

# Refer Sri Lanka to International Criminal Court (ICC) : TGTE

*" The international crimes were committed by the state itself. An accused cannot be their own judge "*

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Justice delayed is justice denied. It has been 12 long years since the height of the Tamil Genocide conducted by the Sri Lankan State, and Tamils are still seeking justice in the midst of a return to an increasingly hostile and dangerous environment on the island. The Sri Lankan government has failed

to advance accountability and only aggressively moves forward in its efforts to destroy the distinct character of the Tamil Nation, coupled with illegal land acquisition to destroy the territorial integrity of the Tamil homeland. The existence of this homeland is recognized in various pacts including the 1987 Indo-Lanka Accord.

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*Transnational Government of Tamil Eelam (TGTE)*



Refer SRi Lanka to ICC

In April 29, 2011 the TGTE wrote a letter to the UN Secretary General, His Excellency Ban Ki-Moon requesting that he refer those responsible for genocide, crimes against humanity and war crimes committed against the Tamil people to the prosecutor of the International Criminal Court (ICC) for investigation. At that time TGTE also urged the UN Secretary General to appoint a Commission of Inquiry to investigate international crimes that had taken place in the island of Sri Lanka against the Tamil people. In support of the above demands TGTE submitted more than 100,000 petitions signed by individuals to the Secretary General's Office.

In 2015, a TGTE launched a signature campaign titled an "Urgent Appeal to the United Nations"

gathered an unprecedented 1.6 million signatures worldwide ([www.tgte-icc.org](http://www.tgte-icc.org)). That is, 1.6 million people worldwide called for the referral of Sri Lanka to the ICC for genocide, crimes against humanity, and war crimes, committed during and after the war that ended in 2009. Instead, the UN Human Rights Council (UNHRC) passed a consensus resolution calling on the Sri Lankan government to establish an accountability mechanism with the participation of foreign judges. However, the Sri Lankan government repudiated its commitment to the transitional justice called for in that resolution in spirit as well as in its 2020 letter to the Council. We firmly believe that neither a domestic mechanism nor a hybrid mechanism will result in any kind of justice for the Tamil people. The stated commitment by the Sri Lankan government to implement domestic accountability processes, while it explicitly showed it would not cooperate with the international community by pulling out of UNHRC's resolution 30/1, is an attempt to deflect the call for the referral of Sri Lanka to the ICC. Sri Lanka means to delay any real actions that can be taken to bring us closer towards accountability and justice.

The primary reason for the call for referral to ICC is that the Sri Lankan state is permeated with entrenched and pervasive racism, thus there is no space for Tamils to obtain justice domestically. In addition, according to the report of the Panel of Experts appointed by the then UN Secretary General Ban Ki-Moon, and the reports of the UN High Commissioner for Human Rights, the international crimes were committed by the state itself. An accused cannot be their own judge.

Tamil victims of Sri Lanka's international crimes, including Tamils who have had to flee Sri Lanka, therefore believe that only through the referral of Sri Lanka to the ICC can justice be done for the Tamil victims. Today, the call for referral of Sri Lanka to the ICC has become the foremost element in the accountability discourse on Tamil Genocide, crimes against humanity, and war crimes committed against Tamils by the Sri Lankan state. The call for the referral of Sri Lanka to the ICC has been urged by the UN High Commissioner for Human Rights Michelle Bachelet, four former High Commissioners for Human Rights, thirteen former UN Special Rapporteurs who visited Sri Lanka, members of the Expert Panel, the Tamil domestic political leadership, Tamil Civil Society, Tamil religious leaders, Tamil diaspora organizations, and international NGOs. This year the second generation of diaspora has also rallied around this call and launched a signature campaign which more than 64,000 signatures were obtained (<https://www.change.org/p/justice-for-eelam-united-nations-human-rights-council-session-46>). This itself has been a victory for the Tamil cause, as Tamils have endured decades of injustice.

TGTE urges the United Nations' member states to take action to refer Sri Lanka to the ICC, for prosecution of genocide, crimes against humanity and war crimes committed against the Tamil people by the Sri Lankan state.

The continuing violence against the Tamils, the recent violence against Muslims and the total impunity in Sri Lanka for atrocity crimes constitutes an ongoing "threat to the peace" under Chapter 7, Article 39 of the UN Charter, because there has been absolutely no accountability for grave injustices.

After years of repeated attempts at deflection, and denials, it is time for Sri Lanka to finally be referred to the ICC, and for the Tamil people to finally obtain justice for the decades-long pain endured at the hands of the Sri Lankan state.

