

Petition to the Attorney General of Singapore: Arrest, Detain, Investigate & Prosecute Former Sri Lanka President: TGTE

"If Gotabaya is Allowed to Return to Sri Lanka, He may be Prosecuted for Corruption. He will never be prosecuted for Atrocity Crimes Committed Against Tamils"

NEW YORK, UNITED STATES, July 26, 2022 /EINPresswire.com/ --

We, the undersigned request the Attorney General of Singapore to arrest, detain, investigate and prosecute Gotabaya Rajapaksa, the former president of Sri Lanka for Genocide, Crimes Against Humanity and War Crimes under universal jurisdiction.

- 1) According to the 2011 Panel of Experts on Sri Lanka appointed by the then-U.N. Secretary General Ban Ki-moon, during the final stages of armed conflict between the state of Sri Lanka and the Liberation of Tigers of Tamil Eelam (LTTE) in 2009, "multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage".
- 2) According to the 2012 UN Internal Review Report headed by Charles Petrie, there is "credible information indicating that over 70,000 people are unaccounted for" during the final stages of the war.
- 3) The late Reverend Dr. Rayappu Joseph, Catholic Bishop of Mannar testified to a government commission that during the final stages of the war 146,679 Tamils must be unaccounted for based on the Sri Lankan government's own figure of number of residents in the area at the early stages of hostilities and the number who emerged from government internment camps at the end of the conflict.
- 4) In 2015, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein filed a comprehensive report to the Human Rights Council known as the OISL report. According to all these comprehensive reports of the UN, there are reasonable grounds to believe Crimes Against Humanity and War Crimes were committed. 'Reasonable grounds' is the same standard upon which the International Criminal Court issues arrest warrants.
- 5) In 2015 the Permanent Peoples Tribunal sitting in Bremen found Sri Lanka guilty of Genocide.

* RELEVANT LAWS:

The armed conflict between the Government of Sri Lanka ("GOSL") and the Liberation Tigers of Tamil Eelam (LTTE), is of an international character and falls within the purview of the 1949 Geneva Conventions, the 1977 Additional Protocol I and the 1998 Rome Statute.

The Geneva Conventions have attained the status of Customary International Law and are applicable to Singapore.

Under Common Article 1 to the Fourth Geneva (Civilian) Convention, it is the responsibility of the Government of Singapore not only to respect but also to ensure respect for the terms of the Convention parties including Sri Lanka "in all circumstances".

Singapore is also party to the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute. Under Article 1 of the Genocide Convention, Singapore has an obligation "to prevent and to punish".

According to the domestic law of Singapore, the AGC may initiate an investigation into Rajapaksa on the basis of s. 3 of the Geneva Conventions Act (1973), which provides, in relevant part:

Any person, whatever his or her citizenship or nationality, who, whether in or outside Singapore, commits, aids, abets or procures the commission by any other person of any grave breach of any scheduled Convention as is mentioned in the following Articles respectively of those Conventions:

[...]

(c) Article 130 of the Convention set out in the Third Schedule [Geneva Convention Relative to the Treatment of Prisoners of War]; or

(d) Article 147 of the Convention set out in the Fourth Schedule [Geneva Convention Relative to the Protection of Civilian Persons in Time of War],

shall be guilty of an offence and shall be liable on conviction [...].

The AGC could also investigate Rajapaksa on the basis of the Penal Code (1871), including, inter alia, s. 326 (Voluntarily causing grievous hurt by dangerous weapons or means); s. 338 (Causing grievous hurt by an act which endangers life or the personal safety of others); or s. 130D (Genocide).

* COMMAND RESPONSIBILITY UNDER INTERNATIONAL CRIMINAL LAW:

Under international criminal law, commanders holding positions of responsibility may be criminally liable for:

i. ordering, facilitating, or aiding and abetting the crimes committed by Sri Lankan armed forces, including crimes committed by Sri Lankan Air Force (SLAF) units, the Sri Lankan Navy and the Sri Lankan Army (notably, the 57th, 58th and 59th divisions)

- ii. failing to prevent or punish crimes committed by Sri Lankan armed forces under their command,
- iii. co-perpetration as part of a broader criminal plan.

