

The Tamil people's right to self-determination

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Abstract *This article provides an overview of the crisis in Sri Lanka and states why an armed conflict has developed in the northern and eastern parts (north-east) of the country. The Tamils' accusations—of discrimination, denial of the right to self-determination, abrogated agreements and violations of international human rights and humanitarian law amounting to genocide by successive Sri Lankan governments—are supported by specific evidence given by international human rights and legal experts, international human rights non-governmental organizations and other relevant entities. The democratic parliamentary efforts and the non-violent resistance struggle of the Tamil people prior to the outbreak of war are traced over several decades. The article includes an outline of social and law and order achievements in the north-east under the de facto administration of the Liberation Tigers of Tamil Eelam (LTTE) and concludes with some current international dimensions of the situation.*

Introduction

The United Nations (UN) Charter of 1945 supports the view that self-determination is a legal principle, and as such the right to self-determination is placed crucially in the first article of each of the two major human rights covenants of 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN 1996). The recognition of self-determination rights was first applied in the 1960s to countries hitherto ruled by colonial powers, for example several countries in Africa—during the decades that followed, the right to self-determination of several other peoples has been internationally recognized. Despite the fact that the principle and fundamental right of self-determination is firmly established under international law, consideration of the Tamil people's right to self-determination and, importantly, the outright denial of this right for many decades are frequently omitted in discourse pertaining to the ethnic conflict in Sri Lanka. Therefore, this article includes a descriptive analysis of the conflict. The main objective is to focus on the violations that have occurred.

If the international community desires to support the search for a just and equitable solution to the island's bloody conflict which will benefit all of the island's population, then an analysis of the root causes of the conflict is required. It is logical to start with a consideration of the historical background prior to colonization. We will then consider how the situation has evolved over the pre- and post-independence periods. This will be followed up by a description of the factors contributing to the conflict.

Two peoples colonized by Europeans

Historians have asserted that the ancestors of the present-day Tamils were the original inhabitants of the island (Williams 1950). Indigenous Tamil people have lived for more than 2,500 years in the northern and eastern parts of present-day Sri Lanka (north-east), known as the Tamil hereditary area. In precolonial days there was the Tamil Kingdom in the north-east (Jaffna) and two Sinhalese kingdoms in the south, called Kotte and Kandy. Drawings and maps from the time of the Greek explorer Ptolemy, and later from the period when the British came to the island, show how the areas of the Tamils and the Sinhalese were recorded separately from antiquity (Emerson 1859).

The Tamils are predominantly Saivites (known as Hindus), whose religion and written language date back more than 2,500 years.¹ There are also Tamils who are Christians (converted from Saivism during the colonial era) and Muslims (through trade migration), sharing much of the Tamil culture, including the language. The highly acclaimed period of Sangham literature extended from 100 BC to AD 250, and is part of Tamil culture, which is immensely rich in art, literature, philosophy and history. The Sinhalese speak Sinhala, a language consisting fundamentally of Pali words, with many Sanskrit and Tamil loanwords. Historians agree that the Sinhalese community emerged after the assimilation of various ethnic groups in southern and western Sri Lanka, around 200 BC. The Sinhalese people are predominantly Buddhists but there are also Christians (Ponnambalam 1983).

The Portuguese (1505) and the Dutch (1658) colonial powers ruled the kingdoms of the Tamil and Sinhalese peoples separately, each people having a distinct culture, religion and language. In 1796, Britain conquered the island and in 1815 captured the Kandyan Kingdom (hitherto unconquered by the two previous colonial powers). For administrative convenience, the British then amalgamated the Tamil and Sinhalese kingdoms in 1833, creating a 'unitary state', later named Ceylon.² Of note, Britain used the concept of Tamil homeland, utilizing the distribution of Tamil and Sinhala place names, as the basis to demarcate the boundaries of two Tamil provinces in 1873 (Manogaran and Pfaffenberger 1994; Manogaran 1997). The British brought across around a million Tamils from South India to work mainly on tea plantations in the Central Hill Country.

The island's total current population is about twenty million. According to the most recent island-wide census, conducted in 1981, nearly three-quarters of the population were Sinhalese, whereas Tamils, including Muslim Tamils, comprised about one-quarter of the population. There are also burghers (dual-heritage descendents of the Europeans), Malays and the Vedas. Proceedings before the Donoughmore Commission in 1930 and the Soulbury Commission in 1946 were

¹ Sinhalese ethnologist Paul Peiris describes the five Saivite shrines on the four cardinal points of the compass, located on the shoreline of Ceylon and predating the birth of Buddha, as evidence of the ancient Tamil habitation of the island (*Tamil Nation* 1995).