The UK Government, the penholder of the tabled Resolution stated that there is “insufficient UN Security Council support” for it. In response to the above, Honorable Stephen Kinnock, Member of Parliament in the UK stated “We fully acknowledge that two of the permanent members of the Security Council would likely veto such a referral were it to be tabled, but this is not an acceptable argument against trying. The UK government’s approach to the UN Security Council should not be determined simply by the veto-wielding intentions of two of its permanent members”. In this connection, the observation made by Honorable Siobhain McDonagh who moved the debate in the UK Parliament on the tabled Resolution on March 18, 2021 merits special attention:

“I turn to the current resolution, to which the UK is a penholder. Disappointingly, it falls short. First, there is no recommendation to pursue criminal accountability by referral to the International Criminal Court. I could barely believe my eyes reading the Government’s reasoning, citing “insufficient...Security Council support”. Who are we to cast the veto for China or Russia before they have done so themselves? Our role on the international stage must be to send the loudest message that impunity will not be tolerated, not to pre-empt the inaction of other nations”

Referral of Sri Lanka to the ICC should not be viewed as an end itself. It is a process. This process will legitimize the Tamils' claim that there is no space for justice for Tamils in the island of Sri Lanka; this process will demonstrate our cry for global justice, it will also intensify and sharpen the Tamil issue in the international arena; even though it is blocked by the exercise of a veto in the Security Council, the state of Sri Lanka will be perceived as a genocidal state and war crime state. Referral will also push states to take sides in the national conflict in the island of Sri Lanka in the UN Security Council and by extension in the world at large.

A putative vetoed resolution at the Security Council is much better than referring accountability to a domestic mechanism in Sri Lanka as proposed by the current tabled resolution. TGTE believes that a vetoed resolution will make democratic powers act in unison and take punitive actions against the Sri Lankan state, independent of the UN.

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

IN SUPPORT OF OUR CALL WE SUBMIT THE FOLLOWING REASONS:

The reasons we provided in 2015 for the referral of Sri Lanka to the ICC are equally applicable to the current situation. In 2015 in support of our call we submitted 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."

Comment

i. The Sri Lankan state apparatus perpetrated serious crimes against Tamils. There has been no acknowledgement of made by the Sri Lankan state in any form. Previous governments have attempted to shift blame to the government that was in power during 2009. Now it is the same people who were in power in 2009 that are the heads of state again, however, it is really the system itself that must bear responsibility.

ii. Political Buddhism emphasizes politics over Buddhist values, and Sinhala Buddhist nationalism is fully embedded and institutionalized as state policy. This ideology justifies subjugation of the island's minorities, because the fundamental tenet of it is the belief that Sri Lanka is the island of the Sinhalese. The current government won a super-majority government during a time in which there was a surge in Sinhala-Buddhist nationalism.

iii. No Sinhala-Buddhist nationalist has ever been held accountable for political crimes or human rights abuses against a Tamil, since the country's independence in 1948. The few individuals found guilty in court are either pardoned or given bail.

iv. The Sri Lankan State conducted itself like a cultural warhead of the Sinhala-Buddhist majority community. The Sri Lankan government has not only violated the fundamental human rights of the Tamils, but also failed to respect and protect them for over seventy years, since independence.

## 2. The Sri Lankan Judiciary and Justice System will not deliver Justice to Tamils:

a. "...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"

Comment

i. 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. In just July 2019, a magistrate in Trincomalee acquitted 12 members of the police Special Task Force and a police officer due to "lack of evidence."

ii. The Sri Lankan legal and judicial institutions have long demonstrated a "chronic inability to address systemic and entrenched impunity for crimes under international law perpetrated by the military and security forces"

iii. 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:

iv. 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.

### 3. Deflecting Collection of Evidence and Prosecution of Perpetrators:

a. The call by the Rajapaksa government for a domestic mechanism, in replacements of their international obligations from 2015, is yet again an attempt to deflect the collection of evidence and the prosecution of perpetrators, and ultimately the referral to the ICC.

b. Sri Lanka is "aggressively attacking efforts to hold officials to account for past grave abuses":

i. Comment: Human Rights Watch released a report in February 2021 outlining the efforts of the Gotabaya Rajapaksa government to thwart justice in seven prominent human rights cases, including blocking investigations, repressing minority groups, intimidating activists and family members of victims.

c. "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."

d. 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).

#### 4. Domestic Mechanisms will not deliver Justice to the Tamils:

##### a. Lessons Learned and Reconciliation Commission (LLRC) has not delivered Justice to Tamils:

i. "...the LLRC is deeply flawed, does not meet international standards for an effective accountability mechanism."

b. "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."

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

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.

d. In January 2021, President Rajapaksa announced a new domestic commission of inquiry to review the findings of the numerous earlier commissions. Those earlier commissions have not lead to accountability nor revealed the fate of the forcibly disappeared Tamil individuals. Prior to the establishment of this commission however, the government already told the UNHRC that allegations against senior military officers were "unacceptable." None of these commissions have met basic international standards.

#### 5. 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."

Comment: The fact that the military apparatus is still intact and the militarization of the North-East 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.

b. Under the new government, self-censorship has returned to the Sri Lankan media, while security forces have carried out intense surveillance and harassment against journalists and activists. The Sri Lankan authorities target, intimidate, and harass journalists, and continue to deviate from democratic institutions and norms.

6. Failed attempts prior to the height of the conflict.

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