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TAG: Executive Summary

Model Indictment Charging U.S. Citizen and Sri Lanka Defense Secretary and U.S. Permanent Resident and Commander of the Sri Lanka Army

Tamils Against Genocide (TAG) has evidence that 12 counts of the crime of genocide have been committed against the indigenous civilian Tamil population of Sri Lanka outside of any conceivable war or conflict zone, for example, affecting temples, churches, schools, and hospitals. TAG used the legal services of Bruce Fein, Esq.¹ to produce a 3-volume 950+ page model indictment which charges U.S. citizen and Sri Lankan Defense Secretary, Gotabaya Rajapaksa, and U.S. permanent resident and Commander of the Sri Lanka Army, Lt. General Sarath Fonseka, with 12 counts of genocide, and 106 counts of war crimes and torture, in violation of U.S. domestic statutes 18 USC § 1091, 18 USC § 2441, and 18 USC § 2340A.

TAG submitted the model indictment to the U.S. Department of Justice on February 5, 2009 for the US Attorney General to initiate a grand jury investigation aimed at filing a federal criminal case in the U.S. District Court for the Central District of California.

A recent US statute now makes it a crime for US citizens and permanent residents to be responsible for the crime of genocide committed even outside US borders. If filed, this case would be the first test of the United States Genocide Accountability Act of 2007 sponsored by Senator Richard Durbin (D. Ill.), and supported by then Senators Barack Obama (D. Ill.), Joseph Biden (D. Del.) and Hillary Clinton (D. N.Y.)

The Sinhala-dominated government has discriminated against and persecuted the civilian Tamils of Sri Lanka since independence in 1948. Since the ethnic conflict broke out between the Sri Lankan armed forces and Tamil rebels in 1983, the Tamil areas of the North-East have been subjected to harrowing destruction. The Tamil people there have been indiscriminately killed, disappeared, kidnapped, raped, and otherwise persecuted with the intent to destroy Tamil groups in whole or in substantial part because they are not Sinhalese Buddhists.

Command Responsibility for Genocide, War Crimes and Torture

The model indictment organizes all relevant crimes committed against Tamils in Sri Lanka between December 5, 2005 and January 29, 2009. By compiling legal evidence, this document intends to prove that the defendants are individually criminally responsible for genocide, war crimes, and torture as recognized and punishable under U.S. domestic law. Genocide is the deliberate and systematic destruction or attempted destruction, in whole or in substantial part, of an ethnic, racial, religious, or national group, as such. War crimes are the violation of the laws and customs of war and include the murder, ill-treatment or

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deportation of civilians, the wanton destruction of cities, towns and villages, and any devastation not justified by military necessity.

As detailed in the model indictment, the specific crimes of genocide, war crimes, and torture committed against Tamils during the period from December 5, 2005 to January 29, 2009 (Eelam War IV), from the rape of Tharshini Ilayathamby to the Senchola school bombing, were committed under the military command responsibility of the defendants through the following non-exhaustive list of methods which were systematically employed in Sri Lanka by the Sri Lankan armed forces and government-sponsored paramilitaries:

Murder, massacre, torture, mutilation and maiming, disappearance, abduction, rape, gang-rape, sexual abuse and assault, arbitrary or indefinite detention, indiscriminate aerial bombardment, indiscriminate artillery shelling, a permanent cycle of displacement and re-displacement, ethnic cleansing by militarization, colonization and de-population, starvation, deprivation of essential goods, medicine, education and public services, harassment, intimidation, and other stark conditions of life intended to cause the physical destruction of Tamil groups in whole or in substantial part.