² In June 1799, Sir Hugh Cleghorn, the first colonial secretary of Ceylon, wrote to the British government, in what is now known as the Cleghorn Minute: 'Two different nations, from a very ancient period, have divided between them the possession of the island: the Sinhalese inhabiting the interior in its Southern and Western parts from the river Wallouve to that of Chillow, and the Malabars [another name for Tamils] who possess the Northern and Eastern Districts. These two nations differ entirely in their religions, language and manners' (Ponnambalam 1983).

testimony to the failure of attempts by the British to create a homogeneous single Ceylonese nation. Measures adopted for multiracial colonies to ensure that no single community would be able to outvote all other communities combined, and proportional representation agreed between the Sinhalese and the Tamils (such attempts were made in colonial times to defuse the gathering crisis) were dropped without any reason being given:

By abolishing communal representation altogether, the [Donoughmore] Commission removed a delicate and pivotal balancing mechanism built into the political system to mirror the nationality structure in the country ... The abolition of communal representation would have been a progressive step only if suitable institutions, with adequate powers, were brought into being within the unitary structure, for the full development and realization of the aspirations of the separate nations. Perhaps with this in view, the Commission recommended limited devolution of power to new district councils. But these were never created and hence territorial representation without devolution of power at once exposed the Tamil nation to the overwhelming majority of the Sinhalese. Hence, subsequent Tamil attempts to redress this imbalance. (Ponnambalam 1983, 53)

The Soulbury Commission attempted to entrench safeguards into the colonial constitution to protect minority rights. Section 29(c) of the 1946 Soulbury Constitution stated,

No law shall ... make persons of any community or religion liable to disabilities or restrictions to which any persons of other communities or religions are not made liable; or ... confer on persons or any community or religion any privilege or advantage which is not conferred on persons of other communities or religions. (Ceylon Constitution Order in Council 1946)

Although Parliament was prohibited from introducing discriminatory legislation, laws that discriminated against Tamils, discussed later, were introduced and implemented. Meanwhile, a policy of colonizing the Tamil homeland areas was already underway.

Colonization of Tamil homeland

Extensive research has shown that one of the ways in which the relationship between the government and the Tamils was altered to the disadvantage of the Tamils was a programme of systematic colonization of parts of the Tamil homeland area. The nature and extent of Sinhalese colonization in Tamil provinces and their impact on those provinces' ethnic composition and political character have been well documented. According to Sachithanandan (1980, 10), 'within 162 years, the Sinhalese had plundered 50 per cent of the Tamil ancestral homeland and are still attempting to colonise more and more lands'. Initially covert, then operating overtly, these programmes were executed with methodical precision and calculated aggression, employing sections of the army and the Land Development, Irrigation and Agricultural Departments. Prior to and after independence, the government employed strategies to appropriate the land from the Tamils by settling armed Sinhalese families in forest areas between Tamil villages.

To many observers this was a process of internal colonization to change demographic patterns and performed two important functions: to lend weight

to the false argument that the Tamils never occupied any part of the island exclusively and to eventually alter electoral boundaries and create new Sinhala electorates for the rapidly increased number of Sinhalese settlers (Manogaran 1997). The District of Trincomalee is a notable example. In 1881, 4.2 per cent of the population were Sinhalese and 89.5 per cent were Tamil-speaking. However, by 1981, the Sinhalese had increased to 33.6 per cent of the population, whereas the Tamil-speaking population had decreased to 62.8 per cent.³ Commenting on the purpose of the government's policy on colonization and its impact on the Tamil-speaking people, Moore (1985) writes,

For not only have large-scale irrigation schemes intruded Sinhalese settlers into areas formerly occupied by Tamil speakers—Sri Lanka Tamils or Muslims—but this has been the conscious and admitted intention. There is thus the territorial dimension to what has been termed, in relation to Sinhalese political and cultural resurgence, 'the Myth of Reconquest'. Land policy, and the ideologies which support it have in general focussed more on the control of the land than the cultivation of or use of land. (Moore 1985, 45)

The colonization of the Tamil homeland areas continues today. Before discussing the acts of violence that underpin this policy, it is necessary to examine legislation introduced to position the Tamils as subordinates.

Post-colonial Sinhalese–Tamil relationship

Independence was granted to Ceylon in 1948. Urging the minorities to accept the Soulbury Constitution, the first prime minister of Ceylon, Sinhalese leader DS Senanayake, had assured the minorities that 'no harm need they fear at our hands in a free Lanka'. Appealing specifically to the Tamils, he asked, 'do you want to be governed from London or do you want, as Ceylonese, to help govern Ceylon?' (State Council Debate on the Soulbury Constitution 1945). Tamil leaders thought the Sinhalese would treat their people as equals. However, once Senenayake became prime minister he passed legislative acts that discriminated against Tamils. Under the provisions of the Ceylon Citizenship Act 1948, almost all the Tamils in the Central Hill Country were denied citizenship, leaving them stateless. They were then disenfranchised by the Ceylon (Parliamentary Elections) Amendment Act. This led to conditions of hardship for Tamils whose position was already depressed in terms of housing, health and education—despite their enormous contribution as labourers to the national income. Another consequence of disenfranchisement was the expansion of the already large majority of Sinhalese voters, as noted by the International Commission of Jurists (ICJ):

In 1948, at independence, the Tamils had 33 per cent of the voting power in the legislature. Upon the disenfranchisement of the estate Tamils (in 1950), however, this proportion dropped to 20 per cent. The Sinhalese obtained more than a 2/3 majority in the Parliament, making it impossible for the Tamils to exercise an effective opposition to Sinhalese policies affecting them. (Leary 1983, 11)

³Census of Ceylon, 1881, Table IV, Colombo 1882, Dept of Census and Statistics, and Census of Population and Housing, Sri Lanka Preliminary Report No 1, Colombo 1981.

