

# Refer Sri Lanka to International Criminal Court (ICC). Victims Must Fashion Modalities for Non-recurrence: TGTE

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The Transnational Government of Tamil Eelam (TGTE) has urged the UN Core Group on Sri Lanka (Canada, Germany, the UK, North Macedonia, and Montenegro) to submit a new resolution to the 46th UNHRC session next month that refers Sri Lanka to the International Criminal Court (ICC) for genocide crimes against humanity, and war crimes.

In the letter sent on January 26, 2021 the TGTE urged that a new Resolution contain the following:

- 1) Refer Sri Lanka to the UN Security Council with recommendation to refer Sri Lanka to the International Criminal Court.
- 2) To ensure non-recurrence of mass atrocities, the victims should be allowed to find a permanent political resolution to the Tamil National Question that has plagued Sri Lanka since independence, manifest in lethal racial pogroms against Tamils in 1958, 1977 and 1983 and war crimes, crimes against humanity and genocide against Tamils during the 1983-2009 war and its aftermath. Specifically, victims should be empowered to participate in finding the political resolution via a referendum conducted under international auspice to determine the political future of the Tamils. A referendum is the appropriate mechanism not only because a lasting solution requires Tamil buy-in, but also because a referendum provides an important measure of remedial justice.
- 3) For the UNHRC to continue to receive and review an update from the Office of the High



Commissioner for Human Rights every six months about the plight of 90,000 Tamil war widows, any progress in finding the whereabouts of the thousands of disappeared Tamils, the situation of unlawfully imprisoned Tamil Prisoners of War (POWs), land grabs under different pretexts and the level of military presence.

TGTE also urged all the states to:

1) Individually or collectively bring an accountability process (legal proceedings) before the International Court of Justice under the Convention on the Prevention and Punishment of the Crime of Genocide against the state of Sri Lanka.

2) Bring amendments in their Immunity Acts/Foreign Sovereign Immunity Acts to include that foreign States are not immune from the jurisdiction of a Court in any civil proceedings that relate to international crimes namely genocide, crimes against humanity and war crimes.

3) Bring legal proceedings under universal jurisdiction against political and/or military leaders accused of international crimes.

TGTE noted the unified position of the Tamil domestic political leadership, religious organizations, civil society, notably the Association for Relatives of the Enforced Disappearances and the sizable Tamil diaspora with respect to the referral of Sri Lanka to the ICC. It was highlighted that Michelle Bachelet, the United Nation's High Commissioner for Human Rights (OHCHR) in her Report dated 12th January 2021 urged member states to take steps toward the referral of the situation in Sri Lanka to the ICC.

Noting in the letter Sri Lanka's longstanding history of impunity which is a threat to peace in the region as manifested in the ongoing Sri Lanka's calculated actions to destroy the distinct characteristics of the Tamil nation and the colonization of Tamil areas of historical habitation recognized in the Indo Sri Lankan Accord, in order to reduce the Tamil nation to a minority group; persecution of Muslims and Tamils, most recently displayed to the world by denying Muslims their burial rights—a violation of the right to religious freedom; along with the destruction of a Hindu Temple and the installment of a Buddhist statue in its place and demolishing the Mullivaikal memorial at Jaffna University dedication to war victims, falls within the purview of Chapter 7 of the UN Charter.

"The combination of international inaction and limited forums to seek accountability has dealt lethal blows to achieving justice for Sri Lankan state crimes," TGTE Prime Minister Visuvanathan Rudrakumaran called on the states "To bring amendments to their domestic laws removing state sovereign immunity as a defense for civil liability for international crimes in their domestic judicial forums". He further said that "this would allow the victims themselves to pursue accountability in the domestic judicial forums in many countries where their presently live.

"TGTE has repeatedly called on the UN to acknowledge that Sri Lanka is an ethnocratic state that will never provide rights or justice for Tamils. The state's refusal to implement the 13th Amendment enacted pursuant to the Indo-Sri Lankan Accord in 1987 and which was urged by the Human Rights Council itself to implement in 2015 is a classic example. Both the institutions and the polity of Sri Lanka are permeated with entrenched pervasive racism. This is not opinion; it is fact. Former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein stated in his 2015 report on Sri Lanka that the crimes committed were 'systemic.' We call on the Core Group to look at history and listen to victims: There is no space for transitional justice in Sri Lanka. The call of the hour is remedial justice," Rudrakumaran said.

