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November 26, 2024

Honourable Melany Joly. PC, MP.
Minister of Foreign Affairs
Global Affairs Canada
125 Sussex Dr,
Ottawa, ON K1A 0G2

Sent via email Melanie.Joly@international.gc.ca, melanie.joly@parl.gc.ca

Dear Minister Joly:

Re: Petition e-5058 presented by MP Shaun Chen against Sri Lanka has no legal basis

01. Ontario Centre for Policy Research (OCPR) is an Ottawa-based public policy research institute that provides its view on public policy matters that affect Canadians.
02. We are monitoring the Tamil terrorist group Liberation Tigers of Tamil Eelam (LTTE) and its supporters and political backers' activities and how their activities affect Canadians and our democratic institutions.
03. We have carefully read the petition initiated by Nirujan Gnanagunalan from Scarborough, Ontario, and presented to the House of Commons on November 20, 2024, by MP Shaun Chen (Scarborough North).
04. The petition requested that Canada act as an injured party per Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide (Convention) based on the alleged Eelam Tamil genocide that occurred in the state of Eelam by referring to the International Court of Justice (ICJ).
05. Further, the petition requested Canada to call for an internationally administered referendum to create an independent and sovereign state of Tamil Eelam.

06. We respectfully submit petition e-5058 has no legal basis. It must not be considered for further action.

07. Canada has no *erga omnes partes* obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, Article IX, covering the entire *temporal jurisdiction* against Sri Lanka.

08. Our reasonings are on the following grounds:

- (1) Issue with ICJ compulsory Jurisdiction
- (2) Issue with The House of Commons motion passed on June 19, 2019
- (3) Issue with the Legislative Assembly of Ontario enacted Bill 104
- (4) Issue with Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism SOR/2001-360
- (5) Issue with the United Nations Charter
- (6) Issued with Federal Policy on Sri Lanka's armed conflict

Brief background to the conflict and quick facts

09. Eelam Tamils and Tamil Eelam are concepts advanced by the Liberation Tigers of Tamil Eelam (LTTE), a Tamil terrorist organization and its supporters. LTTE is a designated terrorist organization in Canada. ¹

10. LTTE waged an armed campaign for almost three decades in Sri Lanka, fully funded by LTTE sympathizers living in Canada ² and other Western countries. On May 08, 2009, Sri Lanka's military eliminated LTTE's Leader Velupillai Prabhakaran and its senior cadre. After the military defeat, LTTE sympathizers started a sinister Eelam Tamil genocide campaign against Sri Lanka.

The emergence of the Eelam Tamil genocide ideology

11. Based on our research, OCPR has reasonable ground to believe that Gary Anandasangaree (current MP of Scarborough-Rough Park) attempted to meet the successor of

¹ <https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crnt-lstd-ntts-en.aspx#46>

² The LTTE has also had an extensive network of fundraisers, political and propaganda officers, and arms procurers operating in Sri Lanka and within the Tamil diaspora. <https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crnt-lstd-ntts-en.aspx#46>

the LTTE leader, Selvarasa Pathmanathan, Kumaran Pathmanathan, or simply KP, head of weapon procurements (aka Gun Runner) in Malaysia, around June 2009.

12. However, Sri Lankan and Malaysian intelligence agencies apprehended KP and brought him to Sri Lanka so Aandasangaree could not meet him.

13. Our research identified the purpose of the meeting is to propagate the idea of the Eelam Tamil genocide and the possibility of appointing KP as a new LTTE leader.

14. Further, Bill 104 promoter MPP Vijay Thanigasalam appeared to be an LTTE sympathizer. On his Facebook page, he wrote the LTTE terrorist leader as his hero and posted a photograph of the Tamil terrorist leader. It says, "Happy 57th Birthday to our National Leader, Hon. V. Pirapaharan." ³

15. The Tamil Eelam concept is a creation of a mono-ethnic state of Tamils living in the northern and eastern parts of Sri Lanka.

16. However, 68% of Tamils live in the southern part of Sri Lanka and are well-integrated with other ethnic groups such as Sinhalese and non-Tamils. Only less than 5% of Tamils live in the northern and eastern parts of Sri Lanka. ⁴

LTTE propaganda

17. LTTE's propaganda campaign has been threefold.

1. Tamils are innocent victims of a government dominated by Sinhalese.
2. Elam Tamils are subjected to constant discrimination and military oppression.
3. The Elam Tamils can never peacefully exist with Sinhalese in a single state. ⁵

18. It is plain and obvious that petition e-5058 preambular and operative paragraphs are a mirror image of LTTE propaganda.