Due to political reasons, the Sinhalese leader SWRD Bandaranaike converted from Christianity to Buddhism and learnt the Sinhala language. He promised two changes that would undoubtedly attract the support of the Sinhalese Buddhist majority. These were to change the official language from English to Sinhala (hitherto both Tamil and Sinhala were recognized as official languages) and make Buddhism the exclusive state religion.

In 1956, one of the first acts of the newly elected Bandaranaike government was the passing of the 'Sinhala Only Bill', which declared Sinhala the only state language:

In the eyes of the Tamils, they were discriminatory provisions adopted by the majority population which placed their language in an inferior position, [and] required them to learn the majority language; it also became more difficult for Tamils to enter government service. (Leary 1983, 10–11)

Tamil public servants were forced to learn the Sinhala language or face dismissal from public service. The professional middle class was affected in every sphere of life, fuelling a great deal of resentment. Together with the violence directed against the protestors, the Sinhala Only Act marked a historical watershed in the relationship between the Sinhalese and Tamil people.

Further discriminatory legislation

If the intention of the Sinhala Only Act had been purely to replace the colonial language of English, the genuine solution would have been to introduce both Sinhala and Tamil as languages with equal status—restoring the situation to that of the precolonial era. However, it was not only this Act but also the disenfranchisement legislation and the colonization process as a whole which were designed to marginalize the Tamils' rights under the guise of democracy. The reasons for this will be explained later below.

Further erosion of the Tamils' rights took place over the following decades. 'Standardization', a system of marks required for admission to university, was introduced in 1971 and required Tamils to gain higher marks than Sinhalese students. In 1972 a 'district quota system' was implemented whereby admission was based no longer on merit but on ethnic origin. Also in 1972, the Sinhalese leadership brought in a republican constitution. This new constitution introduced measures to further disadvantage the Tamils. It abolished the right to appeal to the Privy Council and it also abolished Section 29 of the 1946 constitution, which, as noted earlier, had been intended to protect numerical minorities. Furthermore, it renamed the island 'Sri Lanka' (a Sinhala name) and, in a clear move away from the secularism that had underpinned the British constitution, proclaimed that 'Sri Lanka shall give to Buddhism the foremost place' (Sri Lanka Constitution 1972, chapter 2).

This last move constitutionally secured the ability of the Buddhist clerics, alongside Sinhalese politicians, to maintain Sinhalese control. The ethno-religious identity of the Sinhalese was thus advanced over the minorities. Far from the assertion of a Sinhala identity that could respect diversity and pluralism, in effect a threatening and pernicious system of oppression developed. The origins and ideology of the oppression meted out against the Tamils derive from a distorted interpretation of the Buddhist religion.

On the origins of racism

Given Buddhism's presumed non-violent philosophy, the question arises, how could committed Buddhist monks and their wider community in Sri Lanka actively take part in the political violence of the Sinhalese against the Tamils? The nature of the participation of monks in national politics became increasingly volatile from the 1940s. Some Buddhist monk ideologues have been seeking to establish an 'ideal Buddhist-administered society' (Tambiah 1992). In this, they refer to and rely on the 'Myth of Re-conquest' (*Mahavamsa*), which eulogizes the ancient victories of the Sinhalese Prince Dutugemunu over the Tamil King Ellalan in which thousands of Tamils were killed, and makes a virtue of killing in defence of Buddhism. It also inculcates the belief that Sinhala Buddhists are racially superior to the Tamils. In the early 20th century, the leading proponent of these ideas was Anagaraka Dharmapala (1864–1933). In Dharmapala's view, the Tamils and other non-Sinhalese did not belong on the island. This exacerbated friction and contributed to riots as early as 1915 between Muslims and Sinhalese (Ponnambalam 1983). It is this ideology that influences the policies and actions of the Sinhalese government.

Non-violent resistance

As each new policy of discrimination was introduced, the Tamil people organized dignified protests based on satyagraha (non-violent civil disobedience in the Gandhian manner), inspired by the belief that it would bring forth positive change in the political arena. These non-violent actions continued for thirty-five years after independence and were invariably crushed with hostile and repressive measures taken by the police and army on the direction of the government. Often anti-Tamil riots would follow state intervention. For example, in the non-violent protests against the Sinhala Only Act, some 300 Tamil protesters were attacked, and in some cases stoned, by a government-supported Sinhalese mob numbering in the thousands. Simultaneously, 150 Tamils were killed in the east. Vittachi (1958) records how rumours (later established as false) that a Sinhalese woman and baby were killed had been used to ignite violence and anti-Tamil pogroms. In these attacks on the non-violent Tamil protests, no Sinhalese people were killed.

Alongside the non-violent resistance movement in the 1950s and 1960s, Tamil politicians proposed political solutions. However, agreements for peace, based on a quasi-federal system devolving certain powers to the Tamils in the north-eastern province signed between the Sinhalese leaders (prime ministers) and the Tamil leaders (parliamentarians) to resolve the political turmoil in the country were unilaterally abrogated by the prime ministers then in power. At the Trincomalee Convention of the Federal Party in August 1956, demands were made to the new Prime Minister, after extensive discussions, for a federal constitution, parity of status for Tamil and Sinhala languages, repeal of citizenship laws that had discriminated against Tamils of Indian descent, and an immediate halt to the colonization of the Tamil homeland. The result of this was the Banda–Chelva Pact, signed by Prime Minister Bandaranaike and the Tamil leader Chelvanayagam in 1957. But it was then abrogated by the Prime Minister due to vehement protests staged by Buddhist clergy and Sinhalese political leadership. The Senanayake–Chelvanayagam pact of 1965 also failed. In this agreement, the Federal Party extended support to the United

National Party to form a government in which a Federal Party nominee would be appointed to the cabinet as minister of local government. However, the agreement was not implemented by the Dudley Senanayake government and this led to the withdrawal of the Federal Party from the cabinet in 1968.