* CULPABILITY OF MR. GOTHABAYA RAJAPAKSE:

During the final stages of war Mr. Gotabaya Rajapaksa was Secretary for Sri Lanka's Ministry of Defense at a time when his brother, President Mahinda Rajapaksa was Minister of Defense. The international crimes noted above were committed under his command and control. During the war, Secretary Rajapaksa boasted on the Defense Department website, now deleted, that "he along with [Sri Lankan armed forces] top brass 'read' and analyzed the war operations every hour, every day. ... 'My job was to understand the priorities, rationally organize those priorities in terms of what was really required for victory and flush out needs and requirements that had zero relevance to our objectives.'"

Mr. Gotabaya Rajapaksa was personally involved in the notorious white flag incident, about which Ms. Yasmin Sooka of South Africa's International Truth & Justice Project Sri Lanka said, "An analysis of the available evidence points to an organised government plan at the highest level not to accept the surrender of the top civilian, administrative and political leadership of the LTTE - but rather to execute them, in violation of international humanitarian law".

* SOME OF THE CRIMES COMMITTED BY THE SRI LANKAN ARMED FORCES DURING THE FINAL STAGES OF THE WAR:

1) Bombing an Orphanage (14 August 2006):

Sri Lankan Air Force units conducted bombing raids on a girls' orphanage, killing at least 60 girls between the ages of 16-19, and injuring 60 others. The Sri Lankan Government (SLG) alleged that the orphanage was an LTTE training camp, however international military observers who visited the site the same day found no indications of LTTE installations, uniforms or weapons at the location.

2) Bombing NGOs in SLG-recognized "Safe" Areas (July - October 2008):

The 57th and 58th Divisions of the Army conducted an aerial bombardment, and damaged NGO compounds in an area known as "the Box," in Kilinochchi. "The Box" was recognised by the SLG as a "safe" area, created to ensure the safe conduct of humanitarian programmes and activities in the Vanni. The SLG knew that humanitarian facilities were in the area, but bombarded these areas anyway.

3) Damaging UN Facilities (10 September 2008- 3 October 2008):

The SLAF damaged United Nations facilities, with some of the shells landing about 50 metres from a United Nations bunker. Subsequently, around five civilians were wounded when a shell landed near to the compound. Three UN buildings also suffered significant structural damage, despite being located in "the Box".

4) Bombing Hospitals with UN and Red Cross staff (21 April 2009):

Aerial bombing raids were conducted on Putumattalan hospital, which contained both local, UN, and International Red Cross staff. Many people were killed and injured. According to one witness "doctors were unable to reach the dead and dying as the shelling and the amount of gunfire made it too dangerous for them."

5) Bombing Hospitals serving Civilians in No-Fire Zone (8-12 May 2009):

SLAF units bombarded the sole health facility available to tens of thousands of civilians, trapped in a No-Fire Zone. The scene was described as involving "so many dead bodies that they could not be separated."

* CRIMES COMMITTED BY 57th, 58th and 59th DIVISIONS OF THE SRI LANKAN ARMY:

Almost all actions performed by the 57 th , 58 th and 59 th divisions of the Army were supported by surveillance footage provided by Unmanned Aerial Vehicles (UAVs). As the Defense Secretary, Mr. Gotabaya had direct command over the use of UAVs in the area, which were piloted by No. 111 Squadron. 19 Over the course of the War, UAVs supported a range of artillery bombardments in the region, resulting in the death of civilians. UAVs were repeatedly spotted just prior to the beginning of the attacks.

a) SLAF Bombing Clearly Marked Hospitals (10 January 2009 - 6 February 2009):

PTK Hospital was subject to heavy bombardment by the SLAF. On 13 January 2009, the hospital was directly hit, causing damage to the buildings, and severely injuring at least two patients. 20 Witness statements indicate frequent surveillance of the hospital by UAVs. The hospital itself was marked on its roof with Red Cross emblems, and was clearly visible from the air.

b) Bombing Civilians Lining up for Food (11 March 2009):

A distribution center with a large queue of people waiting for rice and lentils in Valyarmadam was repeatedly struck by artillery shell fire, after the reported sighting of a UAV flying overhead. Large numbers subsequently died from the attack, including the witness's mother.

c) Shelling a Food Distribution Site (25 March 2009):

A center distributing boiled rice to hundreds of people in nearby Ampalavanpokkanai came under attack. One witness stated that the shelling lasted for approximately 15 minutes and that during this time some 50 shells fell, killing a number of people. Aerial surveillance aircraft were witnessed above the area during the distribution of food.