These crimes have brought the Sri Lankan Tamil community close to complete physical destruction, as the model indictment details:

- “Every living Tamil in the Jaffna peninsula and the North-East has been displaced, physically injured, and/or persecuted by the Sinhalese Buddhist majority—an unprecedented victimization rate approaching 100%.” (*paragraph 100 in the model indictment*)
- “During more than two decades of war, including Eelam War IV, in predominantly Northeastern provincial territories, all Hindu/Christian North-East Sri Lankan Tamil villages have been fully depopulated at least once.” (*para. 544*) “The economic blockade and military attacks worked in tandem with a media blackout, and confinement of Tamil civilians in the North-East intensified. The GOSL continued their genocidal strategy of killing Tamils in concentrated locations and imposing stringent conditions of life with shortages of food, medicine, energy, or housing to destroy Tamils physically through starvation, malnutrition, disease, and exposure to the elements.” (*para. 107*)
- In one four-year period alone “Sri Lankan forces destroyed 150,000 homes, created six thousand widows, orphaned 4,000 children in the North-East, damaged 700 temples through bombings, and removed various icons or holy Hindu images from sixty-three temples.” (*para. 108*)
- “Poverty, displacement, and garrisoning of entire towns and villages by Sri Lanka’s armed forces caused Jaffna’s student population to plunge by 100,000 since 1995, the Government Agent for the northern district reported. Before Eelam III, the student population in Jaffna was 240,000. By 2004, it had dropped to 140,000.” (*para. 472*)
- “Genocide [was also accomplished] in Jaffna and the North-East, respectively, in part through colonization, militarization, and Sinhalization.” (*para. 396*) A population which had some of the best indicators of civilian well-being in South Asia, including literacy and infant mortality rates has now become one of the poorest areas. For instance, “In 1991, of the total 148,080 tons of essential foods needed in Jaffna, only 43,080 tons were supplied – a 71% shortfall. Paddy production plunged 83%.” “Before Eelam War II and the blockade, 700-1000 tons of food was unloaded annually at Point Pedro Port in Jaffna; during Eelam War II, that quantity fell to 100 tons.” (*para. 130*) “The fishing sector provided subsistence and livelihoods for 200,000 Tamils. Annual fish production in this sector fell from 104,300

tons to 1,094 tons, a drop of 98.95%, occasioned by national security restrictions. Local consumption before the blockade annually required 6,605 tons of fish. Only 16.6% of that tonnage was caught after 1990." (para. 131) In 2002, "[t]he SLA destroyed 50,000 palmyra palm trees on the route joining Thalaimannar to Mannar. Approximately forty thousand Tamil families depend on palmyra palm plantations while another twenty-five thousand families' livelihood depends on toddy production, handicrafts, as well as other tree products." (para. 409) "In the 10-months from June 1990 to April 1991, North-Eastern hospitals required 220 million rupees to operate, but the GOSL only supplied 7% – 15 million – of the required amount, and did so irregularly." During the same period, "Amparai, whose Sinhala population had risen since independence due to state-sponsored colonization, received funding and treatment for 90% of their needs." (para. 126) "In the Jaffna peninsula, for example, the SLA's Operation Whirlwind in May 1992 bombed 8 hospitals and surrounding infrastructure." (para. 120)

- "The Mannar Bishop and human rights activists lamented [in 1998] that the CSU [*Counter Subversive Unit*] habitually arrests women such as Sivamani and Wijikala from various parts of the Mannar district to rape and exploit brutally under the pretext of interrogation and extended detention pursuant to the Prevention of Terrorism Act and the Emergency Regulations." (para. 377)
- Colonization of Sinhalese into Tamil areas has continued apace. For instance, "The GOSL began construction of a Buddhist shrine in Vilankulam, a traditional Tamil village in 2002... In a companion act of religious bigotry, [nearby, two weeks later] the GOSL banned renovation of the historic Hindu temple at Kanniya, in Trincomalee." (para. 423) In 2007, "[w]hile a majority of the 222 Tamil families from the traditionally all Tamil Raalkuli village in Muthur division in Trincomalee District had been displaced due to SLA and SLAF attacks, by this date, a Colombo-based Buddhist organization laid the foundation stone for 138 houses intended for the settlement of Sinhala-Buddhist civilians in the village." (para. 2124)
- "The fact is that not a single member of the security forces had, at the date of the Mission, been convicted of murder... A culture of impunity has developed, with perpetrators of grave violations being convicted of minor offenses or, in most cases, not at all." -- Centre for the Independence of Judges and Lawyers in Geneva, 1997. (para. 27) "Torture has been facilitated by widespread impunity of the perpetrators. To date, no member of the security forces has been brought to justice for committing torture." -- Amnesty International, 1998 (para. 293)

In the legal argument of the model indictment, the counts of genocide, war crimes, and torture which hold the defendants culpable for crimes committed during Eelam War IV against Tamils are framed within a larger motivational context which preceded the genocide in Eelam War IV, and which details virtually every documented crime committed against Tamils from 1948 to November 2005, including acts of genocide which occurred in Eelam Wars I-III and the recent ceasefire period.