During the period between these agreements, over 500 Tamils were killed in political violence and anti-Tamil riots, and the Tamils' socioeconomic structures were also damaged by government-sponsored arson, vandalism and looting (Sivanayagam 2005, 68). By this time the Tamil civil society, non-violent movement and its political counterpart, the Federal Party, had started to consider that it was time to exercise their right to self-determination, as they had been consistently denied the right to freely determine their political status and freely pursue their economic, social and cultural development as provided for in international law in Article 1.1 of the ICCPR and ICESCR.

Right to self-determination and democratic expression

Although the UN Charter endorses the right to self-determination, one of the ironies of the 20th century is that such 'peoples' frequently suffer from the lack of an international mechanism that supports a people's legitimate aspirations for the right to self-determination. Such a mechanism would clearly need to take into account the fact that countries where peoples seeking self-determination reside invariably circumvent negotiations. Tamil politicians were persistent in their efforts to find a peaceful solution, although attempts to secure a federal arrangement through democratic processes have been shown to be futile, as described above. There is demonstrable evidence that the Tamils had exhausted all possibilities through dialogue before they were driven to demand their right to self-determination. In July 1977, the Tamil United Liberation Front (TULF), the representative party of the Tamils, declared in its election manifesto (which served as a form of referendum to the electorates in the Tamil areas),

What is the alternative now left to the nation that has lost its rights to its language, rights to citizenship, rights to its religions and continues day by day to lose its traditional homeland; The Tamil Nation must take the decision to establish its sovereignty in its homeland on the basis of its right to self-determination ... to establish the independence of Tamil Eelam ... either by peaceful means or by direct action or struggle. (Quoted in Hot Spring 1999, 1)

In the north-east, 86 per cent of the electorate turned out to vote in this election, of which 68 per cent voted for the TULF. Overall, 65.9 per cent voted for candidates who stood for an independent Tamil Eelam.

Clearly, the Tamil people had voted overwhelmingly in favour, showing the majority of the Tamil people's desire for self-determination to be defined by external self-determination. However, the government did not respect the popular mandate verified by this democratic and legal process. On the contrary, the government introduced the Sixth Amendment to the Constitution, which prohibited peaceful advocacy of independence. The constitution itself further denied Tamils an effective role in the decision-making process. This explains why most Tamils boycotted elections for many years afterwards, as their views were simply not taken into account. There ensued heavy, well-documented vote-rigging on the part of successive governments who encouraged discredited Tamil groups to stand for election.

Genocide

We can observe that, based on historical and sociopolitical evidence, the Tamils of the north-east fulfil all the criteria to be recognized as a distinct people: not only a culture that possess a native language, but also one that has inhabited a traditional settlement area, has a shared history and has democratically expressed a collective will. Furthermore, they have a shared lived experience as a people that has been systematically and collectively discriminated against and persecuted by successive Sri Lankan governments. In the early 1980s the persecution intensified. In 1981 the library in Jaffna was burnt to the ground by Sinhalese policemen. Some 95,000 ancient texts and manuscripts were destroyed. In July 1983, over 3,000 Tamils were killed, many of them burnt alive. Electoral lists were used to identify Tamil homes. The police and army encouraged the killings (Sivanayagam 1987).

Judicial experts have repeatedly asserted that the political violence and killings directed against the Tamils constitute genocide. The ICJ stated, 'the evidence points clearly to the conclusion that the violence of the Sinhalese rioters on the Tamils amounted to acts of genocide' (MacDermot 1983). The allegation of genocide is based on the following points: (1) the Tamils represent a clearly defined group and those who kill the Tamils do so with the intent to wipe them out as a group, (2) the killers are encouraged or implicitly supported by state authorities, and (3) the acts of violence and mass killing inflicted upon Tamils are criminal and systematic.

The first international genocide trial in history, the Rwandan Akayesu case, considered the scope and elements of genocide and defined what constitutes a protected group.⁴ It also recognized individual criminal responsibility for acts committed by subordinates. The trial chamber concluded that the victim 'is the group itself and not only the individual'.⁵ Noting the definition of each protected group, it is clear that the Tamil people are a group 'whose members share a common language or culture'⁶ and are also 'a stable and permanent group'.⁷ Regarding the definition of crimes against humanity, the chamber noted that certain inhumane acts must be part of a widespread or systematic attack, 'committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group'.⁸ These acts included extermination, murder, torture and rape. The historic conviction of rape as a crime against humanity and as an instrument of genocide was a significant step for women's rights. Hitherto, the definition of rape in international criminal law had been limited to that of an act of torture.

