rome Statute.

3) Hybrid tribunals can be useful, where a state has a will, but lacks capacity to deliver justice. But that is not case with respect to Sri Lanka.

4) The recent promotion of Army Commander Sarath Fonseka as Field Marshal and the appointment of former Military Commander Mr. Jegath Das as Ambassador which was heavily criticized by the Human Rights Watch, by the "new" regime in Sri Lanka, and their continued refusal to give access to the OISL to Sri Lanka to meet with the victims of war are just a few examples of a clearly lack of will on the part of Sri Lankan state under the "new" regime to deliver any justice for Tamils.

5) It is true that a hybrid tribunal functioning in an ethnically neutral environment would allow the victims to witness justice in the making. However, in the present case, as implicitly acknowledged by the UNSG's Panel of Experts, there is no environment in the island of Sri Lanka for Tamils to get justice.

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