³ https://policy-research.ca/wp-content/uploads/2021/07/D-MPPTthanigasam_HailedLTTELeaderonhisfacebookPage.pdf

⁴ Report on Enumeration of Vital Events (EVE)-2011 - Department of Census and Statistics, Ministry of Finance and Planning, Sri Lanka. https://policy-research.ca/wp-content/uploads/2021/07/K-EVE2011_FinalReport.pdf

⁵ Canadian Security and Intelligence Service (CSIS) publication, Commentary 77. <https://policy-research.ca/wp-content/uploads/2024/11/CISIS-Commentary-77.pdf>

19. There is no prohibition on ethnic groups to identify themselves as they wish. However, Eelam Tamils have a direct nexus between LTTE and a mono-ethnic state for Tamils called Eelam.

Analysis

(1) Issue with ICJ compulsory Jurisdiction

20. Article IX of the Convention states:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

21. Article 35, paragraph 1, of the Statute of the International Court of Justice⁶ provides that the Court shall be open to the States parties to the Statute, and Article 93, paragraph 1, of the Charter of the United Nations provides that all Members of the United Nations are *ipso facto* parties to the Statute. Canada is an original member of the ICJ and a member state of the United Nations.

22. However, Canada deposited the instrument at the ICJ on August 28, 2023, regarding declarations recognizing the Court's jurisdiction as compulsory.⁷ Its sections (b) and (c) read as follows:

(b) disputes with the government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;

(c) disputes concerning questions which, by international law, fall exclusively within the jurisdiction of Canada;

23. Concerning section (b) disputes with the government of any other country member of the Commonwealth, all disputes shall be settled as the parties have agreed or shall agree.

⁶ <https://www.icj-cij.org/statute>

⁷ <https://www.icj-cij.org/declarations/ca>

24. Sri Lanka vehemently denied the alleged Eelam Tamil genocide. However, petition e-5058 insists on taking action against Sri Lanka, a member of the commonwealth state.

25. There are two issues arising from this instance.

(i) The petition e-5058 requested Canada to act on Sri Lanka's position regarding the alleged Eelam Tamil genocide. Since Sri Lanka rejects the Eelam Tamil genocide, it calls a dispute with Sri Lanka.

(ii) The petition also requested that Canada initiate legal proceedings against the Commonwealth Country Sri Lanka.

26. A recognition of compulsory jurisdiction submitted to the ICJ on August 28, 2023, Canada shall settle the (alleged) Eelam Tamil genocide, i.e., a dispute between Sri Lanka in the manner of agreement with both states.

27. As such, Canada has no legal obligation to initiate proceedings directly at the ICJ to investigate the alleged Eelam Tamil genocide as petition e-5058 proposed. It must be in consultation with Sri Lanka, and parties **shall agree** at first to resolve a dispute.

28. Therefore, e-5058 has no legal basis and must be rejected. It must not be considered for further action.

Eelam is not a state

29. With reference to section (c) of the instrument, "disputes about questions which, by international law, fall exclusively within the jurisdiction of Canada."

30. The Petition e-5058 requests Canada to intervene in international law matters, i.e., the alleged Eelam Tamil genocide.

31. The petition suggests that the Eelam Tamil genocide occurred in the state of Eelam. Eelam is a mythical state adopted by LTTE and its sympathizers, and such a state does not exist.

32. Further, Eelam is not a state as per Article 35, paragraph 1, of the Statute of the International Court of Justice and Article 93, paragraph 1, of the United Nations Charter.

33. Therefore, Canada has no legal premise to initiate proceedings against Sri Lanka based on the Eelam Tamil genocide that occurred in the state of Eelam.

34. As such, e-5058 has no legal basis and must be rejected. It must not be considered for further action.

(2) Issue with The House of Commons motion passed on June 19, 2019

35. This matter is directly related to the Prime Minister of Canada's Statement issued on May 18, 2023, regarding the alleged Eelam Tamil genocide.

36. The Federal Court of Canada has already dealt with this matter. The Applicant objected to the Statement and contended that the Statement characterizes the conflict in Sri Lanka as a “genocide.” In addressing the legal question, the Federal court stated as follows in its decision para 19,

Further, contrary to the Applicant’s position, the Statement is not a decision or an order that gives rise to a binding obligation, nor is it conduct that affects legal rights, imposes legal obligations, or causes prejudicial effects. At its core, the Statement concerning the House of Commons motion encourages Canadians to reflect on the conflict in Sri Lanka in the broader context of human rights, peace, and democracy generally.⁸

37. The House of Commons motion passed on June 19, 2019, is not legally binding and has no recognition whatsoever of the Eelam Tami genocide.