Documentation and evidence of widespread attacks, including rape, against the Tamil civilian population over several decades have been collected by international human rights organizations. For instance, as corroborated by Amnesty International, on 11 February 1996 Sri Lankan army soldiers raped and killed two young women during an army mass killing of 24 villagers in Kumarapuram. Thirteen women and seven children below the age of 12 were among those killed. Some of the soldiers shouted, 'Death to the Tamils.' Only soldiers of lower

⁴ Ad hoc International Criminal Tribunal on Rwanda Case No ICTR-96-4-1.

⁵ *Ibid.*, paragraph 521.

⁶ *Ibid.*, paragraph 531.

⁷ *Ibid.*, paragraph 702.

⁸ *Ibid.*, paragraph 168.

rank faced charges and they were released on bail (Amnesty International 1996). The court-case of Krishanthi Kumaraswamy, a 17-year-old girl who 'disappeared' on 7 September 1996 and was gang-raped and murdered by Sri Lankan soldiers, was held in Colombo due to intense international pressure. The case led to the revelation of the mass graves at Chemmani, where some 600 bodies are believed to be buried. Detailed evidence of exact locations of burials in shallow ground, within a Sri-Lankan-government-controlled area, was given in court by an accused junior military officer, who also stated that he was not guilty and named a commander and senior captains who had ordered the killings. In Batticaloa on 17 May 1997, Murugespillai Koneswari, a mother of four children, was raped and killed by Sinhalese police in front of her two-year-old daughter (Amnesty International 1997b; 1997c).

The above cases of systematic rape and killing of Tamil women and girls by Sinhalese security forces fit the recognized definition of genocide. The Tamils are a protected people. Rape has been used as an instrument of genocide against them with the intention of destruction. Over 80,000 civilian Tamil people, including many women and children, have been killed or have 'disappeared' since 1983; more than 12,500 Tamil women have been raped and killed; torture is routinely committed against Tamils (Tamil Centre for Human Rights 2005). In November 2003, the UN Human Rights Committee stated, 'the Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces' (UN Human Rights Committee 2003, 3, paragraph 9). For over two decades, the Sri Lankan government has imposed an economic embargo on the Tamil areas by blocking access to food and medicine. Such an action is listed as an element of the crime of extermination under the Statute and Elements of the International Criminal Court. Sri Lanka has, however, abstained from voting in favour of the Rome Statute of the International Criminal Court.

In 1998, the UN Working Group on Enforced or Involuntary Disappearances stated that Sri Lanka had the second-highest number of disappearances in the world, ranking next to Iraq.⁹ Also Sri Lanka is the only country that the Working Group has visited three times. So far, no proper remedies have been found for these disappearances. More than 2,500 Tamil church and temple buildings have been destroyed in aerial bombings and artillery shelling, and billions of rupees' worth of material damage has been caused by the Sri Lankan government. Vast areas of the north-east have been declared 'High Security Zones' (HSZ) and all dwelling places, schools and places of worship have been destroyed, with the exception of large houses commandeered by the Sri Lankan forces. The livelihoods of the people—farming, fishing, small-scale industries and trading—are denied. About 500,000 Tamils have sought political asylum in European and other countries.

The presidency of Chandrika Kumaratunga, 1994–2001, was a time of immense fear for Tamils. Using her executive presidential powers she declared and waged her 'War for Peace', in which hospitals, churches, temples, schools and marketplaces were bombed from land, air and sea, with a huge toll on civilian life; and over 800,000 Tamil people were internally displaced in the north (Emmanuel

⁹UN Document E/CN.4/1998/43, 62–64.

1997). A few years of cessation of hostilities followed the Ceasefire Agreement between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), which was facilitated by the Royal Norwegian government and signed by the Prime Minister of Sri Lanka, Ranil Wickremasinghe, and the leader of the LTTE, Vellupillai Pirabakaran, on 22 February 2002. However, the onslaught of human rights violations resumed under President Mahinda Rajapakse. The economic embargo—preventing food and medicine from reaching Tamil civilians—has been renewed and infant mortality has risen. Bombing of Tamil civilians by land, air and sea by Sri Lankan forces and extrajudicial killing of Tamils are happening with disturbing frequency. Humanitarian aid workers, including 17 local workers from the French organization Action Contre la Faim, International Committee of the Red Cross (ICRC) staff and many others, have been killed by Sri Lankan armed forces. Ethnic cleansing of Tamils is rampant in the east and a further 300,000 Tamils have been displaced in that region. Successive governments of Sri Lanka have continued to commit violations of international humanitarian law, war crimes and crimes against humanity (Humanitarian Law Project 2006). There is growing alarm currently, both in the north-east and internationally, due to the fact that on 16 January 2008, the Sri Lankan government withdrew from the Ceasefire Agreement.