The pre-Eelam War IV motivational context articulates the complexity and gravity of the Tamil genocide and demonstrates that the Tamil genocide as it unfolds in Eelam War IV can neither be interpreted in isolation nor decontextualized from the post-independence pattern of facts and historical events which show the persistent intent of successive democratically elected Sinhala-Buddhist regimes to commit deliberate acts of genocide with the intent to destroy in whole or in substantial part the Hindu/Christian North-East Sri Lankan Tamil national, ethnic, racial, religious group, as such, in the North-East provincial territories of Sri Lanka, which includes the heavily populated Jaffna peninsula.

Genocide, Torture and War Crimes

The difference between genocide and crimes against humanity in their legal definition is that genocide is an intent-based crime; crimes against humanity are not. Proof of genocidal motivation is occasionally direct, as with Defendant Fonseka's assertion that Sri Lanka is a Sinhalese nation—not a multi-ethnic nation. Other evidence of motivation is circumstantial, for example, no Tamils serve in the security forces; and, no Sinhalese Buddhist perpetrator of extra-judicial killings, torture, rape, and other atrocities has ever been both prosecuted and punished in more than 60 years, with one minor exception.

12 counts of genocide are charged in the model indictment, followed by 106 counts of war crimes and torture. These introduce the option of legal action which charges the defendants for acts of war crimes and acts of torture where, unlike the counts of genocide, the proof of intent to physically destroy on whole or in substantial part a Tamil group is not required.

The indictment charges violations of U.S. criminal laws, not international law. The institutions entrusted with enforcing international criminal prohibitions, for instance, the International Criminal Court or the International Court of Justice, are routinely hijacked by big-power politics. China would frustrate any effort to call the Defendants to account before international bodies, just as it has for its own crimes against Tibetans or Uighurs.

Recourse is being made to prosecuting these crimes in US courts because the government of Sri Lanka, controlled by the island's Sinhala-Buddhist majority, has been an impediment to delivering any justice for crimes against Tamils in Sri Lanka. Further, the defendants are a U.S. citizen and a U.S. permanent resident, whom the United States has a special responsibility for prosecuting under the Genocide Convention of 1948, which was ratified by the U.S. Senate in 1988. United States courts are fiercely independent, and will not be distracted in a genocide prosecution about arguments over the LTTE or other legal irrelevancies to the crime that the defendants would attempt to interject.

In the model indictment, to supplement the sections on the accused and the charges, sections such as evidentiary sources, general allegations, additional facts, and individual criminal responsibility contextualize the counts of genocide, war crimes, and torture.

The Counts

Genocide Counts

The charges of genocide in the model indictment are separated into 12 counts as discernable by the differing methods of genocide in different territorial areas of North-East Sri Lanka. The 12 counts of genocide are comprised of 5 region-level counts and 6 village-cluster levels of genocide. The 5 regions of the region-level genocide counts 1-5, whose provinces or districts are listed below:

Region-level Genocide

1. Non-Government-Controlled Northern Territory (NGNT)

Vanni Region, which includes Mullaitivu and Kilinochchi Districts (as of Jan., 2008)

2. Government-Controlled Northern Territory 1 (GNT-1)

- Jaffna peninsula that includes the Jaffna District and the Jaffna islets
3. **Government-Controlled Northern Territory 2 (GNT-2)**
Vavuniya, Mullaithivu and Mannar Districts
 4. **Eastern Territory (ET)**
Trincomalee, Batticaloa, and Amparai Districts
 5. **Southern Territory (ST)**
Western, Central, Sabaragamuwa, and Southern Provinces

Village Cluster-level Genocide

The 6 village clusters of the village-cluster level genocide counts 6-11, whose villages where acts of genocide occurred are listed in the charging section of the model indictment, are

6. **Sampoor village cluster**
7. **Mannar/Manthai village cluster**
8. **Vavuniya North village cluster**
9. **Mullaithivu South village cluster**
10. **Poonakari village cluster**
11. **Pallai-Vadamaradchi East village cluster**

War Crimes and Torture

The war crimes under the War Crimes Act of 1996 and the U.S. criminal prohibition of torture in fulfillment of the Convention Against Torture listed in this model indictment are not comprehensive. They will be supplemented with new evidence that TAG expects to be generated by the model indictment example. In U.S law, the new charges would be contained in what is called a “superseding indictment.”