d) Knowingly Attacking Civilian Gatherings in No-Fire Zone (8 April 2009):

Shells landed on a Primary Health Clinic where milk powder was being distributed in Pokkanai. A rare commodity, the milk powder had been announced over a loudspeaker to the local

population who were encouraged to go to the clinic. The time and location of the distribution had also been communicated by humanitarian agencies to the SLG, with military surveillance aircraft flying in the area. At least 50 people, including babies and young children, were killed in the attack.

e) Bombing a Hospital in a No-Fire Zone (27 April 2009- 29 April 2009):

From around the 27 April 2009, Mullivaikkal hospital, located in a No-Fire Zone set up by the SLG, came under repeated artillery shelling. On the 28 April 2009, at least six people, including women and children, were reportedly killed entering a Prime Health Care facility within the hospital. On the 29 th , shells damaged the roof of a hospital ward and nine patients died while fifteen others were reportedly wounded. The Sri Lankan security forces had been seen conducting regular aerial surveillance of the area.

* NON_AVAILABILITY/FUTILITY OF ANY DOMESTIC ACCOUNTABILITY PROCESS:

In the island of Sri Lanka, racism is pervasive and entrenched. In fact, Mr. Lee Kuan Yew in an interview with the International Herald Tribune stated "In 1965, we had 20 years of examples of failed states. So, we knew what to avoid – racial conflict, linguistic strife, religious conflict. We saw Ceylon. Thereafter, we knew that if we embarked on any of these romantic ideas, to revive a mythical past of greatness and culture, we'd be damned. So, there's no return to nativism...Had we chosen Chinese, which was our majority language, we would have perished, economically and politically. Riots – we've seen Sri Lanka, when they switched from English to Sinhalese and disenfranchised the Tamils and so strife ever after." (IHT interview 29 August 2007)]

In the report of the 2011 Panel of Experts appointed by the UN secretary general Ban Ki-moon, it is stated that the root cause of the conflict is the real or perceived exclusion of Tamils in the Sri Lankan political process. 26 The UN High Commissioner for Human Rights, in her 2021 report to the HRC that with 'a dangerous exclusionary and majoritarian discourse,' [n]early 12 years on from the end of the war, domestic initiatives for accountability and reconciliation have repeatedly failed to produce results, more deeply entrenching impunity, and exacerbating victims' distrust in the system. Sri Lanka remains in a state of denial about the past, with truth-seeking efforts aborted and the highest State officials refusing to make any acknowledgement of past crimes.

In short, the Sri Lankan state dominated by the Sinhalese, including the judiciary, is ethnocentric and racist. Thus, Tamils do not have space for justice on the island.

* PROSECUTION UNDER UNIVERSAL JURISDICTION:

All three UN High Commissioners for Human Rights since the end of the war have repeatedly called for prosecution by states under universal jurisdiction for the international crimes committed during the final stages of the war.

1) In 2011 HC Navi Pillai said that, “addressing violations of international humanitarian or human rights law is not a matter of choice or policy; it is a duty under domestic and international law” and that, “Unless there is a sea-change in the Government’s response, which has so far been one of total denial and blanket impunity, a full-fledged international inquiry will clearly be needed.”

2) Addressing the HRC on 11 Sept. 2017, HC Zeid noted, “The absence of credible action in Sri Lanka to ensure accountability for alleged violations of international human rights law and international humanitarian law makes the exercise of universal jurisdiction even more necessary.”

4) In 2021 HC Bachelet urged ‘Member States to pursue alternative international options for ensuring justice and reparations and support a dedicated capacity to advance these efforts.’

* CONSEQUENCES OF ALLOWING GOTABAYA TO RETURN TO SRI LANKA:

If Gotabaya is allowed to return to Sri Lanka, he may be prosecuted for corruption. He will never, however, be prosecuted for the Tamil genocide, crimes against humanity or war crimes. Given the increasing role of the Defense Chief of Staff Major General Shavendra Silva, who himself is a genocidaire and a war criminal subject to a US travel sanction, there is no space whatsoever for domestic accountability for the crimes committed against Tamils.

Wherefore We, the Undersigned Request the Attorney General of Singapore to Arrest, Detain, Investigate, and Prosecute Gotabaya Rajapaksa for Genocide, Crimes Against Humanity and War Crimes under Universal Jurisdiction.

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