

தமிழ் மக்கள் பேரவை
Tamil People's Council

Tamil Peoples' Council Office
Palaly Road
Jaffna
23/02/2019

His Excellency António Guterres
Secretary-General
United Nations

Dear Mr. Secretary-General,

We, the undersigned advocates for and representatives of the Tamil people in the Island of Sri Lanka, along with our allies, respectfully invite you to employ your good offices to support a resolution to investigate the litany of crimes (in violation of treaty obligations and *jus cogens* norms) that we allege Sri Lankan personnel have committed against Tamils. Such an independent, international investigation should be conducted by any necessary mechanism appropriate to the crimes alleged: **whether that be an *ad hoc* tribunal, the International Criminal Court or any other Forum suited to such prosecution.**

In March 2019, UN Human Rights Council Resolution 34/1 will expire. In this Resolution, Sri Lanka reaffirmed its commitment to implementing the reforms that 2015's Resolution 30/1 prescribed. The Council extended OHCHR reporting on the implementation of its recommendations for an additional 24 months to allow the state to make the necessary progress on its commitments, and to build confidence between all communities in Sri Lanka. However, no tangible progress has been made. We believe that the Government of Sri Lanka has circumvented its commitments to the international community effectively using the UN Human Rights Council mechanism to delay and obstruct justice for all the crimes committed during and after the armed conflict.

The 2011 Panel of Experts' Report¹ confirms indiscriminate Sri Lankan Army killings of at least 40,000 civilians during the final period of armed conflict, ending in May, 2009. Similarly, the Internal Review Panel² cites "credible information indicating that over 70,000 people are unaccounted for." The victims are predominantly of Tamil origin.

These ethnically characterized killings of non-combatants, we argue (i) are murders that constitute a crime against humanity under the *Rome Statute of the International Criminal Court* (Rome Statute) Article 7(1)(a), holding *jus cogens* status; (ii) violate Article III(a) common to the Geneva Conventions (constituting war crimes in a non-international armed conflict); and (iii) violate the *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) Article II(a).

Mobile-phone footage, taken by Sri Lankan soldiers at the end of the armed conflict, shows combatants of the Liberation Tigers of Tamil Eelam (LTTE) executed without trial.³ Such acts, we argue, violate Article III(d) common to the Geneva Conventions.

¹Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka para 137, 31 Mar 2011

²Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka para 34, Nov 2012

³BBC Channel 4 documentary, *Sri Lanka's Killing Fields*, directed by Callum Macrae, 14 Jun 2011

Following the end of the armed conflict, forcible internal displacement and wholesale internment of Tamils took place in locations such as Manik Farm (which held 300,000, closed in 2012)⁴ and Joseph Camp (still the site of torture and rape reports in December 2016).⁵ It was reported that “[a]bout 1,400 people are dying every week at the giant Manik Farm internment camp set up in Sri Lanka to detain Tamil refugees [according to] senior international aid sources.”⁶

We believe that such forcible population transfer and internments constitute crimes against humanity under the Rome Statute Article 7.1(d) and (e), which holds *jus cogens* status. We further believe that such conditions of internment have altered Tamils’ conditions of life in a manner calculated to bring about their destruction as a group, in the sense of the Genocide Convention, Article II(c).

Consequent to forcible displacement and internment, militarization of historically Tamil areas has proceeded at an extremely rapid pace. In historically Tamil Mullaitivu, for instance, it has produced a ratio of one (Sri Lankan Sinhalese) soldier to every two (Tamil) civilians.⁷

Settlements on requisitioned Tamil land, consisting of military families who also benefit from state financial incentives to have a third child,⁸ appear calculated to alter Tamils’ conditions of life in a manner that may bring about their destruction as a group, in the sense of the Genocide Convention, Article II(c). Militarization of their homeland also appears to deprive Tamils of the ability to dispose of their natural wealth, resources, and means of subsistence, in the sense of ICCPR Article 1(2).

While several countries return Tamil refugees to Sri Lanka, citing the end of the armed conflict to show that Sri Lanka is safe for them, the Working Group on Arbitrary Detention reports receiving “accounts of Tamils who were arrested and detained in 2015, 2016 and 2017 when returning to Sri Lanka after seeking asylum in another country or working abroad.”⁹

The Special Rapporteur on Torture¹⁰ noted that “torture and ill-treatment as a routine method of work,” in conditions of “total impunity,” characterized such detention under Sri Lanka’s Prevention of Terrorism Act (PTA), indicating a violation of ICCPR Article 7. Such acts arguably constitute serious mental and bodily harm (in the sense of the Genocide Convention, Article II(b)), to Tamil detainees.

