



ஓட்டாவா தமிழ் ஒன்றியம்
OTTAWA TAMIL ASSOCIATION
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Not for profit Organization: 936728-4

Est: 2014

August 30, 2022

Minister of Foreign Affairs, Global Affairs Canada

Please Call on the UN to Refer Sri Lanka to International Criminal Court (ICC)

Dear Honorable Minister Melanie Joly,

Since Canada is a member of the Sri Lanka Core Group at the UN Human Rights Council (UNHRC), we are writing to you ahead of the upcoming September UNHRC 51st Session, about our concerns of continued failure for accountability for war crimes, crimes against humanity and genocide committed against the Tamil people.

During this session, Sri Lanka will be evaluated about Sri Lanka's compliance with UNHRC Resolutions. We urge you to present a strong determination for achieving accountability for atrocity crimes committed and continuing, even after 13 years at the end of arm conflict, by successive governments of Sri Lanka by calling for Sri Lanka to be referred to the ICC, as recommended by UN High-Commissioner for human rights in her March 2021 report to UNHRC and reinforced by all four former UN High Commissioners for Human Rights, nine former Special Rapporteurs who had visited and written reports on Sri Lanka, and all three members of the Secretary-General's Panel of Experts on Sri Lanka.

We as a representative of the Tamil Canadians strongly believe that anything short of calling for the referral to the ICC will permanently eliminate any chance of getting justice for the mass atrocities we faced. Additionally, this will encourage the security forces and government to continue to commit mass atrocities against the Tamil people with impunity.

We urge you to ensure that the determination by the Core Group on Sri Lanka to the UNHRC 51st session clearly urges UN Security Council to refer Sri Lanka to the International Criminal Court (ICC).

Background:

Within a week of the end of the armed ethnic conflict in Sri Lanka in May 2009, a joint communique was issued by the Government of Sri Lanka and the UN at the conclusion of the UN Secretary General's visit to Sri Lanka on the 23rd of May 2009, which inter alia stated "Sri Lanka reiterated its strongest commitment to the promotion and protection of Human Rights, in keeping with international Human Rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of International Humanitarian and Human Rights law. The Government will take measures to address those grievances".

Sri Lanka has not taken any meaningful steps to address the above commitments in the last thirteen years. During the intervening years, the UNHRC has adopted seven resolutions ending with UNHRC 46/1 in March 2021. Sri Lanka even co-sponsored some unanimously passed resolutions, including one about establishing Hybrid-Courts with the participation of international judges, prosecutors, and defense lawyers. Several years have passed, but Sri Lanka did not take any initiative to set up a Hybrid-Court as promised by the Government to UNHRC.



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Furthermore, successive Sri Lankan Governments have adopted different tactics to drag the accountability process to hoodwink UNHRC. In addition to not addressing the accountability issue, the government of Sri Lanka continues a program of oppression of Tamils, including continued enforced disappearance, torture, extra-judicial killing, keeping an extremely large military in Tamil areas despite thirteen years have passed since the war ended, land grab to settle Sinhalese in traditionally Tamil areas with the aim to transform Tamil areas into majority Sinhala Areas.

Recommendation by UN High-Commissioner for Human Rights and other senior UN officials: Due to the serious nature of the atrocity crimes committed and successive Sri Lankan Governments' evasive tactics to address accountability, UN High-Commissioner for Human Rights in her report to UNHRC on January 12, 2021 urged the Council to take steps to refer Sri Lanka to ICC. This call was reinforced by several senior UN officials suggesting the same. High-Commissioners report on Sri Lanka on Jan 12, 2021, referring Sri Lanka to ICC states:

"Member states have a number of options to advance criminal accountability and provide measures of redress for victims. In addition to taking steps toward the referral of the situation in Sri Lanka to the International Criminal Court, Member States can actively pursue investigation and prosecution of international crimes committed by all parties in Sri Lanka before their own national courts, including under the principles of extraterritorial or universal jurisdiction." <https://undocs.org/A/HRC/46/20>

An open letter from 20 former high-level UN officials on February 18, 2021. The signatories included all four former UN High Commissioners for Human Rights, nine former Special Rapporteurs who had visited and written reports on Sri Lanka, and all three members of the Secretary-General's Panel of Experts on Sri Lanka. This joint letter stated the following: "The recently released report on Sri Lanka by the UN High Commissioner for Human Rights underlines, yet again, the country's lack of progress on justice and accountability. Based largely on an analysis of emerging trends, it makes a compelling case for decisive international action to ensure justice and accountability for mass human rights violations and atrocities in Sri Lanka as a central element of the search for sustained reconciliation and the prevention of the recurrence of rights abuses and conflict. Given the continued reluctance of the Sri Lankan Government to meaningfully uphold the human rights of all, only decisive, international action to ensure justice and accountability can interrupt Sri Lanka's periodic cycles of violence."

<https://chrgj.org/wp-content/uploads/2021/02/Sowing-the-Seeds-of-Conflict.pdf>

Is it a valid argument that the UN Security Council will block a Referral of Sri Lanka to the ICC?

Some people argue that referring Sri Lanka will be blocked by some members of the UN Security Council (UNSC). This argument is misleading since none of the UNSC Permanent members have indicated that they will veto any referral of Sri Lanka to the ICC. In addition, it should be noted that the same concern was raised previously in other situations, but UNHRC went ahead and urged UNSC to refer those countries to the ICC.

For example:

Sudan was referred to UNSC with a recommendation to refer it to ICC. Even though Sudan is very much close to China compared to Sri Lanka, China did not exercise its veto, resulting in Sudan being referred to ICC and then Sudanese President Omar al-Bashir being served with ICC summons.

Similarly, North Korea was referred by UNHRC to ICC, despite the very serious concern of China using its



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veto.

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Then the question arises why this excuse is being advanced against Sri Lanka being referred to ICC by UNHRC. The only logical conclusion for this argument is to protect Sri Lankan political leaders and military officers from facing justice for the mass atrocities committed against the Tamil people.

Request:

For the above reasons we, as representatives of the Tamil Canadians, jointly urge you, as requested by the UN High Commissioner for Human Rights and other UN officials, to call in your Resolution to urge the UN Security Council to refer Sri Lanka to the ICC, as was in North Korea and Sudan.

Thank you for your consideration.

Sincerely,

Ottawa Tamil Association
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