"Accountability is not only the end itself but also an important process. Putting President Gotabaya, former Army Commander Sarath Fonseka, or former President Chandrika in prison will not itself ensure nonrecurrence of mass atrocities in the island of Sri Lanka or resolve the Tamil National Question. Holding individuals responsible for their crimes is an important first step. Progress on justice and accountability will also contribute to achieving a permanent solution to the Tamil National Question," Rudrakumaran added.

"When more than 1.5 million people around the world (70,000 in Sri Lanka) signed on to TGTE's 'Refer Sri Lanka to the ICC' petition in 2015, it was a significant step toward justice. When the International Commission of Jurists said in 2019 that referral of Sri Lanka to the ICC was "fully warranted," that was another significant step. When Human Rights Commissioner Bachelet noted in her 2019 report that "Some segments of civil society have continued to call for international investigations and for the Security Council to refer the situation in Sri Lanka to the International Criminal Court for international prosecutions and adjudication of those most responsible for these crimes," that was yet another notable step," Rudrakumaran said. "And when the domestic Tamil leadership and civil society in Sri Lanka called for referral of Sri Lanka to ICC last week, creating a unified voice among Tamils worldwide in seeking ICC referral, that was the Core Group's call to action."

Below, please find the letter:

Honorable Dominic Raab  
Secretary for Foreign, Commonwealth and Development Affairs  
United Kingdom

Honorable Marc Garneau  
Minister of Foreign Affairs  
Canada

Honorable Heiko Maas  
Minister of Foreign Affairs  
Federal Republic of Germany

Honorable Bujar Osmani  
Minister for Foreign Affairs  
North Macedonia

Honorable Đorđe Radulović  
Minister of Foreign Affairs  
Montenegro

Dear Honorable Foreign Ministers of the UN Core Group on Sri Lanka:

As Prime Minister of the Transnational Government of Tamil Eelam (TGTE), I write to you regarding the need for a resolution calling for a new and enforceable course of action on justice and accountability in Sri Lanka to be brought forth for vote at the upcoming 46th UNHRC session, which convenes against a backdrop of ongoing complete impunity for atrocity crimes namely genocide, crimes against humanity and war crimes committed against the Tamil people in the island of Sri Lanka during and after the armed conflict.

The regime that was in power during the final stages of war and is accused of international crimes has returned to power, which makes impunity doubly likely. The fact the current President Rajapaksa pardoned the few soldiers found guilty of committing crimes against Tamils related to the armed conflict, proves the government's promises for a valid domestic process lack credibility.

But as the past five years when it was not in power show, the reason for the failure of the Sri Lankan state to implement a transitional justice program is not limited to any one administration. It is because the state of Sri Lanka is not ethnically neutral. The government, its institutions, and the polity itself are inextricably rooted in and operate with entrenched, pervasive racism. Systemic injustice cannot be waited out. No election will change it.

In addition, all three UN reports on Sri Lanka (i.e., Report of The Panel of Experts, The Internal Review Report ("Petrie Report") and OISL Report) state that there is credible evidence that the Sri Lankan state itself committed international crimes.

Given the above, granting the responsibility to the same Sri Lankan state to investigate and prosecute such serious crimes is a blatant contradiction of the fundamental judicial principle that the accused cannot be the judge.

Steven Ratner, one of the members of the three-person Panel of Experts on Accountability in Sri Lanka appointed by Secretary-General Ban Ki-moon writes about this in the context of Sri Lanka in American Journal of International Law (October 2012, Vol 106, NO: 4):

The Sri Lanka case also demonstrates, however, three clear obstacles on the bridge between law and behavior. First, much of the law regarding accountability for human rights atrocities has

developed in situations where governments are judging their predecessors--true cases of transitional justice...For non-transitional situations, the obstacles to accountability are profoundly increased, for the leaders have much more at stake: full investigation could lead to freezing of assets, public humiliation, and even a trial before a national, foreign, or international court...the limiting principle [of transitional justice] still seems to be that governmental officials do not like to investigate themselves. Those states may be willing to investigate the violations of the losing side—as Sri Lanka is with regard to LTTE crimes—but such investigations then appear to be no more than victor's justice.

A unified position of the Tamil domestic political leadership, religious organizations, civil society, notably the Association for Relatives of the Enforced Disappearances and the sizable Tamil diaspora has emerged with respect to the referral of Sri Lanka to the ICC. Also Michelle Bachelet, the United Nation's High Commissioner for Human Rights (OHCHR) in her Report dated 12th January 2021 urged member states to take steps toward the referral of the situation in Sri Lanka to the ICC. "In 2015 more than 1.5 million people around the world (70,000 in Sri Lanka) signed on to 'Refer Sri Lanka to the ICC' petition. In 2019 the International Commission of Jurists said that referral of Sri Lanka to the ICC was "fully warranted,"

In light of the above, as well as the information entailed in accompanying document enclosed, we request that the Core Group submit a new resolution during the 46th UNHRC session that refers Sri Lanka to the International Criminal Court (ICC) for accountability.