Sri Lanka has undertaken to repeal the PTA, but its proposed replacement legislation (the Counter-Terrorism Act or CTA) also suspends *habeas corpus*.¹¹ The provisions of the PTA and its proposed

⁴“Sri Lanka shuts Manik Farm IDP camp” *The Hindu* 25 Sep 2012

⁵*Joseph Camp* International Truth and Justice Project pp. 5, 11, Mar 2017

⁶“Tamil death toll ‘is 1,400 a week’ at Manik Farm camp in Sri Lanka” *Times Online UK* 10 Jul 2009

⁷*Normalising the Abnormal: The Militarisation of Mullaitivu District*, Adayaalam Centre for Policy Research (ACPR) and People for Equality and Relief in Lanka (PEARL) 4 Oct 2017

⁸Charles Haviland “Have More Children, Police Hinted” *BBC Sinhala* 21 Nov 2011; MelaniManelPerera

“Government Subsidies for Third Child. But Only for the Armed Forces” *AsiaNews* 16 May 2012

⁹*Working Group on Arbitrary Detention: Preliminary Findings from its Visit to Sri Lanka (4 to 15 December 2017)*, OHCHR, 15 Dec 2017

¹⁰A/HRC/34/54/Add.2, paras. 111-112

¹¹Prof. Christof Heyns and Toby Fisher, “The Policy and Legal Framework Relating to the Proposed Counter Terrorism Act of Sri Lanka: A Review of Compliance with International Human Rights Norms” *Foundation for Human Rights and Institute for International and Comparative Law in Africa*, 13 Jun 2017

replacement therefore both facilitate arbitrary detention in the sense of ICCPR Article 9, and also deny detainees the right to legal personhood in the sense of ICCPR Article 16.¹²

The Bishop of Mannar documents 146,679 missing at the end of the armed conflict, based on government records.¹³ President Sirisena met with representatives of the families of victims of enforced disappearances on June 12, 2017, promising to release a list of the names and last-known whereabouts of the disappeared.¹⁴ While the administration instituted the Office of Missing Persons (OMP) in compliance with UNHRC Resolution 30/1, the OMP has not been operationalized; and the administration has not produced the list of those missing so far.

During an excavation project in the town of Mannar, which is located in the north-west of the island, excavators stumbled upon skeletons. Further investigations and findings suggest that this excavation site contains a mass grave of at least 276 skeletons, of which 21 are children, showing signs of torture.¹⁵ It is one of the latest discoveries to show the cruelty and systematic cover-up of severe human rights' violations.

This is a partial list of allegations. A thorough investigation will unearth others. To date, no one has been prosecuted for any of these acts. Sri Lanka's deadline for compliance with UNHRC Resolution 30/1, which requests a hybrid tribunal to investigate international crimes, has been extended until March, 2019 under UNHRC Resolution 34/1. Yet, repeated public statements from President Sirisena indicate his intention to shield Sri Lankan military personnel from investigation, and thus to violate Resolution 30/1. (Indeed, one of those accused of war crimes is now second-in-command of the Sri Lankan army.¹⁶) In March, 2019, all domestic remedies will have been exhausted.

Paragraph 4 of the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (A/RES/60/147) prescribes that

In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to

¹²This interpretation is bolstered by the *Tharu et al. v. Nepal* decision (CCPR/C/114/D/2038/2011 paras. 10.6–10.9)

¹³"Mannar Bishop questioned by Sri Lankan CID on 'disappearances'" *Weekend Leader* 10 May 2012

¹⁴"President Sirisena promises families lists of forcibly disappeared will be released" *Tamil Guardian* 12 Jun 2017

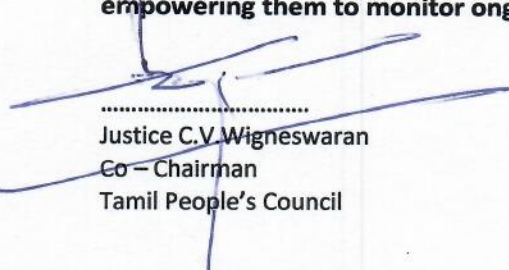
QadijahIrshad "Skeletons of 21 children found in mass grave in Sri Lanka with 'signs of torture'" *The Independent* 13 Dec 2018


¹⁶"Alleged war criminal named second-in-command of Sri Lanka army" *Al Jazeera* 10 Jan 2019