Impunity

The lack of interest by successive Sinhalese governments in addressing the Tamils' complaints has fostered impunity. The problem of impunity is at the very heart of the conflict. Since not a single member of the security forces has been successfully indicted, it seems the Sri Lankan security forces have no restraint on their conduct. More than 90 mass killings of Tamils by the Sri Lankan security forces have taken place in the north-east since 1956 (Tamil Centre for Human Rights 2005). Tamils and human rights organizations have brought many of these cases to the attention of the authorities in Sri Lanka, but to no avail. There has been a well-recorded tactic of delay, court transfers and intimidation of witnesses. The absence of any effective means of bringing perpetrators to justice has helped to fuel the conflict. The UN Special Rapporteur on Extrajudicial Killings, Bacre Waly Ndiaye, has stated,

Effective impunity encourages political violence and is a serious destabilizing element in all contexts of the Sri Lankan socio-political system ... This culture of impunity has led to arbitrary killings and has contributed to the uncontrollable spiralling of violence. (UN Commission on Human Rights 1998, 27, paragraph 119)

A few cases have been brought before the Sri Lankan authorities. For example:

1. In Kokkaddicholai, near Batticaloa there were two 'massacres'. In 1987, 80 unarmed Tamil civilians, including women, were shot dead by special police task forces. The bodies were hauled away in tractors, and have not been seen since. In 1991, Sri Lankan Army soldiers killed 152 Tamil civilians including women. A formal enquiry was held, which found 19 soldiers responsible, but the perpetrators were not punished and returned to active duty (Trawick 1999).
2. At Mylanthanai village in the Batticaloa district, 35 Tamil civilians, including women and 14 children, were 'massacred' by Sri Lankan Army soldiers

on 9 August 1992. After ten years of advocacy, 18 soldiers were brought to trial. At the soldiers' request, the case was transferred from Batticaloa to Colombo and tried before an all-Sinhalese jury, which returned a unanimous verdict of not guilty on 25 November 2002 (British Refugee Council 2002).

3. In the case of the Bolgoda Lake killings of 21 Tamils in custody, whose bodies were found in lakes around Colombo, 'the 22 Special Task Force (STF) members arrested in connection with the killings in September 1995 and released on bail three months later had allegedly returned to active duty' (British Refugee Council 1997).
4. The proceedings of the Chemmani mass graves case have been subject to continuous delays. Amnesty International stated that there was a clear pattern of the security forces carrying out disappearances: 'Between 1983 and mid-1987, we recorded 860 disappearances in the area, nearly all of whom are still unaccounted for. Now we have 600 in one year' (Amnesty International 1997a). Amnesty International called on the President to allow international and national observers to visit Jaffna and assist the government in enforcing measures to bring an end to 'disappearances' (Amnesty International 1997a). The organization reported that 'it is now feared that nearly all of those who remain disappeared after their arrest by the security forces about a year ago died under torture or were deliberately killed in detention' (Amnesty International 1997d, 1).
5. In a rehabilitation centre near Bindunuwewa, 28 Tamil youths were killed by Sinhalese mobs and Sri Lanka police on 25 October 2000. Condemnation of the 'massacre' by Tamil organizations and others, as usual, was swift. Concerns raised by international organizations led to a presidential commission of inquiry. Eight police were found guilty, but none of them was punished, all were acquitted. In fact, one was a police inspector who was subsequently promoted (Satyendra 2007).

The Prevention of Terrorism Act (PTA) of 1979 gives unlimited powers to the Sri Lankan security forces to arrest, detain, torture, rape, kill and dispose of the bodies of Tamils with impunity. Introduced with the specific aim of subverting the rule of law in the north-east, and made permanent in 1982, the PTA provides for detention for up to 18 months with neither trial nor access to lawyers or relatives. It allows confessions under torture as admissible evidence in court. Tamil detainees are forced to sign confession documents written in Sinhala which implicate them in a language that the vast majority of them do not understand.

Academics, human rights defenders, educationalists, parliamentarians, journalists, businesspeople and others have been killed by security forces with impunity. Prominent human rights defender Kumar Ponnambalam, who was well known in international human rights fora, was assassinated in January 2000 in Colombo. Most of these murders of members of civil society, including human rights defenders, have taken place in the government-declared HSZs.

In the absence of domestic remedies and the absence of a regional human rights mechanism in Asia (for example, an equivalent to the European Court of Human Rights or the African Court on Human and Peoples' Rights), it became an imperative to take the fight against impunity directly to global international fora.

Sri Lanka's response

Accusations against Sri Lanka regarding its human rights record have been consistently voiced in the major human rights fora, including the UN Human Rights Commission (now the UN Human Rights Council) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, later named the Sub-Commission on the Promotion and Protection of Human Rights. Many statements have been made under the right to self-determination for more than two decades. In 1996, 53 international non-governmental organizations (NGOs) took up the issue in a joint statement. Treaty bodies have also taken up the issue, and extensive reports from special rapporteurs have documented the human rights violations. In the inaugural session of the UN Human Rights Council (UNHRC), despite Sri Lanka's attempts to block the discussion, the European Union drafted a decision on the situation in Sri Lanka (UNHRC 2006). Soon thereafter, a recommendation was made for the establishment of a human rights monitoring mission (UN General Assembly 2006).

The Sri Lankan government has repeatedly denied responsibility for serious breaches of its obligations under international law and has placed all the responsibility for the conflict on the Tamil people. Sri Lanka's Human Rights Ministry's Inter Ministerial Committee and other human rights' entities appear to be designed to give the impression that the government is active on human rights issues. However, these bodies do not take meaningful action to combat impunity. They challenge neither the root causes nor the continuing violence. Increasingly, the accusations against the government of Sri Lanka are that it not only has no interest in protecting the rights of Tamils, but also has no real interest in a peace settlement because it has no wish to grant regional autonomy to the Tamils. For instance, the Interim Self Governing Authority (ISGA), proposed by the LTTE in November 2003, was welcomed by the international community as a constructive starting point in talking about a settlement to secure rights through internal self-determination. It was formulated in the spirit of the Oslo Declaration of November 2002. The LTTE clearly voiced their preparedness to talk on the basis of internal self-determination and, if that failed, to call for external self-determination—the mandate of 1977.

