



பிரித்தானிய தமிழர் பேரவை
British Tamils Forum



PEARL

SOUTHSIDE FM RADIO



US★TPAC



உலகத் தமிழர் அமைப்பு
World Tamil Organization, Inc.

The Honorable Zeid Ra'ad Al-Hussein
United Nations High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Paquis
Ch – 1201, Geneva
Switzerland

August 18, 2015

Dear Sir,

OHCHR INVESTIGATION ON SRI LANKA [OISL]

We, the undersigned representatives of the Tamil Diaspora, in exile from the island of Sri Lanka¹, and Tamils from all around the world, would like to express our gratitude to you and your office on the task of providing a definitive report on the events at the end of the war in Sri Lanka that brought unfathomable calamity on Tamil victims and survivors. We look forward to the release of the report as an impartial legitimate record of what our People have endured.

We submit this memorandum to responsibly convey to you that neither a domestic mechanism nor a hybrid mechanism would be able to deliver justice to Tamil victims in Sri Lanka. We firmly believe that justice can only be meted out by referring Sri Lanka to the International Criminal Court.

¹Tamils in Sri Lanka have been referred to as Ceylon Tamils for centuries. The 1972 constitution that changed the name from Ceylon to Sri Lanka was adopted without the consent of Tamils, and hence their reluctance to be called Sri Lankan Tamils. Over the past 3 decades, they have been calling themselves Eelam Tamils. Referring them as Eelam Tamils also differentiates them from Tamil Nadu Tamils of South India.

In the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka² (March 31, 2011) it is stated *inter alia*: “Accountability also requires official acknowledgement by the State of its role and responsibility in violating the rights of its citizens when that has occurred.” When the State itself is implicated in international crimes, it cannot play any role in the administering of justice pertaining to those crimes. As the accepted legal principle holds, *nemo iudex in sua causa*— an accused cannot be judge in one’s own case.

The underlying nature of the conflict in Sri Lanka is a conflict between two nations, namely Sinhala Nation and Tamil Nation. Given that, for a State to play a role in its resolution, it must be neutral. However, as demonstrated by Sri Lanka’s history since “independence”, the Sri Lankan State, including the judiciary, overwhelmingly dominated by the Sinhala Nation, has failed to uphold even the appearance of neutrality. The judiciary has always been subservient to the political leadership when it comes to abuses against Tamils, and that is evidenced by all of the past Commissions of Inquiry.

The mandate of the OISL is not limited to war crimes but also includes international crimes, which is further defined in Article V of the Rome Statute of the International Criminal Court as consisting of the crime of genocide; crimes against humanity; war crimes; and the crime of aggression. Article II of the 1948 Genocide Convention defines genocide to mean “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such.” By this very definition of genocide, the Sri Lankan State, controlled almost exclusively by the Sinhala ethnic group, will not be able to adjudicate any charge of genocide by the Sri Lankan State against the Tamils, whether as part of a hybrid mechanism or a domestic mechanism. Therefore, an outside, independent international mechanism is essential for a fair adjudication of the crimes which fall within the purview of the mandate.

It has been the belief in some quarters that the changing of the guard would result in change in institutionalized impunity in Sri Lanka. The Tamils have seen numerous regime changes since Sri Lanka becoming an independent State in 1948, and none of the regimes made any sincere effort to address Tamil grievances. The promotion of former Army Chief Sarath Fonseka to Field Marshal status and the recent appointment³ of former Commander of the notorious 57th division, Major General Jagath Dias, as Army Chief of Staff, both of whom have been implicated in grave international crimes by reputable INGOs, is not only a slap on the face to the victims, but also to the OISL, an open flaunting of the accountability demanded of the Sri Lankan State.

None of Sri Lanka’s domestic mechanisms, including the one that had the International Independent Group of Eminent Persons, has been successful. Accountability and justice are processes that must be credible in the view of the victims, ensuring the free participation of the victims, and complying with international norms and standards. Further, given that the exclusively Sinhalese Sri Lankan military

²POE Report, pg iv http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

³ Sri Lanka: New Army Chief a Blow to Justice. <https://www.hrw.org/news/2015/05/17/sri-lanka-new-army-chief-blow-justice>

apparatus is still intact, and given the intense militarization⁴ of the North East where the Tamil victims live, the Tamils will continue to be fearful to participate in any in-country process.

Given the history and politics of Sri Lanka, a domestic or hybrid mechanism will not meet these standards and thus the only fair option is an international process led by the United Nations.

A hybrid tribunal can be useful, where a state has the will, but lacks the capacity to deliver justice. This is not the case in Sri Lanka, because there is no political will to prosecute members of the Sinhala Nation or to deliver justice to the Tamils. Even the Foreign Minister of Sri Lanka recently told the Southern constituency that they will set up domestic inquiry “to clear the name of the army.” In fact, much of the upcoming parliamentary elections will revolve around precisely this issue.

The present regime lacks the stability and capacity to uphold a prolonged trial of war crimes, crimes against humanity, and genocide. Such a trial, if held, will only intensify anti-Tamil sentiments and may result in anti-Tamil pogroms. The result will be diametrically opposed to what the accountability process hopes to achieve, namely non-recurrence, deterrence, healing and peace. The Secretary General’s internal report on the failures in Sri Lanka (the Petrie Report) gave birth to the Rights Upfront initiative, drawing lessons from Sri Lanka. The UN should not fail the Tamil victims yet again by instituting any mechanism dependent on the Sri Lankan State.

Meanwhile, “One Million Signature Campaign,” a campaign to urge Your Excellency to refer the OISL Report on Sri Lanka to the International Criminal Court has surpassed its target. It also urges you to recommend continued action on Sri Lanka at the Human Rights Council. The one million signatures rejecting local and hybrid mechanisms also jibes with the recent survey results conducted by the Center for Policy Alternatives that found an overwhelming 84% of Tamils wanting an international accountability process.

With great respect for your commitment and work to protect and promote human rights around the globe, to ensure justice and accountability, to build deterrence, and to ensure that injustices are never repeated, we would like to request the following action from you:

A recommendation to refer the case to the International Criminal Court or an international accountability process, rather than support for a domestic or a hybrid judicial process.

Thanking you,

⁴ More than 18,000 people were taken away for interrogation by the Sri Lankan military at the end of the war. While few of these people have been released after undergoing torture and abuse in state custody, vast number of those remains unaccounted for. The Sri Lankan state continues to defy calls for a comprehensive list of those who were taken into custody.

Sincerely,

1. British Tamil Conservatives (UK)
2. British Tamils Forum (UK)
3. Illankai Tamil Sangam (USA)
4. International Council of Eelam Tamils (Canada-Norway-Finland-Denmark-Sweden-Holland-Belgium-Germany-France-Switzerland-Ireland-Italy-Australia-New Zealand and partner country Mauritius)
5. Pasumai Thaayagam Foundation (Green Motherland), (India)
6. People for Equality and Relief in Lanka (USA)
7. Southside FM Radio (South Africa)
8. Swedish Tamils Forum (Sweden)
9. Ministry of International Affairs - Transnational Government of Tamil Eelam (TGTE)
10. United States Tamil Political Action Council (USA)
11. World Tamil Organization (USA)

For correspondence, please contact Mr. Ranjan Manoranjan at Coordinatortamildiaspora@gmail.com.