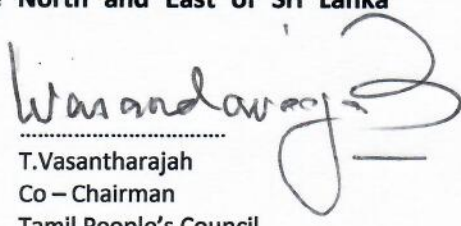
prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

Tamils seek the support of the Secretary-General for such investigation and prosecution through any international judicial organ competent to do so in compliance with the obligations imposed on the international community through General Assembly Resolution 60/147, and acting under the authority of Chapter VII of the UN Charter. We believe that an appropriate resolution to Tamil grievances will

uphold the integrity of the United Nations Charter and of international law, while contributing to the stability and prosperity of the region. **In the interim we urge that the UNHRC do mandate the Office of the High Commissioner for Human Rights to open offices in the North and East of Sri Lanka empowering them to monitor ongoing Human Rights' violations.**


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Justice C.V. Wigneswaran
Co – Chairman
Tamil People's Council


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Dr. P. Lakshman
Co – Chairman
Tamil People's Council


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T. Vasantharajah
Co – Chairman
Tamil People's Council

Copy: Michelle Bachelet, High Commissioner, United Nations

A short biographical sketch of each of the Co – Chairman is herewith attached.

Justice C.V.Wigneswaran

Justice C.V.Wigneswaran had been a Career Judge for over Quarter of a Century and retired as Judge of the Supreme Court in 2004. He holds a Bachelor of Arts Degree from the London University and Bachelor of Law Degree from the University of Ceylon, Peradeniya. He also completed his Proctors Finals (Solicitors) and Advocates Finals (Barristers) and practiced as Attorney at Law for 15 years before joining the Original Judiciary.

He was among the first in Sri Lanka and elsewhere to have started lectures in Law in the Tamil Language at a time when Law Books in Tamil were not available.

He was the first Chief Minister of the first Northern Provincial Council having been elected with a record 133000 odd Votes in September 2013. The second candidate at the said election received 88000 odd Votes.

Mr.Wigneswaran has written books on Hinduism in Tamil and English. His Public speeches have recently been published. He has written several articles in Law, Religion and Social themes both in English and Tamil. Number of his literary contributions have been published serially in News Papers. He has been an office bearer in a number of Social, Literary, Religious organizations apart from being active at the Old Boys' Union of Royal College, Colombo.

A widower, his elder son is Senior State Counsel at the Attorney General's Department and his younger son is Associate Director, Customer Development Division, Fontera Brands Lanka Pvt. Ltd.

While Chief Minister he together with other prominent Civil Society personalities established the Tamil Peoples' Council (TPC) a Civil Movement interested in obtaining the legitimate rights of the Tamils in Sri Lanka.

Dr.P.Lakshman

MBBS,MD

Consultant Cardiologist

Teaching Hospital Jaffna

1. Consultant Cardiologist attached to Teaching Hospital Jaffna since August 2006 to date.
2. University Grants Commission appointed member of the Council of University of Jaffna since 2015.
3. President Jaffna Medical Association 2019.

He together with other Civil Society personalities established the Tamil Peoples' Council of which he is presently Co – Chairman.

T.Vasantharajah Esqr

Mr.Thambipodi Vasantharajah is trained in Social Mobilisation as a Master Trainer. He has attended many Conferences locally and abroad on community based Disaster Preparedness and National Disaster Preparedness.

01. He was Branch Chairman, Sri Lanka Red Cross Society, Batticaloa Branch – for 20 years from 1995
Main responsibility - overall supervision of Branch activities including various training Programmes specially in the Disaster Management field
02. He did Emergency relief operations during war in the Eastern Region of Sri Lanka for 14 years
03. He did Emergency relief and recovery operation during and after tsunami disaster in 2004 for 5 years
04. He was engaged in mobilizing Red Cross Volunteers in security operational areas of the Batticaloa district to deal with Contingencies from 2000 to 2008
05. He was engaged in training Red Cross Volunteers In the following fields since 1999
 - A] Community Based Needs Assessment
 - B] Community Based Disaster Preparedness
 - C] Community Based First Aid
 - D] Disaster Risk Reduction
 - E] Basic Volunteer Training
 - F] Community Based Health Awareness
 - G] Community Mobilization
06. He was Engaged in training Volunteers and Local Staff members of INGOs, NGOs and Govt officers in DRR for 10 years