Tasking Sri Lanka with accountability will not only entrench impunity, but also embolden Sri Lanka to intensify the persecution of Tamils and Muslims. The recent attacks on Muslims and the denial of their burial rights in contrary to the right to religious freedom and the World Health Organization (WHO) guidelines demonstrate that Sri Lanka's impunity is a threat to peace and stability and brings the situation under Chapter 7 of the UN Charter.

With respect to Sri Lanka's ongoing calculated effort to destroy the distinct characteristics of the Tamil nation and the colonization of Tamil areas of historical habitation recognized in the Indo-Sri Lankan Accord in order to reduce the Tamil nation to a minority group and the persecution of

Tamils and Muslims most recently displayed to the world by denying Muslims their burial rights – a violation of their right to religious freedom. We request that the Human Rights Council continued to seize the matter: On January 8, 2021, the Sri Lankan government destroyed the Mullivaikal Memorial on the Jaffna University premises erected by the University students, faculty and the public in 2018 in dedication to those who died in the war. The state's destruction of the memorial directly contradicts the need to remember and memorialize: an important component of transitional justice.

We also firmly believe that the victims should play an important role in fashioning a political mandate to ensure non-recurrence. Thus, a referendum should be held under international

auspice to determine the modalities of political resolutions, including an independent state as an option.

Given that the crimes were committed by the Sri Lankan state, as the aforementioned UN reports indicate, a parallel accountability procedure should be brought against the Sri Lankan state itself in the International Court of Justice (ICJ) under the Convention on the Prevention and Punishment of the Crime of Genocide.

We also request that states remove sovereign immunity as a defense for civil liability for international crimes in their domestic laws. This would provide another and much-needed avenue to pursue accountability in the domestic judicial forums in many countries by the victims themselves.

While we acknowledge the logistical complications pertaining to bringing legal action under universal jurisdiction, just as former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein and the present High Commissioner Michelle Bachelet did not find them prohibitive and repeatedly urged states to pursue universal jurisdiction, we also request that states bring prosecutions against the political and military leaders implicated in international crimes committed during the conflict, especially the nineteen army commanders identified in the OISL report.

We urge that the UNHRC's new resolution on Sri Lanka contain the following elements:

- 1) Refer Sri Lanka to the Security Council with recommendation to refer Sri Lanka to the International Criminal Court.
- 2) To prevent non-recurrence of mass atrocities, the victims should be allowed to find a permanent political resolution to the Tamil National Question that has plagued Sri Lanka since independence, manifest in lethal racial pogroms against Tamils in 1958, 1977 and 1983 and war crimes, crimes against humanity and genocide against Tamils during the 1983-2009 war. Specifically, victims should be empowered to participate in finding the political resolution via a referendum conducted under international auspice to determine the political future of the Tamils. A referendum is the appropriate mechanism not only because a lasting solution requires Tamil buy-in, but also because a referendum provides a measure of remedial justice.
- 3) For the Human Rights Council to continue to receive and review an update from the Office of the High Commissioner for Human Rights every six months about the plight of 90,000 Tamil war widows, any progress in finding the whereabouts of the thousands of disappeared Tamils, the situation of unlawfully imprisoned Tamil Prisoners of War (POWs), land grabs under different pretexts, the level of military presence, and any activities on accountability for international crimes.

We also urge all states to:

- 1) Individually or collectively bring accountability process (legal proceedings) before the International Court of Justice under the Convention on the Prevention and Punishment of the Crime of Genocide against the state of Sri Lanka.
- 2) Bring amendments in their Immunity Acts/Foreign Sovereign Immunity Acts to include that foreign States are not immune from the jurisdiction of a Court in any civil proceedings that relate to international crimes namely genocide, crimes against humanity and war crimes.
- 3) Bring legal proceedings under universal jurisdiction against political and/or military leaders accused of international crimes.

Our Fervent Hope is that the UN WILL NOT FAIL THE TAMILS This Time

Thank you.

Sincerely,

Visuvanathan Rudrakumaran  
Prime Minister  
Transnational Government of Tamil Eelam (TGTE)

Transnational Government of Tamil Eelam  
TGTE

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