The ISGA presented by the LTTE is similar to the Bougainville (2001) and Sudan (2005) peace agreements—both of which are based on internal self-determination. It also contains some features similar to the Sri Lankan government devolution proposals formulated by Gamini Laksman Peiris in 1995, for example, the consideration of police, revenue and land. The ISGA was ignored by then President Chandrika Kumaratunga. In fact, three days later, she sacked the Ministers of Defence, Interior and the Media and dissolved the government. The negotiating stances of successive governments are considered, by the vast majority of the Tamils and many commentators, to be a charade for public consumption rather than a serious engagement in conflict resolution. Academic commentator Robert Oberst noted in December 2003 that,

It is not surprising that when the LTTE presented their Interim Self-Governing Authority (ISGA), a number of Sri Lankan political parties immediately rejected the proposal arguing that there should be no negotiations over the proposal. This has been a sad pattern of the Sri Lankan conflict. (Oberst 2003)

Oberst states that it would be 'foolhardy' for the Sri Lankan government to fail to at least talk with the LTTE about the proposals, adding that several issues raised in the ISGA were 'relatively easy to resolve' and other serious issues needed to be resolved during negotiations between the two sides. Political commentators have remarked that after the round of peace talks, in Oslo in 2004,

[The LTTE] issued a demand for 'internal self-determination'. Mr Rajapakse however, has proposed as his solution a modest devolution at the village level. This idea, modelled on India's system of Panchayats, was aired, and discredited, in the early 1980s. It is hard to exaggerate how inadequate, and depressing, most Tamils considered this ... After so long a struggle, they [the Tamils] also require a fair apportioning of power to a united north-eastern province. (*The Economist* 2007)

In that same article, the writer states that 'President Chandrika Kumaratunga, had also tried to please [the Sinhalese] majority. She waged a policy of "war for peace" against the Tigers—as unsuccessful as it was illogical' (*The Economist* 2007).

In the aftermath of the devastating tsunami of 24 December 2004, there was hope that joint humanitarian work would be possible. However, on 15 July 2005, the Supreme Court issued a stay order on four main points of the Post-Tsunami Operational Management Structure (P-TOMS) responsible for coordinating the administration of aid to tsunami-affected persons in the north-east. This opened the eyes of many to the reality that Tamil victims of the tsunami were denied humanitarian assistance. On 7 January 2005, the UN Secretary General Kofi Annan made a humanitarian visit to Sri Lanka to see the tsunami-affected areas. When he requested to visit the north-east, the area of the island most affected by the tsunami, Sri Lankan authorities prevented him from making a humanitarian visit. This incident illustrates how the government is continuously displacing matters concerning the Tamils from the international community.

National liberation movement

As discussed earlier, the Tamil people had given an overwhelming mandate for a separate state in 1977. Frustrated by the lack of progress through politics, diplomacy and non-violent protest, Tamil youths started to form militant groups, including the LTTE, also known as the 'Tamil Tigers'. The ever-increasing brutality inflicted on the people was a significant factor leading to the growing popularity of the liberation movement and its armed struggle. The pogroms of 1983 led to mass support for the liberation movement.

Comprehensive studies have been made of the complex evolutionary history of the LTTE, the emergence of women fighters, the hitherto unknown characteristics of the leadership of the LTTE, the peace talks during the period of the Indian Peace Keeping Force 1987–1989 and the Jaffna talks of 1994–1995 (Balasingham 1993; 2001; Balasingham 2000, 2004).

The legitimacy of the LTTE lies in the Tamils' right to self-determination under international law. Excluded from the democratic process after 1977, the vast majority of Tamils did not vote again until the general election in 2004, when once again they had the opportunity to vote and exercise their right to self-determination. By this time, the Ceasefire Agreement, signed in February 2002 and facilitated by the Norwegian government, had conferred an official, *de jure*

recognition of the LTTE as one party to the armed conflict—recognized by the Sri Lanka government (which accordingly de-proscribed the LTTE) and the international community. In the 2004 general election, the Tamil National Alliance (TNA), a grouping together of the majority of Tamil political parties, won overwhelmingly in 22 electorates in the north-east (TNA won 22 out of 25 north-east seats). Their manifesto stated that the TNA accepts the 'LTTE's leadership as the national leadership of the Tamil Eelam Tamils and the Liberation Tigers as the sole and authentic representatives of the Tamil people'. The Tamil National Alliance election manifesto of October 2004 stated that the LTTE should be the sole negotiating partner with the government. The people elected them and showed real determination to vote despite restrictions and obstacles imposed on them by the government. The humanitarian needs of the people were of the utmost concern, and the TNA pledged to work for the lifting of the embargo, an end to the HSZs (areas of the Tamil homeland area occupied by Sri Lankan armed forces) and a halt to the atrocities against Tamils.