38. This matter has already been litigated in Canadian Court. The decision has not been appealed either.

39. It appears that petition e-5058 requests that Canada re-litigate the matter related to the House of Commons motion passed on June 19, 2019, by referring to the ICJ.

40. Therefore, the petition e-5058 has no legal basis and must be rejected. It must not be considered for further action.

⁸ *Hewage v. Canada (Prime Minister)*, 2024 FC 901 para 19. <https://canlii.ca/t/k56dm>

(3) Issue with the Legislative Assembly of Ontario enacted Bill 104

41. Ontario Superior Court of Justice ⁹ and Appeal Court for Ontario ¹⁰, on their decisions, have firmly stated that there is no determination of the alleged Eelam Tamil genocide. Further, the Supreme Court of Canada is now reviewing this matter.

42. It appears petition e-5058 requests that Canada re-litigate the matter related to Bill 104, i.e., the Eelam Tamil genocide by referring to ICJ.

43. Therefore, petition e-5058 has no legal basis and must be rejected. It must not be considered for further action.

(4) Issue with Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism SOR/2001-360

44. Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism SOR/2001-360 section 6 states:

Causing, Assisting or Promoting

(6) It is prohibited for any person in Canada or any Canadian outside Canada to knowingly do anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in, any activity prohibited by sections 3 and 4.

45. MPP Vijay Thanigasalam directly promotes LTTE terrorist activities by promoting its leader.

46. The Petition e-5058 refers to Bill 104 and its promoter, MPP Vijay Thanigasalam, who promotes LTTE terrorist leader.

⁹ *Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2022 ONSC 3849
Paras 9 – 12. <https://canlii.ca/t/jq0qb>

¹⁰ *Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2024 ONCA 657, Para 18 <https://canlii.ca/t/k6mp7>

47. The primary purpose of petition e-5058 is to open a pathway to creating an independent sovereign state for Tamils, Tamil Eelam. This request assists or promotes terrorist activities against the sovereign state of Sri Lanka.

48. Therefore, petition e-5058 directly conflicts with the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, SOR/2001-360, section (6).

49. As such, petition e-5058 has no legal basis. It must not be considered for further action.

(5) Issue with the United Nations Charter

50. Canada is a member of the United Nations, so it must respect its charter. Sri Lanka is also a member state of the United Nations.

51. The United Nations (UN) Charter prohibits the use or threat of force and requires all member states to respect the sovereignty, territorial integrity, and political independence of other states:

- **Article 2.1**
The UN is based on the principle of sovereign equality for all its members.
- **Article 2.4**
All members are called to respect other states' sovereignty, territorial integrity, and political independence.

52. The UN also has a resolution reiterating all people's right to determine their political status and pursue economic, social, and cultural development without external interference. The resolution also calls on states not to support political parties or groups in other countries and not to take actions that undermine electoral processes.

53. The petition e-5058 requests that Canada be involved in a referendum on creating an independent and sovereign state of Tamil Eelam in Sri Lanka. It affects Sri Lanka's sovereignty, territorial integrity, and political independence and contravenes the UN charter, specifically Article 2.4.

54. Further, Petition e-5058 originated from a group of individuals in another country, i.e., Canada. Therefore, under the UN charter, Canada should not support such a request.

Therefore, petition e-5058 has no legal basis. It must not be considered for further action.

(6) Issue with Federal Policy on Sri Lanka's armed conflict

55. Canada issued a diplomatic note to Sri Lanka stating that the Government of Canada had not made a finding that there was a Tamil genocide in Sri Lanka.¹¹

56. In other words, Canada's official foreign policy is apparent, i.e., the No Elam Tamil genocide in Sri Lanka.

57. The petition e-5058 contradicts Canada's official foreign policy.

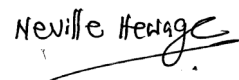
Therefore, petition e-5058 has no legal basis. It must not be considered for further action.

Conclusion

58. Foregoing all the reasons mentioned above, OCPR respectfully submits that the petition e-5058 has no legal basis and should not be considered for further action.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Ottawa, Ontario, November 26, 2024.

Ontario Centre for Policy Research
Per



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¹¹ Diplomatic Note Issued by the Government of Canada. <https://policy-research.ca/wp-content/uploads/2024/05/5-Diplomatic-Note.pdf>