In this model indictment, there are 106 counts of war crimes and torture. Each act of torture, murder, rape, mutilation or maiming, sexual abuse or abuse, is charged separately by individual.

The 106 counts include, in no particular order, all Tamil civilian victims of the following:

- Separate acts of torture in the areas of Jaffna, Batticaloa, and Colombo carried out through a non-exhaustive list of torture methods used by the Sri Lankan armed forces and government-sponsored paramilitaries
- Murder of Tamil civilian male Joseph Pararajasingam
- Trinco-5 massacre
- Allaipitti massacre
- ACF-17 massacre
- Sencholaibombing
- Rape of Tharshini Illayathamby
- Murder, decapitation, and body mutilation by dismemberment of Tamil civilian male Fr. Jim Brown
- Murder and decapitation of a 5-month old Tamil male infant by an indiscriminate aerial bombardment of a Tamil civilian area
- Sexual assault of 51 Tamils in Boosa Detention Camp

Explaining Tamil Genocide

All previous well-known genocides which have occurred since the end of World War II have been characterized by a massive number of murders in a small defined locality occurring in a short time period and carried out by an actor seeking the total physical extermination of a particular ethnic group. The post-1945 genocide cases often cited are: the Holocaust, Cambodia, the Kurds in Iraq, the Srebrenica massacre, Rwanda, and Darfur.

By contrast, Sri Lanka's genocide against Tamils has taken place over a number of years and is more characterized by widespread, prolonged displacement and destruction of the community's physical and cultural base than murder. For this and also wider geopolitical reasons, the destruction of the Sri Lankan Tamils is less well-understood in the world at large as a case of genocide. The model indictment accommodates this lack of awareness into its articulation of the patterns of Tamil genocide.

The 2007 US Genocide Accountability Act defines genocide as an attempt to physically destroy a group in whole or in substantial part because of race, religion, ethnicity, or nationality, as such, by employing the following tactics: extrajudicial killings or disappearances; the infliction of serious bodily harm; or, the creation of conditions of life intended to cause the physical destruction of a racial, religious, ethnical, or national group in whole or in substantial part. The evidence collected and organized in the model indictment proves beyond a reasonable doubt that Eelam War IV is genocide masquerading as counter-insurgency. Every incident of genocide chronicled in the indictment was inflicted on Tamil civilians outside any conceivable war zone and uninvolved in the ethnic conflict between the LTTE and the government.

The central difference between the Tamil genocide and other post-1945 genocides is that in Sri Lanka the culture of genocide seeks to physically destroy Tamils in substantial part, not in whole, if the Tamil survivors are willing to accept vassalage or serfdom to Sinhalese Buddhists.

Eelam War IV, and the Tamil genocide between December 6, 2005 and January 29, 2009 as detailed and alleged in the model indictment, inherits and continues a post-1948 Sinhala-Buddhist culture of genocide against Sri Lankan Tamils which fundamentally seeks to create a racially pure Sinhala-Buddhist state as prophesied in the 13th century mytho-historical text of Sri Lankan Sinhala-Buddhism, the "Mahavamsa." This text is widely taught, read, and revered today among Sinhalese Buddhists as incontrovertible truth.

The Sinhalese Buddhist acts of genocide intend to further and complete the comprehensive Sinhalization of the territory of Sri Lanka in whole, and the physical extermination or destruction in substantial part of the Hindu/Christian North-East Sri Lankan Tamil national, ethnic, racial, religious group, as such.

From the first to the last page of the model indictment, the evidence is mountainous that the ascendant Sinhalese Buddhist power structure has invariably acted on the conviction that Sri Lanka is a mono-ethnic-religious nation and that all other groups are aliens or interlopers whose physical existence (when it is tolerated) is at the grace of the government.

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