The TNA gives the Tamil people a voice in Parliament. Over the last three years, the TNA has made many satyagraha (non-violent) protests in Parliament opposing the continuation of the Emergency Regulations, the PTA and ongoing human rights violations. However, this has been very costly, as two TNA members of Parliament and two former Tamil ministers of Parliament have been assassinated by government forces since 2002, and many more have been threatened. The Inter-Parliamentary Union (IPU) is currently investigating these incidents (IPU 2007a; 2007b). Also, reports of extrajudicial killings and other human rights violations against the Civil Monitoring Committee have been lodged. The LTTE has been the negotiating party on behalf of Tamils in many series of talks with the government since 1985. It is widely acknowledged that the LTTE has evolved as a de facto administrative body and is the most powerful force representing the Tamils. Several reports have been published by international observers after their visits to the north-east of Sri Lanka, including Australian member of Parliament Virginia Judge.¹⁰ Many of the visiting dignitaries met and appreciated the qualities of the chief political negotiator in the most recent peace talks, SP Tamilchelvam, who was assassinated by Sri Lankan government forces in an aerial bombing of his residence in the north, on 2 November 2007.

As has been demonstrated, the Tamils are a distinct people with their own culture and language and a contiguous homeland territory, which has been occupied forcefully by the military of successive Sri Lankan governments. The Tamil people have been and continue to be subjected to acts of genocide. The LTTE is engaged in an armed struggle based on the right to self-defence and right to self-determination, carrying out the democratic mandate given by the people in the 1977 election (Humanitarian Law Project and UK Parliamentary Human Rights Group 1997). The majority of the Tamil people have accepted the armed nature of the struggle and actively support it. This is evidenced by the de facto government that remains, and the fact that more territory has come under the control of the LTTE within the last two decades (approximately two-thirds of the north-east), with assistance and support from people in the area. Tamil people,

¹⁰New South Wales, Legislative Assembly, *Hansard*, 15 September 2005.

within the homeland territory and internationally, have frequently demonstrated their support for the LTTE, which is perceived by the majority of Tamils as the organization that is most effectively defending them.

A self-governing, self-managing administration

Tamil Eelam institutions have been established over the last 18 years and have developed into fully functioning systems to meet the basic needs of the people. As well as a police force founded in 1990, there is a legal system founded in 1993 with penal code, law school, courts and court of appeal. There are also education and health systems as well as welfare organizations.

However, whilst Tamil Eelam has established judicial and civic institutions as well as social services, development has been slow, as years of conflict and war have imparted a devastating effect on the lives of hundreds of thousands of people. More than a million people have been displaced multiple times and are living in conditions of extreme poverty. The Sri Lankan army still occupies their homes, schools and places of worship, preventing them from returning home—contrary to the stipulations of the Ceasefire Agreement. Development has also been hindered by the post-tsunami recovery operation—or rather the lack of it, as discussed previously. International NGOs working in the LTTE-administrated areas have regularly informed the international community about the lack of government relief sent to those affected areas in the north-east. Funds for the development of the north-east have never been utilized for their intended purpose in the past and this pattern continues. The blocking of tsunami aid is a disturbing example of how government aid earmarked for the north-east does not arrive. It was largely the Tamil diaspora who sent aid and ensured it actually reached the people in need.

International recognition

It is significant that for more than twenty years negotiations between the LTTE and the Sri Lankan government have taken place in countries outside Sri Lanka. A third party has officially hosted the formalities on each occasion. The international community has facilitated talks in Thimpu, Bhutan in 1985; Bangalore, India in 1986; Sattahip and Rose Garden, Thailand, Oslo, Norway and Hakone, Japan in 2002; Berlin, Germany in 2003 and Geneva, Switzerland in 2006. The international community needs to recognize the LTTE as a partner for peace, and as an equal party to the talks, otherwise there will be no progress and the failures of past, abrogated agreements will be repeated. The main sticking point has always been that the government goes for negotiations outside the country with the LTTE, but returns and claims that the LTTE does not represent the Tamil people. This contradicts the recognition of the LTTE as a legitimate peace partner by United States (US) Secretary of State Condoleezza Rice and the co-chairs (US, European Union, Norway and Japan).

Conclusion

This article has provided an overview of the relationship between the Tamil and Sinhalese peoples, in first Ceylon and then Sri Lanka. It has also tried to show how

the government has used its democratic majority to discriminate against the Tamils over the years since independence, gradually depriving them of all their civil, political, economic, social and cultural rights and ultimately committing acts of genocide. The article shows how the Tamils used every available parliamentary method to attempt to restore their rights and all of these attempts were ignored by the government. Tamils then voted in democratic elections to express their demand to exercise their right to self-determination. Extensive evidence points to the fact that violence was adopted reluctantly and only as a last resort.

The LTTE has been categorized by some countries as a terrorist organization, while holding a groundswell of support in the Tamil homeland areas. The Sri Lankan government has recognized the LTTE's de jure nature, by de-proscribing it and entering into negotiations. What the international community needs to do now is to demand that the government of Sri Lanka talk to the LTTE to bring about a permanent, durable and just solution. With the current political climate framed by the war against terrorism, maybe it is timely for the international community to review its assessment of the LTTE as a terrorist group, as it would seem clear that it is resorting to the right to self-defence while struggling for the right to self-determination. The international community needs to take a balanced account of the conflict. It also needs to give diplomatic support to the LTTE to negotiate with the Sri Lanka government. If the international community wants peace in the area it must encourage this process.

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