

## **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. [ ]

### **Two peoples colonized by Europeans**

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.[ ]

### **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. [ ]

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. 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. [ ] The colonization of the Tamil homeland areas continues today.

### **Post-colonial Sinhalese-Tamil relationship [ ]**

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) [ ]

### **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. [ ]

### **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'. In this, they refer to and rely on the 'Myth of Re-conquest', 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 Anagarika 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. 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. [ ]

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. 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.

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 [ ]**

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'. 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. 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'. 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' and are also 'a stable and permanent group'. 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'. These acts included extermination, murder, torture and rape. [ ]

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. 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.' 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. 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. 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. 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. [ ]

### **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.[ ]

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. [ ] 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. [ ]

### **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. [ ]

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'. [ ]

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. 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, 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. [ ]

### **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.

*[references deleted for brevity]*

## THE SRI LANKA-TAMIL WAR IS A WAR OF NATIONAL LIBERATION IN DEFENSE OF THE PRINCIPLE OF SELF-DETERMINATION

by Karen Parker, Esq., President, Association of Humanitarian Lawyers, 1997

Modern humanitarian law applies to all types of war: international wars, civil wars and wars of national liberation. [ ]

A war is a war of national liberation when a group having a claim to self-determination carries out military actions against the occupying state, which can be a colonial or alien power or a racist regime. Self-determination is the collective right of a people to freely determine their own political status and to pursue economic, social and cultural development. People claiming self-determination must show a history of independence or self-rule in an identifiable territory, a distinct culture, and a will and capability to regain self-governance.

In wars of national liberation in the exercise of the right to self-determination or against racist regimes, the international community is required to side with the people with the right to self-determination or fighting against racist regimes. This is because of the peremptory (jus cogens) nature of the principle of self-determination and the international prohibition against racism. [ ]

The Tamil claim to self-determination is one of the strongest in the contemporary international scene. The three main elements of a claim to self-determination –

- historic self-governance in an identifiable territory,
- a distinct culture and
- a national will and capacity to govern

-- are all present in the Tamil case.

The Tamil people have a centuries-old tradition of independence on the island of Ceylon, broken only by colonial powers. Early mention of a distinct Tamil kingdom and culture exists in the 6th century B.C. in the great Indian epics Mahabharata and Ramayana. A series of Tamil kings founded the ancient capital Anuradhapura and ruled until 101 B.C. when the Tamil Ellaran was defeated by a Sinhalese prince. This capital was retaken by the Tamils and other Indian invaders in the ninth century. By 1214 A.D. however, the Tamils held power in the kingdom of Jaffna, extending into current Tamil lands in the North and East. A 1789 map of the area by the cartographer Du Peron clearly indicates the territorial divisions of the two kingdoms.

The colonial period began in the early sixteenth century when the Portuguese captured the Sinhalese kingdom in the south of Ceylon. The Tamil kingdom remained free until 1621, more than 100 years later when the Portuguese captured the Tamil king Sankili. The Portuguese were defeated by the Dutch in 1658, and the Dutch soon began to import Tamils from south India as slaves and textile workers. The British replaced the Dutch in 1796, who by 1833 governed both Tamil and Sinhala kingdoms under unitary colonial rule.

The first British colonial secretary, Sir Hugo Cleghorn, recognized not only that the Tamil and Sinhalese kingdoms were politically separate, he also attested to their profound cultural, linguistic and religious differences. In his now-famous Minute he wrote:

Two different nations, from the 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 Chillaw, and the Malabars [Tamils] who possess the Northern and Eastern Districts. These two nations differ entirely in their religions, language and manners. [ ]

The third element of self-determination -- national will and capacity to govern -- is also exceptionally strong in the Tamil case. Not only are the LTTE themselves evidence of a willingness to defend the right to self-determination with the use of force but the vast majority of Tamil civilians, whether in Sri Lanka or abroad, also show an exceptionally strong national will that has endured for the many long years of the war and indeed throughout the colonial period and post colonial period. Even those relatively few Tamils who do not strongly support the LTTE do not deny their insistence on some form of self-governance, whether in association with the Sinhalese or as a separate nation. [ ]

In the 1977 general elections, the TULF ran on a platform of Tamil "sovereignty in its homeland on the basis of self-determination" and won 18 out of the available 19 seats. [ ] In an impassioned speech at a major peace conference in Australia, The Rev. Dr. S.J. Emmanuel, Vicar General of the Diocese of Jaffna stated:

I am standing here as a man of God in service to a suffering mankind. I have hope in the goodness of God and men. From amidst the deafening sounds of thousands of bombs falling on our soil and consuming sacred lives, I cry out with Moses of old, "Let my people go from this slavery to freedom."

About the capacity to self-govern there can be no doubt. The Tamil people have a long political history, and there are a variety of Tamil political parties with great experience and highly developed platforms and programs. Many leading Tamils have had high offices in former Sinhalese governments, and while they are now mainly in exile, they are able and ready to serve in a Tamil government. The LTTE has maintained a civilian authority in the areas under their control since the beginning of the war

The Tamil people also have a claim to self-determination based on the racism and persistent violations of their human rights carried out by the succession of Sinhala-dominated governments since the end of the colonial period. *[references deleted for brevity]*

*Sangam!*  
**Association of Sri Lankan Tamils in the USA**

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January, 2009